



Andy Mowery &lt;pohoaandy@gmail.com&gt;

---

**FORMAL NOTICE OF VIOLATIONS BY POHOA BOARD - Invalid Election**

---

**Andy Mowery** <pohoaandy@gmail.com>

Sat, Jan 20, 2024 at 5:45 AM

To: Poudre Overlook at FtC &lt;atftcpoudreoverlook@gmail.com&gt;

Cc: rep.brianna.titone@gmail.com, naquetta@ricks4co.com, shindi@denverpost.com, David Graf &lt;dgraf@moellergraf.com&gt;

To the Board and Colorado Legislators:

As an additional step, I have taken all of the PDF documents, including those from the Stevens v. Brandychase II case and the relevant POHOA policies for analysis and processing by ChatGPT with the AskYourPDF module installed. The key argument I am making is that the detailed documentation I have created which Lora Ballweber has portrayed as "combative" and/or "harassment" is actually purposeful for such an analysis.

Large Language Models (LLMs) perform significantly better when rich data provide details and context. The resultant output is then more useful when detailed questions are used as ChatGPT prompts. The key here is that rather than being forced to defend my actions from allegations that Ms. Ballweber (with the unanimous authority of the POHOA Board), I can actually state confidently that these are good faith intentions and actions necessary to use such tools successfully.

After uploading all of the relevant documents, I engaged ChatGPT, including prompts and questions that took the Devil's Advocate position of questioning whether my emails were "combative" or "harassment". I also asked it to look for any logical fallacies, or anything that is not supported by the law or governing documents. The output from ChatGPT is below. I believe it demonstrates, at the very least, an objective and neutral analysis of the dispute based upon the written record.

After the process of using ChatGPT prompts to see if there were any objective problems with the length, method, or tone of my documentation of these issues with Elections and Retaliation, I asked ChatGPT to write a report or brief on the matter for the purpose of informing Legislators. That output is also below.

Based upon this good faith attempt to self-review my own actions to determine if I have taken any inappropriate actions by using an LLM to process the documentation and AI via ChatGPT to see if such actions are justified, I am more confident that they are in fact the appropriate way to deal with the POHOA Board's non-compliance in preventing the casting of a vote for myself via proxy after self-nomination. The exercise did not uncover any deficiency as a matter of law, ethics, or logic.

It did, however, uncover the possibility that the reaction by the POHOA Board might be considered statutory retaliation if Hawaii's protection of HOA Homeowners were in place in Colorado. I therefore, use this example as advocacy for such protections being put into place as soon as the Legislature can make this possible. It also appears necessary to update the CCIOA-required Responsible Governance Policies with one that addresses Elections with specificity to ensure that a "strict compliance" standard is used in resolution of disputes.

I welcome any questions from the POHOA Board or Legislators on this matter, and will make available any and all documents (communications) for review. If the POHOA Board has a specific example of how my emails qualify as "combative" or "harassment", I would be happy to review the excerpts - and run them through ChatGPT to get that perspective. The POHOA Board is of course free to use these free/paid tools as well. I find them indispensable, as we are clearly obliged to use available technology to the best of our ability to do the best jobs we can.

I am therefore asking the POHOA Board to acknowledge the Formal Complaint, begin the process of impartial fact-finding, and to consider the resolution proposed without any further delay.

Sincerely,

Andy

~~~~~  
CHATGPT SUMMARY  
~~~~~

## Comprehensive Analysis: The Dispute Between Andrew Mowery and the Poudre Overlook HOA

### Introduction

This detailed analysis examines the complex dispute between Andrew Mowery and the Poudre Overlook Homeowners Association (POHOA) Board throughout 2023. It delves into the nuances of the case, focusing on the election dispute, legal compliance issues, and potential retaliation, advocating for amendments to the Colorado Common Interest Ownership Act (CCIOA).

