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Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

MARGARET W. BUSSE
Executive Director

ERIN RIDER
Division Director

ADVISORY OPINION NO. 2025-09

<u>Applicant Name:</u>	Monnie Elliott
<u>Association Name:</u>	Padre Lakes Townhomes Association
<u>Association Type:</u>	Community Association
<u>Governing Statutes:</u>	Utah Community Association Act Utah Revised Nonprofit Corporation Act
<u>Advisory Opinion Drafter:</u>	Christoffer T. Binning, Esq.
<u>Advisory Opinion Date:</u>	December 8, 2025

LEGEND OF DEFINED TERMS

Association	Padre Lakes Townhomes Association
Board	Board of Trustees
Bylaws	Bylaws of Padre Lakes Townhomes Association, dated April 4, 1994, as subsequently amended
CC&Rs	Declaration of Covenants, Conditions and Restrictions of Padre Lakes Townhomes, dated April 4, 1994, as subsequently amended
Governing Documents	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
Ms. Elliott	Monnie Elliott
Office	Office of the Homeowners' Association Ombudsman

Summaries of each legal question are included at the start 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 dispute has arisen between Ms. Elliott and the Association regarding the voting requirements and procedures for the upcoming annual meeting and Board elections. Ms. Elliott contends that the Bylaws require the Association to provide paper ballots to all members. The Association argues that it has never provided paper ballots, and that the provision Ms. Elliott cites in the Bylaws gives the Association the authority to conduct mail-in voting but does not require it. The main facts and timeline, as presented to the Office, are as follows:

- On October 20, 2025, Ms. Elliott contacted representatives of the Association inquiring as to why she had not received a ballot for the upcoming election via mail.
- On October 21, 2025, the Board's president responded to Ms. Elliott, informing her that the Association had never sent out paper ballots.
- On October 21, 2025, Ms. Elliott sent a demand for compliance, which asserted that the Board was refusing to comply with Article VI of the Bylaws.
- On October 22, 2025, Ms. Elliott submitted her request for an advisory opinion to the Office.

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 voting requirements for an association?

1. What are the Voting Requirements for an Association?

Summary: Under Utah law, community associations are required to conduct board elections in compliance with the specific procedures outlined in their governing documents, defaulting to a vote at the annual meeting only if the bylaws are silent. In this case, because the Bylaws state that elections “may” be handled by mail, language defined as permissive rather than mandatory, the Association acted within its authority by declining to use mail ballots and instead holding the election at the annual meeting.

General Legal Principle: [Utah Code § 57-8a-216\(2\)\(c\)](#) provides that an association’s bylaws shall outline the “manner and method of officer election by the board or, if the declaration requires, by the lot owners.” Additionally, [Utah Code § 57-8a-216\(2\)\(h\)\(ii\)](#) states that the declaration or bylaws of an association may dictate the voting requirements. Therefore, as a general principle, an association will rely upon and comply with its declaration and bylaws, as required under [Utah Code § 57-8a-212.5](#), when holding elections for board members. Similarly, if an association is registered as a nonprofit corporation, which is the case here, it must also comply with the requirements of [Utah Code § 16-6a-804](#) in electing its board. [Utah Code § 16-6a-804\(1\)](#) states that board members “shall be elected, appointed, or designated as provided in the bylaws.” If the bylaws do not have a specific method for electing an association’s board, then under [Utah Code § 16-6a-804\(2\)](#), board members “shall be elected by the voting members at each annual meeting.” Accordingly, under both [Utah Code § 57-8a-216](#) and [Utah Code § 16-6a-804](#), an association will look to the voting and election process outlined in its governing documents, and then, if necessary, will default to the statutory presumption of electing board members during its annual meeting.

Application to Matter: In this case, the Association’s Bylaws have a straightforward method for voting for and electing the Board. Article VI, Section 2 of the Bylaws provides that elections shall occur through secret written ballot. As relevant to the dispute between the parties, Article VI, Section 3 of the Bylaws states that elections “*may* be handled by mail voting...which *may* be, at the determination of the Board, the sole method of voting or used in conjunction with in-person voting.” (emphasis added). The operative word related to mail voting is “may,” which [Utah Code § 68-3-12\(1\)\(g\)](#) defines as “authorized or permissive.” The inclusion of “may” within Article VI, Section 3 makes it clear that the Association has the authority, but not an absolute requirement, to conduct elections via mail. If the Association chooses not to conduct elections via mail, the other alternative is in-person voting, which is what the Association has been doing. Therefore, the Association did not violate either [Utah Code § 57-8a-216](#) or [Utah Code § 16-6a-804](#) in making the decision to hold elections during the annual meeting, instead of by mail.

CONCLUSION

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

1. **Voting Requirements:** Because the Bylaws state that elections “may” be handled by mail, language defined as permissive rather than mandatory, the Association acted within its authority by declining to use mail ballots and instead holding the election at the annual meeting.



Erin Rider (Dec 8, 2025 16:47:42 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 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 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/>.