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Division Director

ADVISORY OPINION NO. 2025-10

Applicant Name:	Daniel Burleigh
Association Name:	Cooper's Hollow Home Owners Association
Association Type:	Community Association
Governing Statutes:	Utah Community Association Act Utah Revised Nonprofit Corporation Act
Advisory Opinion Drafter:	Christoffer T. Binning, Esq.
Advisory Opinion Date:	December 9, 2025

LEGEND OF DEFINED TERMS

ACC	Architectural Control Committee
Advantage	Advantage Management, Property Management for the Association
Association	Cooper's Hollow Home Owners Association
Board	Board of Trustees
CC&Rs	Amended and Restated Declaration of Covenants, Conditions, and Restrictions, dated November 18, 2021, as subsequently amended
Governing Documents	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
IADU	Internal Accessory Dwelling Unit
Mr. Burleigh	Daniel Burleigh
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 Mr. Burleigh and the Association over finishing the basement in Mr. Burleigh's home. Mr. Burleigh maintains that he complied with the requirements of the CC&Rs and the ACC when completing the basement. The Association argues that Mr. Burleigh did not provide all the necessary information for the ACC to make an informed decision and that the basement breaches Article XIII, Section 6(j) of the CC&Rs. The main facts and timeline, as presented to the Office, are as follows:

- On March 7, 2022, Mr. Burleigh submitted an application to the ACC to finish his basement, describing the project as adding "a finished bedroom and a common area downstairs." The application noted that detailed contractor plans were not yet available.
- Also on March 7, 2022, email communications took place between Mr. Burleigh and Advantage regarding the ACC application. In those exchanges, Advantage informed Mr. Burleigh that "anything that would alter the exterior of the unit would need to be expressed in the application form."
- In response, Mr. Burleigh noted that there would be no external changes to the property and that he was planning to finish the basement. However, there were no complete plans because the contractor had not yet completed the design process.
- That same day, March 7, 2022, the ACC approved the request. The only condition identified in the approval form is: "no exterior modification."
- Mr. Burleigh then proceeded with the renovation, which included installing a kitchenette in addition to an additional bedroom.
- At no point during the renovation did the ACC seek to obtain the final plans from Mr. Burleigh or conduct any follow-up regarding the final design of the basement, nor did Mr. Burleigh ever provide the completed plans to the ACC.
- On or around April 8, 2025, Mr. Burleigh received a notice of violation from the Association informing him that the kitchenette and bedroom in the basement brought his home out of compliance with the CC&Rs, which restrict homes to no more than one kitchen and five bedrooms.
- In July 2025, the parties began corresponding regarding their positions on the issue.
- On July 25, 2025, the Association informed Mr. Burleigh that if the sixth bedroom was not removed or repurposed and if all kitchen or cooking elements were not removed from the kitchenette by August 8, 2025, the Association would begin imposing fines.
- On September 8, 2025, Mr. Burleigh formally appealed the notice of violation, arguing that the basement renovation should be "grandfathered" and/or that it met the requirements for an IADU, which the Association could not prohibit. Additionally, Mr. Burleigh claimed that other members of the Association had made similar improvements to their homes, and no enforcement action had been taken against those members.
- On September 9, 2025, the Board rejected the appeal and stated that fines would continue to accrue until the home was brought into compliance with the CC&Rs. No hearing was held to address Mr. Burleigh's appeal request.
- On September 28, 2025, Mr. Burleigh filed a request for Advisory Opinion with 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) does an association's failure to act in one case mean that it has waived its ability to act in another; and (2) what restrictions can an association place on improvements and construction within an owner's home, and can a homeowner rely on a design approval once received from an association.

1. Does an Association's Failure to Act in One Case Mean that it has Waived its Ability to Act in Another?

Summary: Utah law allows an association to adopt and enforce usage restrictions in its governing documents and gives an association some discretion as to when and how to enforce those restrictions. In this case, the Association's alleged previous failure to enforce these restrictions in one situation does not mean that it has waived its right to enforce them later.