#### Background and Context

Andrew Mowery, a homeowner in POHOA, raised several governance issues with the POHOA Board. His primary concerns revolved around the election procedures, the handling of his resignation, and the application of bylaw amendments. Mowery's approach, characterized by detailed documentation and legal references, suggests a good faith effort to resolve these issues.

#### The Election Dispute and Proxy Voting

Central to the dispute was the POHOA Board's refusal to accept Mowery's self-nomination for an open Board seat and the subsequent rejection of his proxy vote. This action raises questions about the interpretation of election procedures and the rights of homeowners in HOA elections, particularly in the absence of explicit nomination requirements in the POHOA governing documents.

#### Legal Standards and Compliance Issues

The case of *Stevens v. Brandy Chase II* provides relevant legal standards, particularly concerning the importance of following HOA governing documents and state laws. The issue of strict vs. substantial compliance is critical, especially regarding the events of 1/25/23, where Mowery's resignation and the subsequent bylaw amendment to ban him for three years were central. The legal opinion from Altitude Law, indicating that HOA bylaws are effective only upon being signed, further complicates the Board's actions.

#### The Role of Lora Ballweber and the POHOA Board

Lora Ballweber, as the President of POHOA, played a pivotal role in the events of 2023. Her actions and statements, particularly at the HOA Task Force meeting on 1/2/24, could be interpreted as potential retaliation against Mowery for his efforts to address governance issues.

#### Potential Retaliation and Legal Protections

Drawing parallels with Hawaii's anti-retaliation statute, Mowery's experience suggests the need for similar protections in Colorado. Such legislation would safeguard homeowners who, in good faith, challenge HOA governance practices.

#### Advocacy for Amending CCIOA

The Mowery-POHOA case underscores the necessity for amending CCIOA to include specific policies on Elections and Retaliation. These amendments would ensure strict compliance standards for HOA Boards, akin to those expected of homeowners, and provide clearer guidelines for fair and transparent governance.

### Detailed Analysis

**Election Procedures and Mowery's Self-Nomination**

Mowery's attempt to self-nominate for an open Board seat was met with resistance from the POHOA Board. The Board's interpretation of the nomination process, which seemingly required nominations to be made from the floor during the meeting, was not explicitly stated in the POHOA governing documents. Mowery's written self-nomination prior to the meeting, therefore, should have been considered valid based on the absence of specific procedural requirements in the governing documents.

**Proxy Voting and Ballot Rejection**

The rejection of Mowery's proxy vote further complicates the election dispute. Proxy voting is a common practice in HOA elections, and Mowery's assignment of his vote to another member should have been honored, especially in the context of his self-nomination.

**Legal Compliance: Strict vs. Substantial**

The events of 1/25/23, involving Mowery's resignation and the subsequent bylaw amendment, highlight the issue of strict versus substantial compliance. Mowery's resignation, as per the POHOA bylaws, was effective immediately upon submission. The Board's attempt to retroactively apply the bylaw amendment banning Mowery for three years contradicts the legal advice from Altitude Law and potentially violates CCIOA, the Non-Profit Act, and the POHOA Governing Documents.

**Ballweber's Role and Potential Retaliation**

Lora Ballweber's testimony at the HOA Task Force meeting, where she characterized Mowery's actions as overly burdensome and combative, raises concerns about potential retaliation. Her portrayal of Mowery's legitimate governance concerns as negative and disruptive could be seen as an attempt to discredit his efforts and dissuade him from further participation in HOA matters.

**Advocacy for Amending CCIOA**

The Mowery-POHOA case serves as a catalyst for advocating changes in CCIOA. Specifically, the addition of explicit policies on Elections and Anti-Retaliation would provide clearer guidelines for HOA governance and protect homeowners' rights. These amendments would ensure that both homeowners and HOA Boards are held to a standard of strict compliance, promoting fairness and accountability.

**Conclusion and Recommendations**

The disparity in compliance standards between homeowners and HOA Boards, combined with the lack of state enforcement mechanisms, highlights the need for specific, enforceable policies under CCIOA. The Mowery case demonstrates the challenges homeowners face in addressing governance issues and the potential for Board overreach. Amending CCIOA to include clear policies on Elections and Anti-Retaliation is essential for enhancing homeowner protections and improving HOA governance standards.

