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Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

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ADVISORY OPINION NO. 2025-07

<u>Applicant Name:</u>	Denia-Marie Ollerton
<u>Association Name:</u>	Aix La Chapelle Condominium Association, Inc.
<u>Association Type:</u>	Condominium Association
<u>Governing Statutes:</u>	Utah Condominium Ownership Act Utah Revised Nonprofit Corporation Act
<u>Advisory Opinion Drafter:</u>	Christoffer T. Binning, Esq.
<u>Advisory Opinion Date:</u>	November 26, 2025

LEGEND OF DEFINED TERMS

Amendment	Amendment to the Declaration of Covenants, Conditions, Restrictions, and Bylaws for Aix La Chapelle Condominium, dated December 12, 2024
Association	Aix La Chapelle Condominium Association, Inc.
BCI	Utah Bureau of Criminal Identification
Board	Board of Directors
Bylaws	Bylaws of Aix La Chapelle Condominium Association, Inc., dated July 6, 1979, as subsequently amended
CC&Rs	Declaration of Covenants, Conditions, Restrictions, and Bylaws for Aix La Chapelle Condominium, originally dated July 6, 1979, as subsequently amended
Governing Documents	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
Mr. Naumann	Helmuth Naumann, the Association's General Manager
Mr. Wright	Wesley David Wright
Ms. Ollerton	Denia-Marie Ollerton
Office	Office of the Homeowners' Association Ombudsman
Request	Request for an Advisory Opinion
Rule	Felony and Sex Offender Rule, adopted July 2, 2025

Summaries of each legal question are included at the beginning of each section. These summaries aim to provide a clear and straightforward answer to the question and should be read in conjunction with the complete analysis.

INTRODUCTION & BACKGROUND FACTS

A series of disputes has arisen between Ms. Ollerton and the Association regarding improper rule and amendment adoption, lack of transparency regarding financial records, failure to maintain common areas properly, and selective or retaliatory enforcement. The Association denies these allegations, asserts it has acted in good faith, and raises concerns regarding the conduct of Ms. Ollerton and Mr. Wright. The core facts and timeline, as understood by the Office, are as follows:

- The conflicts began after Ms. Ollerton and her partner, Mr. Wright, moved into the Association.
- The Association contends that, beginning from the time Ms. Ollerton and Mr. Wright moved into the Association, they were organizing meetings of homeowners. Ms. Ollerton and Mr. Wright contend that, starting from the time they moved into the Association, issues of mismanagement and malfeasance arose that necessitated homeowner action to address.
- In July 2022, an unsigned letter accusing the Board and Mr. Naumann of various omissions and misconduct was circulated among owners.
- On August 12, 2022, the Association sent a cease-and-desist letter to Ms. Ollerton and Mr. Wright, citing alleged violations related to posting signage, defamation, and nuisance behavior.
- In summer 2023, the Association levied a special assessment of approximately \$2,500 per unit for boiler system repairs.
- On August 9, 2023, the Association's management deactivated the couple's online owner portal account.
- On September 8, 2023, Mr. Naumann sent a separate cease-and-desist letter to Mr. Wright, alleging a pattern of stalking.
- On December 12, 2024, the Association approved the Amendment, which, among other things, incorporated changes to the Association's rental restrictions. The Amendment was a restatement of a 2016 CC&R amendment, which the Association learned had not been recorded with Salt Lake County.
- On July 2, 2025, the Board adopted the Rule, which bans individuals with felony convictions from serving on the Board.
- On July 10, 2025, Mr. Wright submitted his application for a board position.
- On July 17, 2025, the Board officially disqualified Mr. Wright's candidacy, citing the Rule and an undisclosed felony conviction.
- Mr. Wright challenged the Board's denial based on the fact that his prior felony had been lawfully expunged, and he was therefore not required to disclose any information related to it, and that the Board could not rely on it in disqualifying his candidacy.
- In the following weeks, an advocacy group called "Resident Assistance" circulated communications challenging the Amendment.
- This series of events led Ms. Ollerton to submit the Request to the Office on September 11, 2025.

Since the dispute remains unresolved, the Office issues this Advisory Opinion pursuant to [Utah Code § 13-79-104](#).

ANALYSIS OF QUESTIONS PRESENTED & GOVERNING LEGAL PRINCIPLES

This dispute raises the following legal questions for the Office: (1) what are the requirements for an association to amend its declaration to include rental restrictions; (2) can an association prevent a felon or sex offender from seeking election to its board; and (3) can an association apply a rule banning a felon from its board to someone with an expunged record.¹

1. [What are the Requirements for an Association to Amend its Declaration to Include Rental Restrictions?](#)

Summary: Utah law allows an association to amend its declaration so long as it complies with the procedures outlined in the declaration and other applicable Utah laws. Utah law further allows an association to impose rental restrictions in its declaration, and in some limited circumstances, its rules. In this case, the Amendment imposing the rental restrictions was recorded with Salt Lake County and has an attestation that all requirements, including the voting thresholds, for the Amendment were met. Therefore, the Amendment was duly adopted and recorded, and the Association did not violate Utah law in imposing the rental restrictions.

General Legal Principle: [Utah Code § 57-8-10\(2\)\(d\)\(iv\)](#) requires that an association’s declaration include a description of the “method by which the declaration may be amended.” Therefore, as a general rule, the declaration of an association may be amended in accordance with the requirements outlined in the declaration, provided the requirements or the proposed amendment do not violate Utah law. [Utah Code § 57-8-39](#) imposes several restrictions on what can be required for amending an association’s declaration, including voting thresholds, time restrictions, and votes of specific units or individuals. An association may amend its declaration as long as it complies with these restrictions and follows the procedures and requirements specified in the declaration. Additionally, and as relevant to the matter at hand, [Utah Code § 57-8-10.1](#) grants an association the authority to limit the number and terms of rentals, provided these restrictions are included in its original or amended declaration. If an association only seeks to establish a minimum lease term of six months or less, this restriction can be implemented through the adoption of a rule rather than through its declaration.

