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UTAH DEPARTMENT OF COMMERCE

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## **OFFICE OF THE HOMEOWNERS' ASSOCIATION OMBUDSMAN** **ADVISORY OPINION NO. 2025-02**

Applicant Name: Craig Tanner  
Association Name: Layton Parke Estates Homeowners Association  
Association Type: Community Association  
Advisory Opinion Date: October 27, 2025  
Advisory Opinion Drafter: Christoffer T. Binning, Esq.

### **INTRODUCTION & BACKGROUND FACTS**

A dispute has arisen between homeowners Craig and Courtney Tanner (the "Tanners") and the Layton Parke Estates Homeowners Association (the "Association"), centered on the Tanners' installation of a chicken coop and the keeping of hens on their property located in Layton, Utah. The conflict involves an amendment of the Declaration of Protective Covenants of Layton Parke Estates Homeowners Association, Inc., dated February 14, 2019 (the "Original CC&Rs"), made by the developer of the Association, Castle Creek Homes, LLC (the "Declarant"), during the period of administrative control. The Tanners, who have lived on their half-acre lot for about three years, assert that raising chickens was a key feature they valued when purchasing the home, particularly since it was a practice they saw among neighbors. After obtaining permits from Layton City, the Tanners built an 81-square-foot coop on their lot. The dispute began after a neighbor complained to the Association.

On June 25, 2025, the Association issued its first Notice of Violation to the Tanners, citing a restriction on temporary structures. The next day, the Tanners requested approval from the Architectural Control Committee (the "ACC") to install concrete footings so the structure would qualify as permanent. The ACC denied this, stating that "chickens are not allowed, therefore, a chicken coop is not allowed." The Association sent a follow-up notice on July 21, 2025, again citing the rule against temporary structures and setting a removal deadline of August 2, 2025. On July 28, 2025, the Tanners' legal counsel responded, arguing that (1) the CC&Rs applied only to structures used as residences, and (2) pet restrictions prohibited breeding poultry but did not ban hens kept for eggs. After this, the Association suspended enforcement and notified the Declarant.

On September 15, 2025, the Declarant recorded the First Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Layton Parke Homeowners Association, Inc., dated September 15, 2025 (the "Current CC&Rs") with Davis County, which explicitly banned all poultry from the Association and clarified that prohibited outbuildings included chicken coops. On September 17, 2025, the Association issued two new violation notices to the Tanners for the hens and the coop. Mr. Tanner later contacted the Association, expressing disappointment, requesting an appeal and an extension to

rehome his hens. The Association granted a one-week extension, setting a final deadline for October 8, 2025.

On October 1, 2025, the Tanners requested an Advisory Opinion from the Office of the Homeowners' Association Ombudsman (the "Office"), arguing the violations were invalid as the new rules couldn't be retroactively applied to their coop and hens. Since the dispute remains unresolved, the Office now issues this Advisory Opinion under [Utah Code § 13-79-104](#).

## ANALYSIS & OPINION

### I. CC&R Amendment by Declarant.

The first dispute between the Tanners and the Association concerns the validity of the Current CC&Rs. The Tanners claim the amendment is invalid because the Declarant acted in bad faith by unilaterally changing the rules after their initial challenge, consequently breaching the implied covenant of good faith and fair dealing. They argue that such "moving of the goalpost" destroyed their right to continue a previously compliant use, and that such unilateral power should have reasonable limits. Conversely, the Association argues the amendment was lawful, citing the Declarant's authority under the Original CC&Rs during the period of administrative control. They state that the amendment was necessary to fix vague provisions and clarify standards on poultry and outbuildings, which the Original CC&Rs did not sufficiently address.

[Utah Code § 57-8a-102\(21\)](#) defines the period of administrative control as the time when the Declarant retains the right to exercise the powers granted to the Association in its CC&Rs, Bylaws, and Rules (collectively, the "Governing Documents"). According to [Utah Code § 57-8a-502](#), unless a declaration states otherwise, this period ends sixty days after eighty percent of the lots are sold to non-declarant owners, or seven years after the declarant stops offering lots for sale, whichever comes first. Both the Tanners and the Association agree that the period of administrative control has not ended, and its provisions remain in effect. Since several sections of [Utah Code § 57-8a](#) limit amendment powers only *after* this period ends, Article 15 of both the Original and Current CC&Rs governs during declarant control. Section 15.1.12 of the Original CC&Rs allows the Declarant to amend the CC&Rs unilaterally. Therefore, the amendment was valid under Utah law.

### II. Grandfathering of Non-Conforming Use.

The Tanners believe their chicken coop and hens should be "grandfathered in" and allowed to remain, even if the amendment to the Original CC&Rs was valid. They argue that the amendment should not be applied retroactively to a use that was previously permitted under the Original CC&Rs. Referencing principles common in zoning law, they assert that their pre-existing, compliant use should be protected, especially because they received permits and approval from Layton City before obtaining the coop and hens. They also contend that removing the coop and hens would breach the implied covenant of good faith and fair dealing by undermining their rights under the terms of the Original CC&Rs. Conversely, the Association states that the Governing Documents lack a grandfathering clause and that its duty is to enforce the current, valid amendment as written for all owners. They emphasize that Utah courts treat private covenants as contracts based on clear terms, without incorporating "non-conforming use" doctrines from public land use law. The Association maintains that its enforcement addresses ongoing violations under new rules rather than punishing past conduct.

While it is true that specific provisions of Utah law, such as [Utah Code § 57-8a-218\(10\)](#), allow grandfathering of nonconforming ownership of personal property when the Association adopts new *rules* that would require its removal, [Utah Code § 57-8a-218\(24\)](#) explicitly states that a declaration may depart from this requirement. Here, the use restriction was not issued by rule, but rather as an amendment to the CC&Rs. Therefore, the provisions of [Utah Code § 57-8a-218\(10\)](#) do not apply. Additionally, no other state laws applicable to the Association support the idea that non-conforming uses *must* be grandfathered in when the CC&Rs are amended. The fact that the Tanners obtained permits for the hens from Layton City, while compliant with city regulations, does not override the more restrictive requirements of the Current CC&Rs, which are binding contractual obligations between the Tanners and the Association.

Although the Tanners argue that restrictions should limit a declarant when amending the Association's Governing Documents during the period of administrative control, Utah law does not currently impose these restrictions insofar as it relates to the modification of usage restrictions that govern the Association contained in the CC&Rs. No Utah case law interprets these statutes or enforces such restrictions judicially. Thus, the Association has not violated Utah law by issuing notices and demanding removal of the non-compliant hens and coop.

### CONCLUSION

The Association has not violated Utah law in the dispute over the Tanners' chicken coop and hens, and can therefore require their removal. The Declarant acted within its legal authority to amend the Original CC&Rs during the period of administrative control. Nothing in Utah law or the Association's Governing Documents requires grandfathering for non-conforming use that applies to this issue. The Association can, therefore, enforce the ban.

  
[Erin Rider \(Oct 27, 2025 15:45:46 MDT\)](#)

**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/>.