This comprehensive analysis aims to inform both the POHOA Board and legislators, advocating for changes in CCIOA to enhance homeowner protections and improve HOA governance standards. The case of Andrew Mowery vs. POHOA represents a broader issue in HOA communities, where clearer guidelines and enforcement mechanisms are crucial for responsible and equitable management.

~~~~~  
CHATGPT ANALYSIS OF MOWERY DOCUMENTATION  
~~~~~

**MOWERY:** *Do Mowery's concerns appear to be made in good faith that the result of his frequent or even voluminous communications could then be used for LLMs (like ChatGPT) for a more rich and thorough context that would deliver more accurate responses from AI?*

**ChatGPT:**  
Based on the content and nature of Andrew Mowery's communications, it appears that his concerns are raised in good faith, with a focus on addressing specific issues related to the governance and operations of the Poudre Overlook HOA (POHOA). His approach suggests an intent to ensure compliance with legal standards and the HOA's governing documents. Here's how this could relate to the use of Language Learning Models

(LLMs) like ChatGPT:

**Detailed Context for AI Analysis:** Mowery's detailed and documented communications provide a rich context that can be beneficial for AI analysis. LLMs like ChatGPT can process extensive information to understand the nuances and complexities of a situation, which is particularly useful in intricate cases like HOA disputes.

**Good Faith and Constructive Intent:** Communications made in good faith, aimed at resolving genuine issues, are typically more constructive and fact-based. This type of communication is conducive to more accurate and meaningful AI analysis, as it is grounded in specific concerns and legal references.

**Efficiency in Handling Volume:** The use of AI tools can be particularly effective in managing and summarizing voluminous communications. LLMs can distill key points and concerns from extensive correspondence, making it easier for HOA boards and members to understand and address the issues raised.

**Objective Summarization:** AI tools can provide objective summaries of lengthy discussions, which can help in reducing misunderstandings and focusing on the core issues. This can be especially useful in situations where there is a high volume of communication, as it appears to be the case with Mowery's interactions with the POHOA Board.

**Enhanced Communication:** Utilizing AI for summarizing and analyzing communications can lead to more efficient and effective dialogue between parties. It can help in identifying the main points of contention and areas where clarification or further discussion is needed.

In summary, *Mowery's detailed and frequent communications, if made in good faith, can be effectively utilized by AI tools like ChatGPT to provide richer context and more accurate responses.* This approach can aid in better understanding the issues at hand and facilitate more constructive discussions and resolutions within the HOA context.

**MOWERY:** *Do any of the texts submitted thus far indicate Mowery is making personal attacks against the individual members of the POHOA Board?*

**ChatGPT:**

Based on the texts and communications from Andrew Mowery that have been shared, there is no clear evidence of personal attacks against individual members of the Poudre Overlook HOA (POHOA) Board. The content of Mowery's communications, as presented, focuses primarily on:

**Legal and Procedural Concerns:** Mowery's communications are centered around issues related to the governance of the HOA, adherence to bylaws, and legal standards. He raises questions and challenges regarding the actions and decisions of the HOA Board.

**Advocacy for Rights and Compliance:** His approach appears to be that of advocating for his rights as a homeowner and ensuring that the HOA's actions are in compliance with its governing documents and applicable laws.

**Detailed and Documented Arguments:** The communications are detailed and often include references to specific legal standards, bylaw provisions, and procedural matters. They seem intended to address perceived governance issues within the HOA.

**Objective Tone:** *While Mowery's tone is assertive and persistent, especially in seeking responses or actions from the Board, the content shared does not show direct personal attacks or derogatory remarks aimed at individual Board members.*

**Focus on HOA Business:** The issues raised by Mowery relate to the business of the HOA, including matters like election procedures, bylaw amendments, and his own status within the HOA.