Application to Matter: In this matter, the rental restrictions adopted by the Association were recorded with Salt Lake County in the Amendment. While Ms. Ollerton argues that the notice and voting procedures related to the Amendment violated Utah law and the Governing Documents, she has not produced any evidence to support that conclusion. On the contrary, however, is the Amendment itself, which includes a verification statement and certification that it had complied with all procedural requirements and had received the necessary two-thirds approval required under the CC&Rs. Therefore, based on the information provided by the parties, the Association did not violate Utah law by amending the CC&Rs, and the rental restrictions imposed under the Amendment are valid and enforceable against all owners and homes within the Association.

¹ While Ms. Ollerton has raised allegations of misconduct related to access to records, the adoption of rules, the imposition of special assessments and fee increases, maintenance of the Association’s common areas, and malfeasance by the Board and Mr. Naumann, many of these issues were known or should have been known to her more than one year before she submitted the Request. Therefore, the Office lacks jurisdiction to address these allegations under [Utah Code § 13-79-104\(2\)\(a\)\(iii\)](#). Beyond those allegations that are time-barred, Ms. Ollerton has not provided specific details about several claims, despite multiple requests from the Office. This lack of detail prevents the Office from reviewing and applying the facts under Utah law. Consequently, the Office further declines to opine on these allegations, as it cannot determine whether they fall outside the one-year limitation period, are beyond its jurisdiction, or are not yet ripe for review.

2. [Can an Association Prevent a Member Who is a Felon or Sex Offender from Seeking Election to its Board?](#)

Summary: Utah law allows an association to prohibit an individual from running for or serving on its board if the individual is a felon or sex offender. In this case, no evidence is presented to support the allegation that the Rule was adopted in violation of Utah law. Accordingly, the Rule is valid and applies to all members of the Association.

General Legal Principle: Under [Utah Code § 57-8-8.1\(9\)](#), an association has the authority to restrict a sex offender from accessing protected areas within the community. Additionally, [Utah Code § 57-8-59\(3\)](#) allows an association, either through its governing documents or internal policies, to “disqualify an individual from serving as a member of the management committee because the individual has been convicted of a felony or is a sex offender.” An association’s rules are part of its governing documents and are valid against all members under [Utah Code § 57-8-8](#), provided they do not violate or conflict with the other governing documents or relevant statutes. Therefore, so long as an association complies with Utah law and its governing documents for any amendment or rule adoption, it may restrict felons and sex offenders from serving on its board.

Application to Matter: In Ms. Ollerton’s case, there is no evidence to support the claims related to the lack of notice or otherwise improper adoption of the Rule. While Ms. Ollerton disputes the validity of the Rule, she has presented no evidence to support the claim that the Board cannot adopt the Rule in its approved form. Under the general principles of Utah law, particularly [Utah Code § 57-8-59\(3\)](#), the Board has the authority and right, subject to any disapproval rights of the members contained within the Governing Documents, to prohibit those with prior felonies and who are registered sex offenders from running for and being elected to the Board. Therefore, based on the information provided by the parties, the Board did not violate Utah law in adopting the Rule.

3. [Can an Association Apply a Rule Banning a Felon from Its Board to Someone with an Expunged Record?](#)

Summary: Once an individual has completed the expungement process, including receiving the certificate of eligibility, court order, and processing, that individual can respond to inquiries as though the arrest, prosecution, or conviction did not occur. In this matter, while there may have been other lawful reasons for preventing Mr. Wright from running for the Board, the Association cannot base that denial solely on his expunged criminal matters.

General Legal Principle: [Utah Code § 77-40a](#) governs expungement of criminal records. Under this chapter, an individual is allowed to seek a certificate of eligibility from BCI and then to petition the courts to obtain an expungement order. Once this process has been completed, [Utah Code § 77-40a-401\(5\)](#) states that the individual who received the expungement may “respond to any inquiry as though the arrest, investigation, detention, prosecution, or conviction did not occur.”

Application to Matter: In this matter, if Mr. Wright had fully completed the expungement process, he could lawfully answer that he had not been subjected to any criminal investigation, prosecution, or conviction for any offense that had been expunged. Similarly, the Board could not use his expunged record as a reason for disqualification, even if it had independent knowledge of its existence. Therefore, while there may have been other lawful reasons for disqualifying Mr. Wright’s candidacy for the Board, the Association cannot base that disqualification solely on the expunged criminal matter.

CONCLUSION

Based on the information provided by the parties and the governing Utah statutes, the Office concludes as follows:

1. **Declaration Amendments:** The Amendment imposing the rental restrictions was properly recorded with Salt Lake County and has an attestation that all requirements, including the voting thresholds, for the Amendment were met. Without specific evidence demonstrating this attestation is false, there is no reason to assume the Amendment was not duly adopted and recorded; therefore, the rental restrictions it imposes are valid against all homeowners.
2. **Adoption of the Rule:** No evidence is presented to support the allegation that the Rule was adopted in violation of Utah law. Without such evidence, the Office has no choice but to conclude the Rule is valid and applies to all members of the Association.
3. **Expungement Application:** While there may have been other lawful reasons to prevent Mr. Wright's candidacy for the Board, the Association cannot base that denial solely on his expunged criminal matter.



Erin Rider (Nov 26, 2025 11:30:02 MST)

Erin Rider

Director



Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

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 intended as legal advice and does not establish an attorney-client relationship. 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 court's discretion.

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/>.