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UTAH DEPARTMENT OF COMMERCE

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## **OFFICE OF THE HOMEOWNERS' ASSOCIATION OMBUDSMAN** **ADVISORY OPINION NO. 2025-01**

Applicant Name: Gordon D. Payne  
Association Name: Westglen Village Condominium  
Association Type: Condominium Association  
Advisory Opinion Date: October 21, 2025  
Advisory Opinion Drafter: Christoffer T. Binning, Esq.

### **INTRODUCTION & BACKGROUND FACTS**

Gordon D. Payne (“Mr. Payne”) has requested an advisory opinion from the Office of the Homeowners’ Association Ombudsman (the “Office”) concerning several disagreements with the Westglen Village Condominium Association (the “Association”) in West Valley City, Utah. The disputes started around April 2025, after a new management company changed the method for calculating homeowner assessments from a flat rate to a system based on unit square footage. The Association states this was done to align with its governing documents; for Mr. Payne, the change increased his annual assessment amount.

Subsequently, Mr. Payne formally requested three years of financial records in July 2025. Even though the Association states it provided all required records it possesses, Mr. Payne claims the documents he received were incomplete. Mr. Payne also requested an independent audit of the Association’s financial condition; however, the Association argued it is not required to obtain an independent audit under Utah law. The scope of this disagreement has since expanded. Mr. Payne questions the authority behind several rules and fees, including (1) a \$400 resale fee; (2) occupancy limits; (3) tenant information disclosure requirements; (4) a \$50 non-refundable clubhouse fee; and (5) a towing policy. He also raises concerns about the adoption of the 2025 budget and alleges that deferred maintenance of common areas is in violation of the Association’s obligations. The Association, in response, states that the rules in question were adopted in accordance with Utah law and the Association’s governing documents and that it is not required to produce and distribute a yearly budget under Utah law. Additionally, the Association acknowledges its maintenance responsibilities and states it is working to secure funds for improvements, aided by the revised assessment calculations.

Mr. Payne and the Association’s Board of Trustees (the “Board”) tried to resolve the dispute using the dispute resolution procedures outlined in the Association’s governing documents, but were ultimately unsuccessful. As a result, Mr. Payne requested this advisory opinion in September 2025. Since the disagreements remain unresolved, the Office now issues its opinion based on the information submitted by both parties.

## ANALYSIS & OPINION

Before evaluating the claims made by the parties, it is important to note that Mr. Payne consistently references [Utah Code § 57-8a](#), the Community Association Act, in his request. However, to fully address the concerns and disagreements between the parties, the correct statute must be referenced, since it governs the analysis of what is expected of the Association. Rather than the Community Association Act, the Association, as a condominium project, is governed by [Utah Code § 57-8](#), the Condominium Ownership Act. Therefore, the Office will analyze and refer to the Condominium Ownership Act throughout this opinion.

### I. Record Production and Independent Audit

Mr. Payne argues that the Association has not provided the complete and detailed financial information required by both Utah law and the Association's governing documents. He states that, despite formal requests, essential documents such as detailed ledgers, receipts, invoices, and several years of financial records are still missing, which prevents a full review of the Association's spending history. In response, the Association claims it has fulfilled its duties by providing all the documents it possesses. They explain that any missing records were never handed over by the previous management company, and recent financial reports were delayed because they were waiting for updated loan statements or needed time to redact other owners' private information. However, the Association states that all required and requested documents in their possession and control have been provided to Mr. Payne per Utah law and Mr. Payne's request.

Utah law clearly states that the Association must keep and provide access to specific records for its members. Under [Utah Code § 57-8-17](#), these include copies of the Association's:

- governing documents;
- most recent approved minutes;
- most recent annual budget and financial statement;
- most recent reserve analysis;
- certificate of insurance for each insurance policy the association of unit owners holds;
- management committee meeting minutes from the previous three calendar years;
- a profit and loss statement for the previous three fiscal years; and
- a balance sheet for the previous three fiscal years.

Additionally, under [Utah Code § 57-8-17\(1\)](#), the Association must keep and make accessible certain documents specified in the [Utah Revised Nonprofit Corporation Act](#). Specifically, [Utah Code § 16-6a-1601](#) mandates that the Association maintain:

- minutes of all meetings of its members and the board of directors;
- a record of all actions taken by the members or board of directors without a meeting;
- a record of all actions taken by a committee of the board of directors on behalf of the nonprofit corporation;
- a record of all waivers of notices of meetings of members, the board of directors, or any committee of the board of directors;

- a record of its members in a form that allows for preparing a list of all members' names and addresses: ordered alphabetically by class; and indicating the number of votes each member is entitled to;
- resolutions adopted by its board of directors regarding the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- all written communications to members generally as members for a period of three years;
- appropriate accounting records;
- all financial statements prepared for periods ending within the past three years;
- a copy of its most recent annual report; and
- a list of the names and business or residential addresses of its current directors and officers.