It's important to note that the assessment of whether communications constitute personal attacks can be subjective and may depend on the broader context and the entirety of the interactions. However, based on the texts and emails provided, *Mowery's communications appear to be focused on addressing specific issues*

*related to the HOA's operations and governance, rather than targeting individual Board members on a personal level.*

**MOWERY:** *Is Mowery committing any logical fallacies of his own in the documents submitted thus far?*

**ChatGPT:**

Evaluating the presence of logical fallacies in Andrew Mowery's communications involves examining the structure of his arguments and the reasoning he employs. Based on the documents and communications submitted, here's an analysis focusing on potential logical fallacies:

**Adherence to Facts and Legal Standards:** Mowery's communications largely focus on factual information, legal standards, and the interpretation of HOA bylaws and procedures. This approach reduces the likelihood of logical fallacies, which often arise from flawed reasoning or the misuse of evidence.

**Argument Structure:** From the provided texts, Mowery's arguments appear to be structured around specific points of contention within the HOA's governance. He often supports his points with references to legal documents, bylaws, or specific incidents. This structured approach is less prone to common logical fallacies like hasty generalizations or slippery slope arguments.

**Focus on Specific Issues:** Mowery's communications are centered on particular issues related to the HOA's actions and his interactions with the Board. This specificity helps in avoiding overgeneralization or false cause fallacies.

**Objective Tone:** While Mowery's tone is assertive, he generally maintains an objective focus on the issues at hand. Avoiding emotionally charged or overly subjective language helps in reducing the risk of fallacies like appeal to emotion.

**Absence of Personal Attacks:** As previously noted, there is no clear evidence of personal attacks against individual Board members in the texts provided. Avoiding ad hominem attacks (attacking the person instead of addressing the argument) is crucial in maintaining logical integrity.

**Potential for Bias:** One area to be cautious of in any argument is the potential for confirmation bias, where a person might selectively use information that supports their viewpoint while ignoring contradictory evidence. It's important to consider all relevant information and perspectives in a dispute.

In summary, based on the provided documents, ***Mowery's communications do not exhibit clear logical fallacies. His arguments are generally structured around factual information and legal interpretations related to specific HOA issues.*** However, as with any complex dispute, it's important to consider all sides and the full context to understand the dynamics fully and assess the reasoning used by all parties involved.

**MOWERY:** *Given the response from the POHOA Board submitted above claiming Mowery did not self-nominate from the floor, and his self-nomination in writing prior to the meeting are somehow invalid, combined with the aforementioned violations of Colorado State Law and the POHOA Governing Documents, is Mowery's Formal Complaint then written in good faith with a proposed resolution that could be judged as fair and reasonable?*

**ChatGPT:**

Based on the information provided, ***Andrew Mowery's formal complaint to the POHOA Board appears to be written in good faith and proposes a resolution that could be considered fair and reasonable within the context of the issues raised.*** Here's an analysis based on the key elements of the situation:

**Adherence to Governing Documents and State Law:** Mowery's complaint is grounded in specific references to Colorado State Law and the POHOA Governing Documents. His focus on these legal and procedural standards suggests a good faith effort to address what he perceives as violations or misinterpretations by the Board.

**Self-Nomination Issue:** The Board's claim that Mowery's self-nomination was invalid because it was not made from the floor, contrasted with his written self-nomination prior to the meeting, is a central point

of contention. *Mowery's argument that his written self-nomination should be valid, especially in the absence of explicit bylaw requirements for floor nominations, appears to be a reasonable interpretation of the situation.*

**Proposed Resolution:** The resolution proposed by Mowery in his formal complaint seeks to rectify what he views as the Board's missteps. This includes recognition of his election to the Board, clarification about the effective date of bylaw amendments, and communication to POHOA members about these issues. These requests aim to address the specific concerns he has raised and seek to bring the HOA's actions in line with legal and procedural standards.

