



Clayton & McCulloh

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Embracing Community

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Amendment Flat Rate Package Now Available!

Amending Governing Documents is a fairly common legal activity that Clayton & McCulloh gets asked to do. Most amendment work is done on an hourly basis for our Association clients, however, two of the most frequently requested amendments are the Quorum Requirement Amendment to hold meetings and amending the Amendment Requirements Amendment. We now feature fixed fee rates for preparing amendment packages for these two amendments. Sometimes the Amendment desired needs to occur with respect to more than one of your Governing Documents. Our fixed fee for this service is per package and per Document amended (Declaration, Articles of Incorporation, and By-Laws). Additionally, we have a flat fee for a Sexual Predator amendment to your Governing Documents. For more information on this service, please contact our office.



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Orlando Office: Winter Park Area
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Melbourne Office: Suntree/Viera Area
Baytree Corporate Park
1341 Bedford Drive, Suite A
Melbourne, FL 32940
Phone: (321) 751-3449
After Hours: (407) 808-2553



TURN THOSE FILES OVER!



WHO'S AWESOME UPCOMING EVENTS



LAUNDRY LISTS

community connect

Embracing Community

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Clayton & McCulloh Attorneys at Law

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Turn Those Files Over!



Gerry Burton
Attorney &
Counsellor At Law

With the start of the New Year, many Associations will be having their Annual Membership Meetings within the next month or two. Because some Directors may be not be re-elected or decide not to accept nomination to be a Director again, issues may arise regarding what items in possession of the departing or "X-Director" are part of the Association's "Official Records" and, therefore, should be returned or delivered to the Association for its maintenance as part of its Official Records.



While it is apparent that written documents in the possession and/or control of an X-Director, including letters, agreements, etc., are part of the Association's Official Records, what about electronic data, information, documents and/or other forms of communication, such as electronic faxes, pdf files (or other photographic representations of documents, photographs, and communications), e-mails, etc.?

Even though these types of electronically stored data and documents are not

specifically listed as part of the Official Records in Florida's Condominium ("Condo") Act (F.S. §718), Florida's Homeowners Association ("HOA") Act (F.S. §720) or in Florida's Cooperative ("Co-op") Act (F.S. §719), each of these Acts has similar provisions stating, that the Association's Official Records includes, "All other records of the association not specifically included in the foregoing list of documents and data included in the Association's Official Records] which are related to the operation of the association." [F.S. §718.111(12)(a)15; F.S. §720.303(4)(l); F.S. §719.104(2)(a)13]

The only difference between these provisions is contained in the Homeowners' Association Act, which limits "other records" to only "other written records" [F.S. §720.303(4)(l)]. It is arguable, therefore, that electronic data or records, which have not been printed, are not part of the Official Records of the Homeowners Association, unless such non-written electronic data or records are



Who's Awesome? Nominate Them!

"Yeah, I Dry My Laundry the Old Fashioned Way . . ."

Do you know of an awesome Board Member and/or Manager who have gone above and beyond the call of duty? You do? Well, then tell us about them. Effective with the Spring 2016 issue of Community Connect, we will commence alternating features of the Outstanding Board Member and Manager in our newsletter. Winner will also receive a gift card and a Certificate attesting to their Awesomeness. To submit your nomination, visit our web-site's home page – www.clayton-mcculloh.com and select the link "Vote for the Most Awesome Board Member and Manager" and simply complete the brief form. Winners will be based on several criteria including, but not limited to: the most votes cast and reasons why they are awesome. Both the winner and the nominator will be notified of the results.

Upcoming Events!

Here's a list of our upcoming Conferences and Seminars:

2016 Embracing Community Conferences
Saturday, February 13, Melbourne – Hilton Rialto – Melbourne
Saturday, February 27, Ocala – The Hilton
Saturday, April 2, Lakeland – The Lakeland Center

For Managers Only!
Thursday, March 17, Orlando - Westin Universal

This year's complimentary Embracing Community Conferences feature separate Board Certification classes for HOAs, Condos and Co-Ops, and Mobile Home Parks. For those individuals who have already have taken a Board Certification Class, we are featuring two other classes – "Hot Dog! Dealing with those Dog Gone Dog Issues" and "Every Move You Make: All About Drones."

We are the first in the State to offer the Drone class and the first (and the only company as we go to press) to be approved by the State to offer the Board Certification for Chapter 723, Mobile Home Parks.

Our first 2016 Managers Seminar of the year will feature "Timely Amendments: Capital Contributions & Sexual Predators." This course is open to licensed community association managers only and is available for 1 CEU.

For more information on our seminars or to make a reservation, please visit our web-site: www.clayton-mcculloh.com or call any of our offices and ask for our Events Department.

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specifically listed in F.S. §720.303(4) as being part of the HOA's Official Records. But what about documents which could be printed, but were not? Or documents printed by others, but not by the X-Director?

"An outgoing board or committee member must relinquish all Official Records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election." [F.S. §718.111(f); F.S. §719.104(e)]§

But there is no such provision in Florida's HOA Act, except in the event a Director is recalled. Even though no specific directive exists, it is clearly the intent, and therefore arguable, that an X-Director of an HOA is still required to deliver to the Association all written documents within his or her possession, which are included in the statutory list of Official Documents and/or which are related to the operation of the association. The question still remains whether e-mails and other electronic data are required to be delivered to the HOA, as well.



Anthony Fouladi
Attorney &
Counsellor At Law



I read recently about a resident in an upscale HOA community who spent her summer vacation in Maine. While there, the resident became accustomed to putting her clothes out to dry on a clothesline, per local custom. The resident assumed, however, that upon returning to her Florida HOA community, she would be prohibited from utilizing a clothesline due to restrictions in her HOA's declaration.

The resident soon discovered that she couldn't have been more wrong. While HOA and COA declarations may prohibit clotheslines, Florida law decided some time ago that such restrictions are null & void. Per Florida Statute §163.04(1), *"the adoption of an ordinance by a governing body . . . which prohibits or has the effect of prohibiting the installation of solar collectors, clotheslines, or other energy devices based on renewable resources is expressly prohibited."*

I raise this issue because while using clotheslines in Florida is absolutely legal, it doesn't seem to be a common practice. When the issue of clothesline usage does come up, many HOA residents may find the sight of clothes hanging out to dry unseemly, prompting a complaint to the Association board for assistance. The Association, in turn, may refer to their declaration, which may either positively exclude clotheslines from use, or attempt to limit their usage indirectly; in Florida, both types of provisions are superseded by law.

As an example, one declaration I reviewed recently limited placement of clotheslines to designated "service

yards" that are "completely screened so that the elements screened are not visible at any time from the street or any adjoining property." With most lots in this particular subdivision at two



stories, it was nearly impossible for someone not to see a given clothesline from some vantage point; effectively, then, the declaration was banning clotheslines. While some HOA board members may think a provision like this conforms to state law, they would be mistaken. Remember the statute - restrictions "which prohibit or [have] the effect of prohibiting . . . clotheslines . . . are expressly prohibited." Despite their objections, homeowners who are perturbed by a clothesline obstructed view will have to find a way to assuage themselves under current law.

The possibility of more conflict down the road may be increasing. A nascent "right to dry" movement has recently picked up steam, spearheaded by groups with names like "Project Laundry List" and blogs like those put out by the group "Urban Clothesline." HOA and COA board members should be continually alert to resident concerns on such matters to avoid getting into any legal hot water.