Mr. Payne acknowledges receiving some of the requested documents, but his primary concern remains that essential financial records are still missing. The Association does not dispute this; they admit that certain records, such as older financial statements and profit and loss reports from the past three years, have not been provided, but insist they have produced all required records in their possession. They explain that this is because these documents were never handed over by the previous management company during the recent transition. The Association's position is clear: they cannot produce records they never received or do not possess. It is important to note here, however, that it is ultimately the Board's responsibility to keep and be able to produce accurate records, even if they hire a management company or other third party for assistance. As this did not occur, producing lost records or those not created may not be feasible. As long as the Association and its manager have provided Mr. Payne with all the required records they possess, they have fulfilled their legal obligations in this instance. Moving forward, the Office encourages the Association to verify it has access to copies of each of the documents identified above to ensure it can meet its obligation to produce such records upon request.

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Having established what records must be retained by the Association and produced upon request by a homeowner, the remaining question concerning Mr. Payne's records request is what the law means by "appropriate accounting records" under [Utah Code § 16-6a-1601](#). According to [basic financial principles](#), accounting records are the main financial summary reports that provide an overview of an organization's economic health, such as balance sheets, income statements, and cash flow statements. There is no evidence that the Association has failed to provide these key summary reports or other documents showing the same information. While Mr. Payne and others might want records with more detail on specific transactions, Utah law does not require the Association to produce that level of detail. Therefore, because the Association has provided the necessary summary documents, it has met its legal obligations for financial records under [Utah Code § 16-6a](#) and [Utah Code § 57-8](#).

The unresolved dispute over an independent audit stems from both parties interpreting the same section of the governing documents differently. As stated above, [Utah Code § 57-8](#) itself does not mandate an audit; however, that fact alone does not end the analysis. [Utah Code § 57-8-8](#) also states that "[s]ubject to reasonable compliance therewith by the manager and the management committee, each unit owner shall reasonably comply with the covenants, conditions, and restrictions as set forth in the declaration or in the deed to that unit owner's unit, and with the bylaws and/or house rules and with the administrative rules and regulations drafted pursuant thereto." The implication of this law is that, while every member of the Association is required to reasonably comply with the terms of the governing documents, that compliance is not absolute or without any protection. Specifically, the Association, the Board, and all agents of the Association must also reasonably comply with the governing documents to be enforceable against the

members. While a request for interpretation of the meaning of language within the Association's governing documents would be outside the scope of the Office, Mr. Payne's claim in this instance is not one of interpretation, but rather of compliance with the plain language of the governing documents, which implicates [Utah Code § 57-8-8](#). In his claim, Mr. Payne highlights the language in Section 16.04 of the Declaration of Condominium of the Westglen Village Condominium, dated September 27, 1979, as subsequently amended (the "CC&Rs"), which states the Association "shall obtain an audit...at no greater than annual intervals" using community funds, which he views as a strict requirement for maintaining financial accuracy. Conversely, the Association points to language within the same provision that allows any homeowner to hire their own auditor at the homeowner's expense, arguing this clause offers an alternative that exempts the Association from its financial obligation.

According to the plain language of Section 16.04 of the CC&Rs, the clauses referenced by the parties are separate and independent. Section 16.04, in its entirety, states:

Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

When evaluating the section's structure and plain language, it imposes unambiguous, separate, and distinct rights and requirements on the owners and the Association. First, it grants any owner the right to have an audit conducted by someone of their choosing at their own expense. Second, and relevant to the current dispute, it imposes the clear affirmative obligation on the Association to commission an audit by independent certified public accountants at least once a year, and then provide those audit results to each homeowner. If the Association wishes to change this language going forward, it may do so through the amendment process. However, existing requirements are clear – because the Association has not conducted an annual audit, it is therefore not in compliance with either the CC&Rs or [Utah Code § 57-8-8](#).

## II. Budget Requirements

Mr. Payne also argues that the Association was required to create and present a new budget for 2025, which it failed to do. The Association argues that no Utah law mandates a condominium association to adopt a budget annually. Because of this, they assert the previously adopted budget remains in effect for 2025. Mr. Payne argues this view is only partly correct. He points to Section 9.02(c) in the Association's CC&Rs as evidence that the Board must prepare and distribute a new budget to all homeowners for the upcoming fiscal year by December 15<sup>th</sup> of the current year.