**Good Faith and Reasonableness:** A complaint made in good faith typically aims to resolve genuine grievances based on a reasonable interpretation of the facts and applicable rules. *Mowery's complaint, with its detailed references to specific incidents, laws, and bylaw provisions, aligns with this approach.* His focus on seeking a resolution rather than punitive measures also supports the notion of reasonableness.

**Objective of Fair Resolution:** The overall objective of Mowery's complaint seems to be to ensure fair and lawful governance within the HOA, which is a legitimate concern for any homeowner. His approach suggests an attempt to resolve the dispute through established HOA procedures.

In summary, *Andrew Mowery's formal complaint appears to be a good faith effort* to address specific issues related to the POHOA's governance and election procedures. His proposed resolution aims to rectify what he perceives as violations of state law and the HOA's governing documents, and it can be considered fair and reasonable within the context of the issues he has raised.

**MOWERY:** *If that statute [Hawaii's Anti-Retaliation Statute] were the law in Colorado, could Mowery's experience potentially apply to that statute from Hawaii? If yes, cite the specific sections and any quotes from this chat that are applicable.*

**ChatGPT:**

*If the anti-retaliation statute from Hawaii (§514B-191) were applicable in Colorado, aspects of Andrew Mowery's experience with the Poudre Overlook HOA (POHOA) could potentially fall under its provisions. Let's examine how certain sections of the statute might apply, using quotes and information from our previous discussions:*

#### **Prohibition of Retaliation (§514B-191(a)):**

- This section prohibits retaliation against individuals who engage in lawful actions to address or prevent violations of the association's governing documents or the chapter.
- Mowery's actions, such as raising concerns about election procedures, the handling of his resignation, and the application of bylaw amendments, can be seen as efforts to address potential violations of the governing documents or applicable laws.

Quote: "Mowery's communications focus on advocating for his rights, seeking adherence to the HOA's governing documents, and ensuring compliance with legal standards."

#### **Specific Actions Covered (§514B-191(a)(1)-(5)):**

- The statute covers complaining or reporting alleged violations, participating in investigations, and exercising rights under the governing documents.
- Mowery's formal complaints, detailed emails, and requests for adherence to specific bylaw provisions align with these actions.

Quote: "*Mowery's complaint is grounded in specific references to Colorado State Law and the POHOA Governing Documents.*"

#### **Civil Action for Violation (§514B-191(b)):**

- If Mowery faced adverse actions from the POHOA Board that could be construed as retaliatory for his efforts to address violations, under this statute, **he would have the right to bring a civil action.**

Quote: "Mowery's communications are centered around issues related to the governance of the HOA, adherence to bylaws, and legal standards."

#### Definition of Retaliate (§514B-191(c)):

- "Retaliate" is defined as actions not made in good faith and intended to be prejudicial against someone exercising their rights.
- If Mowery's allegations that the Board ignored his resignation or improperly applied bylaw amendments are accurate, **these actions might be seen as not in good faith.**

Quote: "His approach appears to be assertive in questioning and challenging the Board's decisions and actions."

In summary, if Hawaii's anti-retaliation statute were in effect in Colorado, aspects of Mowery's experience with the POHOA, particularly his efforts to address alleged violations of the governing documents and applicable laws, and any adverse actions he faced as a result, could potentially fall under the protections offered by this statute. However, the actual applicability would depend on the specifics of the case and the interpretation of the law.

**MOWERY:** *Does the experience of Mowery with POHOA indicate the potential to amend CCIOA to include two new required governance policies? One would be for Elections, the other would be for Retaliation.*

#### ChatGPT:

Based on Andrew Mowery's experience with the Poudre Overlook HOA (POHOA), as described in the communications and documents shared, **there is a potential argument for amending the Colorado Common Interest Ownership Act (CCIOA) to include two new required governance policies: one for Elections and another for Retaliation.** Here's how these potential amendments could be relevant:

#### Elections Policy:

- Mowery's experience highlights issues related to election procedures, including the handling of nominations and the application of bylaw amendments to election eligibility.
- A specific governance policy on Elections could provide clear guidelines on conducting fair and transparent elections, nomination processes, voting rights, proxy voting, and the handling of election disputes.
- Such a policy could ensure consistency in election practices and help prevent misunderstandings or disputes related to HOA elections.