General Legal Principle: Under Utah Code § 57-8a-212 and Section 218, an association may, in its governing documents, include restrictions on the use of lots within the association. When this information is contained within the governing documents, it is binding on all members of the association under Utah Code § 57-8a-212.5. Even when usage restrictions are included in the governing documents of an association, the board generally has discretion in deciding whether to take action regarding a specific violation under Utah Code § 57-8a-213, which outlines various reasons for or against taking action. Under Utah Code § 57-8a-213(2), the decision to refrain from enforcing a requirement of the governing documents at one point in time does not prevent the association from taking action later.

Application to Matter: Although Mr. Burleigh believes that other homeowners may be violating the CC&Rs and the Association has not taken enforcement action against them, this fact, even if true, does not necessarily waive the Association's right to enforce those same provisions against Mr. Burleigh under Utah Code § 57-8a-213(2). In addition to Utah Code § 57-8a-213, Article XVI, Section 1 of the CC&Rs states that "any failure to enforce the terms of this Declaration shall in no event be deemed a waiver of the right to do so thereafter." Therefore, the mere fact that the Association may have elected not to seek enforcement against another homeowner does not preclude it from enforcement now.

2. What Restrictions Can an Association Place on Improvements and Construction Within an Owner's Home, and Can a Homeowner Rely on a Design Approval Received From an Association?

Summary: Under Utah law, an association may generally regulate lot use and review improvement plans. However, specific statutes prohibit an association from (a) banning IADUs from detached single-family homes, (b) preventing reliance on previously approved completed applications, or (c) restricting a dwelling's interior use unless there is a safety necessity. Although Mr. Burleigh's incomplete application precludes him from using statutory protections to rely on the ACC approval, and although his attached townhome does not qualify for statutory IADU protections, the Association ultimately cannot enforce its CC&R limits on bedrooms and kitchens because the restriction violates the statutory ban on regulating interiors without a safety purpose, and all fines associated with that enforcement are invalid.

General Legal Principle: Utah Code § 57-8a-212(2) provides that an association's declaration can contain provisions related to, among other things, "any restriction on the use of a lot." Additionally, under Utah Code § 57-8a-109, an association may require its board or another entity within the association,

such as a committee, to approve plans for construction or improvement on a lot. If this is required, the association has the discretion to either approve or deny the lot plan. Under Utah Code § 57-8a-109(4), if an association denies a lot plan, it must provide the homeowner with written notice of the denial that identifies the specific provision of the governing documents used to reject the plan and the specific portion of the plan that does not comply with that provision. While Utah Code § 57-8a-212(2) allows for usage restrictions to be contained in an association's declaration, as a matter of practice, many restrictions related to the usage of a homeowner's property are contained within their rules, which are governed by Utah Code § 57-8a-218. Importantly, even when an association has rules already in place, Utah Code § 57-8a-218(25) states that Section 218 applies "regardless of when the association is created," giving it retroactive effect and requiring an association to update its governing documents in accordance with any changes that occur within Section 218 from year to year.

Utah Code § 57-8a-218(24) states in its entirety that "a declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1), (2), (6), and (8) through (14), except Subsection (1)(b)(ii)." The question presented by this subsection is whether this provision allows an association to put anything into its declaration without impunity because it is not then a rule, or if the provision is intended to restrict an association from imposing limitations on the substance in Section 218, thereby prohibiting a declaration from containing any of the restrictions contained in Utah Code § 57-8a-218 except for those specifically exempted under Section 218(24). After reviewing the provision to give practical meaning and effect to "every word and every provision," *Croft v. Morgan Cty.*, 2021 UT 46, ¶ 32-33 (discussing the surplusage canon of statutory interpretation), and to avoid the effect of nullifying the provision by allowing an association to circumvent Utah Code § 57-8a-218 by including anything it wanted in its declaration, *id.*, the Office interprets Section 218(24) under the latter option, that is, that the provision is intended to restrict an association's declaration from containing any of the restrictions contained in Utah Code § 57-8a-218 except for those specifically exempted under Section 218(24). Any other reading would have the practical effect of rendering Utah Code § 57-8a-218(24) meaningless, as it would allow an association to prohibit and restrict everything outlined in Utah Code § 57-8a-218, provided that it did so through either its declaration or bylaws, rather than its rules.[1]