Mr. Payne also raises concerns about the budget adoption process and overall financial transparency of the Association. He argues that even if a previous year's budget can be carried over, the law and governing documents still require the Board to prepare and present a new proposed budget to the owners for review. Mr. Payne states that no meeting was held to discuss the 2025 budget, and no proposed budget was ever distributed for review. He claims this failure deprived homeowners of their legal right to be notified and to hold a meeting to vote on rejecting a new budget.

[Utah Code § 57-8](#) itself does not require the Association to prepare and approve a new annual budget. Instead, [Utah Code § 57-8-17](#) states that the Association must keep its most recent annual budget on file and provide a copy to any homeowner who requests it. Therefore, according to the plain text of

[Utah Code § 57-8-17](#), as long as the Association operates under its last approved budget and makes that document available, it is not obligated to create a new one under Utah law. However, once again, that is not the end of the analysis. As stated previously, [Utah Code § 57-8-8](#) also requires the Association to comply with its governing documents. Section 9.02(c) of the Association’s CC&Rs requires that “on or before December 15 of each year...the Association shall prepare and furnish to each owner...an operating budget for the upcoming fiscal year.” Even if the budget proposed by the Board is identical to the previous year, the CC&Rs are clear: they must still follow the process outlined in the governing documents. The Association does not dispute that there was no budget prepared for 2025, nor was it provided to the members. Therefore, as it relates to the budget, the Association has not complied with the requirements of Section 9.02(c) or [Utah Code § 57-8-8](#).

### III. Assessment Calculations and Meeting Concerns

The disagreement over the assessment calculation arises from the Association's decision in April 2025 to change its monthly fee calculation from a flat rate for all owners to a system based on each owner's percentage of ownership. While both Mr. Payne and the Association agree that the new percentage-based method is correct under the CC&Rs, their dispute centers on the procedure used to implement it. The Association argues that no special vote or process was necessary because it simply corrected a long-standing error to comply with the governing documents. They further stated that they viewed the old flat-fee system as fundamentally unfair, as it caused some owners to effectively subsidize others. In contrast, Mr. Payne asserts that changing a practice that had been in place for potentially decades, even to correct it, required a transparent and proper process that was ignored. He argues that this procedural failure violated Utah law and the Association's governing documents, which require at least 14 days' notice before any meeting where fees or budgets are discussed.

Utah law and the Association's governing documents specify how homeowner fees should be calculated. [Utah Code § 57-8-24\(2\)](#) states that an HOA shall charge owners for common expenses based on their percentage of ownership in the community unless another assessment method is outlined in the Association’s governing documents. Section 9.02(b) of the Association’s CC&Rs requires the same. Since both Utah law and the Association's governing documents agree, there is no violation of Utah law regarding the calculation method used for assessments.

Regarding the Association's decision, timing, and approach to changing the fee calculation method, Mr. Payne argues that this change relates to the budget and therefore requires a properly noticed meeting. As discussed above, Utah law does not mandate the adoption of an annual budget or notice of a change in assessments under the Condominium Ownership Act. Likewise, a budget presentation is not required at a properly noticed meeting. Furthermore, the Association's CC&Rs also do not seem to require this. Section 9.02(d) only requires that “the Association shall notify each Owner as to the amount of the Annual Assessment against his Condominium on or before December 15<sup>th</sup> each year for the fiscal year beginning on January 1 next following.” This language does not require the Association to hold a formal meeting to inform homeowners of their new fees; simply sending a notice is enough. Therefore, the Association did not violate any Utah laws concerning the approach to changing the assessment calculation method.

### IV. Association Rules

Mr. Payne also disagrees with several of the Association's rules and fees, arguing that they amount to illegal overreach by the Board and create new obligations not outlined in the Association's governing documents. His main point is that these rules are invalid because they were never approved by a homeowner vote, which he claims is required for such significant changes. The Association argues that the

disputed rules are within their rights under the governing documents and insists they acted according to Utah law.

Both parties agree that the disputed rules were created in 2005, so under [Utah Code § 13-79-104\(2\)\(a\)](#), the Office may not opine on matters that happened more than one year before the advisory opinion request was filed. As a result, the Office will not determine the validity or enforceability of the Association's rules and regulations. Nonetheless, this provides an opportunity to explain how HOA rules typically work and their general enforceability.

In Utah, condo and homeowner associations follow a hierarchy of official documents to the extent they exist:

- 1) Utah Condominium Ownership Act or Utah Community Association Act (depending on the type of association);
- 2) Utah Revised Nonprofit Corporation Act or other relevant statute governing a corporate entity;
- 3) Plat and Declaration ("CC&Rs") recorded with the county;
- 4) Corporate organization document;
- 5) Bylaws; and
- 6) Rules.