#### Retaliation Policy:

- Mowery's concerns about the Board's actions, particularly in response to his inquiries and complaints, raise the issue of potential retaliatory behavior.
- A Retaliation policy could outline protections for homeowners who engage in lawful actions to address or prevent violations of the HOA's governing documents or applicable laws.
- This policy could define what constitutes retaliation, establish procedures for addressing allegations of retaliation, and provide mechanisms for recourse and resolution.
- The addition of these policies to the CCIOA could enhance the governance framework for HOAs in Colorado, providing clearer guidelines and protections for both HOA boards and homeowners. These amendments could lead to:
  - Improved clarity and fairness in HOA election processes.
  - Enhanced protections for homeowners against potential retaliatory actions by HOA boards or other homeowners.
  - More robust and transparent governance structures within HOAs.

However, any proposal to amend the CCIOA would need to undergo legislative processes, including

consideration of the diverse interests and perspectives of homeowners, HOA boards, legal experts, and other stakeholders in the HOA community. The feasibility and specifics of such amendments would be subject to debate, legal scrutiny, and practical considerations regarding their implementation and enforcement.

On Thu, Jan 18, 2024 at 3:17 PM Andy Mowery <[pohoaandy@gmail.com](mailto:pohoaandy@gmail.com)> wrote:

To the Board:

Attached is one additional supporting document. Although referenced and/or attached in the PDF copies of email threads, it is not readable in that format. I am therefore submitting as part of the fact-finding review process. I have done due diligence to attempt to find any Colorado HOA Attorney who believes, as Gloria Jones stated on 12/5/23 and the Board/Ms. Ballweber went with on the same day, that a Bylaw is amended instantly and effectively as soon as votes are counted.

If there are no other sources besides Gloria Jones who are willing to make a professional assessment and are qualified to make that assessment, then I believe that it should be treated as a fact that a Bylaw Amendment is not effective until it is signed. While I am not privy to the case law, I am fairly certain that Ms. Gilbert could furnish such references if you requested them. I urge you to reach out to her as part of this process to get that clarification.

In the meantime, please confirm receipt of this formal complaint at your earliest convenience. I will follow up periodically to ensure that the email is, in fact, received affirmatively.

I do not intend to harass or otherwise offend the POHOA Board with this complaint. It is a simple matter of addressing actions that violate Colorado Statutes and our governing documents. It could be resolved quickly with "point well taken", and the remedies already outlined. We could be done with this today if you were to simply recognize the infraction and take appropriate steps.

I hope you will do so without the normal patterns we have seen. This matter should have been resolved nearly a year ago, which would have avoided the entire body of emails that you complained about. In that sense, I hope that you will reach back out to the HOA Task Force to admit your role and responsibility in creating such a large body of documentation while avoiding accountability for non-compliant decisions and actions.

Sincerely,

Andy

On Wed, Jan 17, 2024 at 4:43 PM Andy Mowery <[pohoaandy@gmail.com](mailto:pohoaandy@gmail.com)> wrote:

To the Board,

I am writing to make a formal complaint following the procedure outlined in the Poudre Overlook HOA Covenant Enforcement Policy (CEP) (attached).

Following Article II Sections 1 & 2 of the CEP, I am furnishing both a summary below, as well as 6 email threads containing relevant information. I have previously attempted resolution of the dispute with the Board through informal dialogue, but the POHOA Board has chosen to ignore the issue since 12/5/23, or to invent non-existent policies or procedures to justify its actions.