(a) IADUs

With this framework in mind, the Office must now review several provisions of Section 218 in relation to Mr. Burleigh's request that further restrict an association's ability to regulate what homeowners can do within their homes and properties, starting with Utah Code § 57-8a-218(16), which limits an association's ability to prohibit the construction of an IADU through rules. As discussed above, because the restrictions in Utah Code § 57-8a-218(16) are not identified as those that can be altered via an association's declaration under Utah Code § 57-8a-218(24), the same restrictions apply regardless of whether the prohibition is contained in an association's declaration or rules. Crucially, however, several limitations apply to these restrictions, namely, the structure or improvement in question must meet the legal definition of an IADU before the protections become applicable. Utah Code § 17-80-101(9)(a) states that an IADU must be built within a "primary dwelling," which is defined in Utah Code § 17-80-101(13)(a) as a "single-family dwelling that is detached." Any other type or form of modification not meeting this

[1] In reviewing Section 218(24), the Office spent time going over the legislative history of Section 218. From the legislative history, beginning as early as 2021 with the introduction of IADUs, it appears clear that the legislature intended Section 218(24) to generally restrict what an association can do in its governing documents, thus further supporting the conclusion reached by the Office in the analysis above. To review the legislative history mentioned, see *HB 82 GS 2021*; *SB 31 GS 2021*; *SB 191 GS 2023*; *HB 104 GS 2024*; and *SB 204 GS 2024*.

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requirement is not covered under the protections of Utah Code § 57-8a-218(16). Whether or not Utah state law prohibits an association from placing restrictions on IADUs within a community, however, a homeowner may still be subject to other restrictions outside the jurisdiction of the Office, such as local ordinances, building codes, and fire codes, and the onus is on the homeowner and the association to ensure compliance therewith.

(b) Reliance on Previously Approved Completed Applications

Second, once an association has given approval to a homeowner, Utah Code § 57-8a-218(13) prohibits a rule from "divest[ing] a lot owner of the right to proceed in accordance with a completed application for design review…under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review." According to this provision, the homeowner bears the burden of complying with the requirements of the governing documents, as outlined in Utah Code § 57-8a-212.5 and 57-8a-218(13), to submit a complete application. Once they have done so, they are entitled to rely on approval from the association to proceed in accordance with that completed application. While an association does have the authority under Utah Code § 57-8a-218(24) to modify Utah Code § 57-8a-218(13) through its declaration, including imposing additional requirements before a homeowner can rely on a design review approval, any such modification to the declaration is an affirmative action that the association must take, as highlighted by the word "may" in Section 218(24). When it has not done so, the prohibition contained in Utah Code § 57-8a-218(13) would control under the hierarchy of governance contained in Utah Code § 57-8a-228(5).

(c) Dwelling Interior Restrictions

Third, under Utah Code § 57-8a-218(22)(b)(i), "a rule may not impose a restriction on a dwelling's interior, except as reasonably necessary for the safety of adjacent lots and the occupants of those lots." *Black's Law Dictionary* defines "reasonable necessity" as "a necessity arising because an alternative cannot be used or acquired without a substantial expenditure of money or labor." In line with this definition, Utah courts have held that reasonable necessity "must be determined from a consideration of the facts and circumstances peculiar to the case." *Judd v. Bowen*, 2017 UT App 56, ¶ 58. Section 218(22) was enacted during the 2025 legislative session and, therefore, may not yet be familiar to many associations and boards. However, Utah Code § 57-8a-218(25) gives retroactive effect to all of Section 218, and an association has an obligation to ensure compliance with all changes and updates, regardless of when they were enacted. Under Utah Code § 57-8a-218(24), Section 218(22) is not one of the specific provisions that can be modified through an association's declaration. Therefore, an association cannot restrict a dwelling's interior, either in its rules or in its declaration, unless it is reasonably connected to the safety of other lots and occupants within the community.

Finally, an association may assess fines against a homeowner under Utah Code § 57-8a-208(1) "for a violation of the association's governing documents." When an association assesses a fine under Section 208(1), Section 208(3) stipulates that the fine can only be for a violation of a rule, covenant, condition, or restriction contained in the governing documents and must be for the amount identified in the governing documents.

