

## Section 10

### **Guidelines for Confidential Communications Intended for Association Attorneys' Use in Litigation and Anticipated Litigation Contexts**

#### **Policy**

The scope of litigation, including preparation for litigation and discovery in litigation, is broad and includes both written and email communication. To protect the interests of the Association and its members, it is the general policy of the Association to:


- Cloak Board communications with the attorney/client privilege as much as possible.
- Make Board/Attorney communications as efficient as possible.
- Reduce attorneys' fees billable to our Directors and Officers liability insurance carrier and thereby reduce the Association's potential responsibility for those attorneys' fees considered excessive or outside the scope of coverage by our Director and Officers liability insurance carrier.
- Submit this policy with any application to new or alternative Directors and Officers liability insurance, to help to insure a favorable review by a prospective insurance carrier.

#### **Procedure**

1. The Board should consider retention of a general counsel in any litigation context, or the Board should select a single Board representative/liaison, for all communication between the Board and its attorneys.
2. The Board should select a back-up Board representative for Attorney/Board communications when its chosen general counsel or Board representative for such communications is unavailable.
3. Internal Board email and other written communications about any subject directly or tangentially-related to ongoing, pending, prospective, or vulnerability to litigation, or about any subject about which attorney advice may be sought should contain these or similar words in the subject line: "**Confidential Communication Intended for Association Attorney Use.**"
4. Communications sent directly to and from, or communications which "copy", Association Attorneys should ordinarily be automatically protected.
5. Communications between the Association Attorney and the Board representative for such communications which are "forwarded" via email to the Board should ordinarily be protected.

6. Multiple-subject email or other written communications, one subject of which is related to attorney/client matter, should contain the advisory "Confidential Communication" language suggested in paragraph 3 above.
7. Legal documents in the public domain may be published on the Association website pursuant to Section 2 of the Fairway Pines Property Owners Association Policies and Procedures. However, written communications between the Association and its Attorneys should not be posted on the website, even if they are in the public domain by virtue of having been published to third parties, unless such posting is approved in advance by Association Attorneys. Legal documents posted on the Association website should be posted without editorial comment.
8. Legal information published to Association members in the Association Newsletter, or in other written communications, should ordinarily be general in nature, minimize editorial comment, direct Association members to the Association website to view posted legal documents, and take care not to communicate information protected by Attorney/Client Privilege.
9. Confidential Communications, including oral communications, protected by the Attorney/Client Privilege should be kept "in house" by Board members, Board Officers and Advisors, and Association Staff. In areas of "Privilege" ambiguity, publication should be avoided until clarification is obtained by Association Attorneys.
10. Care should be taken when sending Confidential Email Communications to insure that the communications are not sent to unintended parties.
11. The Board should regard as "Confidential Communications" attorney invoices and any information related to attorneys' fees and costs because they often contain information related to the substance of the work performed. Persons or entities in possession of attorney invoices or information connected thereto should be advised not to disclose this information to the general public or Association members.

Adopted May 12, 2009

  
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Association Administrator