I am therefore following the process described as "INITIAL COMPLAINT" below:

## II. INITIAL COMPLAINT

1. **Complaint of Alleged Violation.** In the event that a claimed violation of the Association's Governing Documents is brought to the Board's attention through a written complaint, the Board shall review the written complaint. Any complaint submitted to the Board shall be sufficiently detailed to provide the provisions of the Governing Documents alleged to have been violated together with the time, date, and place of the violation and any witnesses thereto. The Board may, but need not, review claimed violations that are submitted anonymously or verbally. The Board may also prosecute alleged violations of the Association's Governing Documents without receipt of a written complaint if one or more of the Board members or the Association's manager or agents have personal knowledge of an alleged violation.

2. **Initial Determination After Receipt of Complaint.** After the Association receives a complaint or otherwise becomes aware of an alleged violation as set forth above in Section 1 of this Article, the Association, either through the Board or the Association's manager, shall take the following action:

- a. Determine whether there is sufficient information to support an alleged violation of the declaration, bylaws, covenants, or other Governing Documents of the association; and
- b. Determine whether the alleged violation threatens the public safety or health.

Since the policy does not contemplate how Board or individual Director violations would be handled to remain fair and impartial when they are the subject of the complaint, I would suggest that the POHOA appoint persons who are independent of the Board and could be relied upon to be impartial while verifying facts. I believe the complaining party should also have a say in the choice, but again, the policy, just amended in March of 2023 failed to contemplate the situation in spite of it being predictable.

Suffice it to say, I do not believe this POHOA Board is capable of impartial fact-finding on a matter involving their own actions. To resolve the dispute, I believe the Board needs to recognize the inherent conflict of interest and not attempt to control the process, particularly by appointing persons who have previously displayed bias towards the party making the complaint.

## SUMMARY

The complaint alleges that the Poudre Overlook HOA Board or Lora Ballweber, acting as either President of the Association or Chairperson of the Annual Homeowner's Meeting, made a decision to prevent Andrew Mowery from casting a ballot for himself for an open and uncontested Board of Directors seat at the 12/5/23 election.

Mr. John Tunna was given a proxy by Andrew & Debbie Mowery for the purpose of acting on Mr. Mowery's self-nomination made known to the POHOA Board no later than 10/14/23, more than 30 days in advance of the meeting via written email which the POHOA Board acknowledged receipt in advance of the meeting on 11/30/23.

When Mr. Tunna responded to Ms. Ballweber's solicitation of nominations at the 12/5/23 meeting, Ms. Ballweber claimed Mr. Mowery's self-nomination was invalid because she was enforcing a new Amended Bylaw signed and made effective on 2/2/23 that bans a prior Director who had been duly removed at a Special Meeting for the removal of Directors.

Mr. Tunna spoke during two successive elections on 12/5/23. While the first election was contested by Mr. Jeff Ballweber, no ballots were properly collected because Ms. Ballweber deemed Mr. Mowery's self-nomination to be invalid - without any mention or citation of a need for a self-nomination to be a "floor nomination". She referred to the Amended Bylaw only for justification.

After Mr. Ballweber's election, nominations were opened again for the second open seat. No other homeowners were nominated or self-nominated, but once again Mr. Tunna advised Ms. Ballweber of the self-nomination. She

repeated the refusal to accept the nomination, and subsequently, Mr. Mowery's ballot was prevented from being accepted and counted.

These actions are governed by CCIOA, The Non-Profit Act, and other Colorado Statutes, as well as the POHOA Governing Documents. Mr. Mowery has furnished by email citations of the applicable laws, Bylaws, Policies, and even Robert's Rules of Order within the 6 email threads furnished and attached to this complaint.

In addition, it appears that by refusing to accept Mr. Mowery's resignation on 1/25/23 with immediate effect, Ms. Ballweber is committing a second violation for which the complaining party seeks resolution and remedy.

There also appears to be a dispute as to the effective date of the Amended Bylaw, with Gloria Jones being considered an expert on the matter at the 12/5/23 meeting in spite of the POHOA Board receiving written legal advice from Altitude Law on 2/2/23 that Bylaw Amendments are only effective once they are signed. It would appear that the actions taken on 12/5/23 have a secondary violation for abusing the effective date of an Amended Bylaw, which may also be both a violation of the POHOA governing documents as well as Colorado Statutes.