Plats, CC&Rs, and Bylaws define homeowner rights and property boundaries, are recorded with the county, and generally require a homeowner vote to change. However, board rules are usually not recorded with the county and can be updated based on the guidelines set forth in the Association's governing documents. These rules must be reasonable ([Utah Code § 57-8-8.1\(14\)](#)) and cannot conflict with higher documents or laws ([Utah Code § 57-8-40\(5\)](#)) to be enforceable. If compliant, they are valid. More information and educational resources regarding this subject can be found at [hoa.utah.gov](http://hoa.utah.gov).

#### V. Common Areas

Finally, Mr. Payne claims that the Association is neglecting its legal duty by failing to address long-term maintenance issues in the common areas, which he believes damage property values and pose safety risks. The Association agrees it is responsible for maintaining the common areas and states that it is "working tirelessly to procure funds and improve common areas." Crucially, the Association directly connects this issue to the recent change in homeowner fees, explaining that measures like adjusting the assessment calculation and other modifications to assessment amounts were necessary to generate the funds needed for essential maintenance and repairs.

Both sides agree that Utah law, specifically [Utah Code § 57-8-7\(7\)](#), requires the Association to maintain, repair, and replace the common areas. However, these duties cannot be fulfilled without the necessary funds to pay for the work; in fact, it would be negligent for the Association to engage in maintenance and repairs without the necessary funding. Section 4.01 of the Bylaws of Westglen Village Condominium Owners Association, dated November 15, 2011, as subsequently amended (the "Bylaws") grants the Board authority to manage the Association's property, affairs, and business. This broad authority allows the Board to independently decide the pace and priority of common area maintenance as part of its overall fiscal responsibilities. Nowhere in Utah law or the Association's governing documents does it require the Association to fix all issues simultaneously. Therefore, as long as the Association actively works to obtain funds and maintain common areas at a reasonable pace, it has met its obligations under Utah law. Any further determination of timing is between the Board and the homeowners themselves.

## CONCLUSION

Based on the information provided by the involved parties in the dispute between Mr. Payne and the Association, the Office finds as follows:

- 1) The Association fulfilled its legal obligation by providing available financial reports. Utah law does not require detailed transaction records that were lost or never received; however, the Association should make sure it has access to all necessary documents and records for future requests.
- 2) The Association was correctly acting within its authority to change the fee calculation to a percentage-based system and was not required to hold a formal meeting when it did so.
- 3) The Association's failure to conduct an annual audit or provide an annual budget means that it is not in compliance with its own governing documents or, therefore, with Utah law.
- 4) The Office lacks jurisdiction to assess the validity of rules adopted in 2005, but notes that a board can generally adopt reasonable rules that do not conflict with its other governing documents.
- 5) The Association has met its obligation by working to secure funding and determining the priority and pace of common area maintenance in accordance with its Bylaws.



Erin Rider (Oct 21, 2025 15:02:56 MDT)

**Erin Rider**  
*Director*



## **INFORMATION REGARDING ADVISORY OPINIONS**

This document is an Advisory Opinion issued by the Office of the Homeowners' Association Ombudsman as an alternative dispute resolution method pursuant to [Utah Code § 13-79-104](#). The Office's jurisdiction is limited to alleged violations of state statutes, as outlined in [Utah Code § 13-79-103](#) and [Utah Code § 13-79-104](#). The opinions here are based on a review of the specific facts provided and may not correspond with outcomes in other cases where circumstances or laws differ. This opinion is not legal advice, does not establish an attorney-client relationship, and does not represent the official views of the State of Utah or the Department of Commerce. All parties are encouraged to seek legal counsel to protect their interests.

While this Advisory Opinion is not legally binding on any party, it could have potential consequences if the matter proceeds to litigation. Under Utah law, the opinion and related findings are not admissible as evidence in court, except for the specific purpose of evaluating attorney fees and costs. If a cause of action discussed in this opinion is litigated and resolved according to it, the prevailing party may recover reasonable attorney fees and court costs incurred from the date this opinion was issued. A court may also impose a civil penalty if it finds that the opposing party knowingly and intentionally violated the law. The decision to grant such awards rests within the discretion of the court.

## **NOTICE TO ASSOCIATIONS**

Condominium Associations must register with the Department of Commerce through the Office of the Homeowners' Association Ombudsman under [Utah Code § 57-8-13.1](#), and Community Associations must register under [Utah Code § 57-8a-105](#). Due to an updated registration system, any association that registered prior to September 2025 is required to complete a new registration, regardless of whether they have previously registered with the Department of Commerce. All associations must also renew their registration annually. Information about this process and the registration application is available at <https://commerce.utah.gov/hoa/new-registration/>.