Application to Matter: Applying the principles above, in order, to Mr. Burleigh:

(a) Article XIII, Section 6(j) of the CC&Rs states that "no unit shall contain more than five-bedrooms nor more than one kitchen." This restriction, on its face, does not necessarily prohibit the construction of an IADU, as not every home that contains a sixth bedroom or second kitchen would

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qualify as a lawful IADU. More fundamentally, however, Mr. Burleigh's home is not a detached single-family home but an attached townhome. Therefore, Mr. Burleigh's home does not meet the legal definition for a protected IADU, and the restrictions of Utah Code § 57-8a-218(16) do not apply to his home.

(b) Next, Utah Code § 57-8a-218(13) prohibits a rule from preventing a homeowner from proceeding with an approval from the Association if that approval is based on a completed application as defined and required by the Governing Documents. Article IX, Section 2 of the CC&Rs states that no improvement to a home can be constructed or maintained "unless complete plans and specifications therefor have first been submitted to and approved by the [ACC]." Sections 3 and 4 then grant the ACC the authority and responsibility to review all plans to ensure they meet the Association's standards and to approve or deny plans based on the Governing Documents and Utah Code § 57-8a-109. Notably, the CC&Rs do not contain any provisions regarding limitations on reliance on the decisions of the ACC and the Board; therefore, the standards outlined in Utah Code § 57-8a-218(13) apply to the Association and the CC&Rs. There is no dispute that Mr. Burleigh did not fully comply with the requirements of the CC&Rs when he submitted his application, which required him to include "complete plans and specifications." Therefore, while the ACC certainly failed to thoroughly review Mr. Burleigh's application before providing him with approval, that ultimately does not matter because the application was not complete. Therefore, Mr. Burleigh is not entitled to rely on the protection of Utah Code § 57-8a-218(13) because the approval he received was not based on a completed application.

(c) Finally, the reason for the Association's recent action against Mr. Burleigh is that Article XIII, Section 6(j) of the CC&Rs imposes restrictions on the interior of dwellings within the Association by limiting the number of bedrooms and kitchens that can be contained therein. A restriction of this nature, however, is prohibited under Utah Code § 57-8a-218(22)(b)(i) unless it is reasonably necessary for the safety of adjacent lots and the occupants of those lots. Because this provision cannot be modified through the CC&Rs under Utah Code § 57-8a-218(24), the inclusion and enforcement of Article XIII, Section 6(j) violates Utah law unless it can be shown to be reasonably necessary for the safety of the community. After reviewing the information provided by the parties, including the current and previous versions of the Governing Documents, and communicating with the parties to obtain additional documentation and information related to this specific point, there is nothing showing, under the particular facts of the situation as presented, *see Judd v. Bowen*, 2017 UT App 56, ¶ 58 (explaining how "reasonably necessary" is evaluated), that the restrictions on the number of bedrooms or kitchens are reasonably tied to or necessary for the safety of the community. While there may be other reasons for the inclusion of Article XIII, Section 6(j), those reasons do not prevail over the requirements of Utah Code § 57-8a-218(22)(b)(i), unless they demonstrate their reasonable necessity for the safety of lots adjacent to Mr. Burleigh's home or the occupants of those lots. Accordingly, based on the information provided by the parties, the enforcement of Article XIII, Section 6(j) violates Utah Code § 57-8a-218(22)(b)(i) as it imposes restrictions on the interior of dwellings without being reasonably necessary for the safety of the community. Because Mr. Burleigh cannot violate an unlawful provision, any fine flowing from it is similarly prohibited; therefore, all fines assessed against Mr. Burleigh related to its enforcement are void under Utah Code § 57-8a-208.

Conclusion

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

1. **Waiver:** Whether or not the Association previously enforced restrictions in the Governing Documents in one situation does not waive its right to enforce them later.
2. **Interior Restrictions & Approval Reliance:** Although Mr. Burleigh's incomplete application precludes him from using statutory protections to rely on the ACC approval, and although his attached townhome does not qualify for statutory IADU protections, the Association ultimately cannot enforce its CC&R limits on bedrooms and kitchens because the restriction violates the statutory ban on regulating interiors without a safety purpose, and all fines associated with that enforcement are invalid.

Erin Rider (Dec 9, 2025 12:01:07 MST)

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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/.

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