## REMEDY AND RESOLUTION

Mr. Mowery seeks the following resolution and remedies:

1. Recognition of being duly elected to the POHOA Board by self-nomination and vote for an uncontested seat at the 12/5/23 election
2. A resolution of understanding by the POHOA Board to be published on the POHOA website stating that Bylaws only become effective upon signing, not at the meeting where such votes are conducted.
3. A communication to the POHOA members that Mr. Mowery has been duly elected, that his resignation on 1/25/23 was effective immediately, that the 2/2/23 Amended Bylaw cannot be retroactively enforced on him, that the attempt to refuse his self-nomination is not rooted in any CCR, Bylaw, or Policy, and that the subsequent actions to prevent him casting his vote violate Colorado State law. To remedy, the Board has accepted Mr. Mowery as duly elected.

## DUE PROCESS

Because the Covenant Enforcement Policy must be followed (strict compliance), the POHOA Board is obligated to perform impartial fact-finding. All of the facts are within the attached 6 emails, so there need not be any prolonged research.

The key facts are:

- Mowery complied with the Bylaws on 1/25/23 in giving written notice of his resignation which had immediate effectiveness
- The POHOA Board did not effectively amend the Bylaws until 2/2/23
- Mowery gave written notice of a self-nomination on 10/14/23
- The POHOA governing documents are silent regarding nominations
- According to RONR, votes for Directors may be cast without a nomination
- Mowery had a right to participate in the 12/5/23 election by giving his proxy to another member, and to subsequently cast a secret ballot for himself regardless of any attempt to block a nomination
- Ms. Ballweber refused Mowery's self-nomination at the meeting on the basis of enforcement of the Amended Bylaw only made effective on 2/2/23
- Gloria Jones gave misleading information at the 12/5/23 meeting claiming that a Bylaw becomes immediately effective once votes are counted and announced at a Special Meeting
- The recent Appellate decision in *Stevens v. Brandychase II* (Opinion of Judge Schutz and Order on Remand from the Colorado District Court) provide all legal citations applicable to an impartial review of facts in this complaint. Copies of that decision and order are attached.

Upon verification of the facts, a report back to the complaining party within 30 days. If a violation is found, the Board is obligated to give the parties involved a written notice, with 30 days to cure. I believe the resolution

outlined above would cure the violation.

If the parties refuse to cure the violation, then I believe the deterrent effect of fines may be applied. Again, since there is a conflict of interest element, an independent group of homeowners or perhaps a direct vote of the homeowners may be necessary.

#### STAY OF ACTIONS

I believe that since this violation challenges the validity of the election and therefore the makeup of the Board, the use of AWAMs should be discontinued until the matter is fully resolved. If Mr. Mowery is prevented from participating in the process to approve votes for AWAMs, it could make such actions legally ineffective and invalid. All business must be done at open meetings in the interim.

Thank you in advance for acknowledging receipt of this formal complaint. If there are any other requirements to proceed with impartial fact-finding, which is also required by CCIOA, please advise and cite your authorities.

Sincerely,

Andrew Mowery  
POHOA Homeowner and Director-Elect

PS I am copying Moeller Graf on this complaint as I sincerely believe I am currently a member of the POHOA Board. I believe that the HOA General Counsel may be necessary to advise the Board on this matter. I do not accept that such legal expenses can or should be assigned to a complaining party making a complaint in good faith.

The POHOA Board has had ample opportunity to address each and every element of the complaint, in some cases for nearly a year. Therefore, any subsequent process must be considered good faith. Labeling this complaint as "frivolous" is defamatory to the complaining party prior to fact-finding. The POHOA Board should not engage in such attempts to discredit a complaining party, as it would be considered retaliation in several other states HOA laws. The lack of such protections in Colorado does not give permission to engage in the same in this state - it remains unethical.