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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. 2026-01

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| <u>Applicant Name:</u> | Sean Kearney |
| <u>Association Name:</u> | Whispering Pines Property Owners Association |
| <u>Association Type:</u> | Property Owners Association ¹ |
| <u>Governing Statutes:</u> | Utah Revised Nonprofit Corporation Act |
| <u>Advisory Opinion Date:</u> | January 14, 2026 |

LEGEND OF DEFINED TERMS

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| Association | Whispering Pines Property Owners Association |
| Board | Board of Directors |
| Bylaws | By-Laws of Whispering Pines Property Owners Association, dated July 15, 2016, as subsequently amended |
| Governing Documents | The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association |
| Mr. Kearney | Sean Kearney |
| 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.

¹ The parties appear to dispute the applicability of [Title 57, Chapter 8a of the Utah Code](#) to the Association. However, based on the information provided to the Office, the issue raised by Mr. Kearney can be addressed through the application of [Title 16, Chapter 6a of the Utah Code](#). While the outcome would be the same if [Title 57, Chapter 8a of the Utah Code](#) were to be applied, to avoid confusion, the Office only applies the requirements for nonprofit corporations throughout this Advisory Opinion.

INTRODUCTION & BACKGROUND FACTS

A dispute has arisen between Mr. Kearney and the Association regarding the procedural requirements and legality of a proposed land exchange involving 1.35 acres of association-owned open space and four water shares. Mr. Kearney contends that the transaction, which includes a \$9,000 payment for water rights, exceeds the \$5,000 financial threshold established in the Association's Bylaws and constitutes a transfer under [Utah Code § 57-8a-232](#), thereby requiring a formal vote by the membership. In contrast, the Association maintains that the land swap is a non-monetary trade rather than a sale, and that the fair market value of the property falls below the \$5,000 limit. The Association asserts that the transaction is governed by provisions that require only Board approval and independent appraisals, rather than a mandatory membership vote as mandated by Utah law or the Governing Documents. The main facts and timeline, as presented to the Office, are as follows:

- On July 15, 2016, the Bylaws were adopted, establishing a requirement that transactions exceeding \$5,000 receive approval from a majority of the membership.
- Before November 2025, the Board had engaged in multi-year discussions regarding a proposal to trade 1.35 acres of association-owned open space for a 1.35-acre parcel owned by the Fassio family.
- In August 2025, a vote on a different proposed land swap transaction was voted on by the members, but did not achieve passage. Importantly, this proposed transaction did not include the water shares, which were added in the subsequent proposal.
- On November 1, 2025, a property owners' meeting was held to discuss a revised land swap deal whereby the parcels would be exchanged, the local water company would pay \$9,000 for the cost of four water shares to the Fassio family, and the newly owned 1.35 acres would be leased to the water company for a period of 10 years in satisfaction of the \$9,000 payment. Additionally, the Association would cover the cost of a survey of the 5 acres still owned by the Association.
- Around November 1, 2025, Mr. Kearney emailed the Association, asserting that the transaction did not comply with the requirements of Utah law and the Association's Governing Documents, and that a vote was required either under [Utah Code § 57-8a-232](#), with a 67% approval required, or if [Utah Code § 57-8a-232](#) is inapplicable, then a majority vote of the membership as required by the Bylaws.
- On November 9, 2025, the Board sent an email to property owners announcing a final vote for transparency purposes on the transaction as discussed during the November 1, 2025, owners' meeting. The vote was to be conducted via a third-party electronic service beginning the following day.
- On November 10, 2025, the scheduled electronic voting period for the property owners began.
- On November 12, 2025, the Association emailed Mr. Kearney, arguing that [Utah Code § 57-8a-232](#) does not apply to the transaction because it is a non-monetary trade rather than a sale, and asserting that the Bylaws do not mandate a member vote for such trades.
- On November 18, 2025, the voting period regarding the land swap proposal ended. The final vote of the 109 homeowners was 84 in favor and 8 against, with the remaining 16 votes not having been cast.
- On November 25, 2025, Mr. Kearney filed his request for an Advisory Opinion Application with the Office regarding the application of [Utah Code § 57-8a-232](#) and the \$5,000 transaction limit established in the Bylaws.

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 question for the Office: (1) What are the requirements for an association to transfer or sell common area property?

1. What are the Requirements for an Association to Transfer or Sell Common Area Property?

Summary: Under Utah law, a nonprofit association’s authority to sell property without member approval depends on whether the sale occurs within the “regular course of business,” otherwise requiring a formal board proposal and member vote under [Utah Code § 16-6a-1202](#). In this matter, although the Association asserts that the value of the land swap alone is below the \$5,000 threshold, the total transaction value—including land, water shares, and leases—clearly exceeded the \$5,000 threshold set forth in the Bylaws. However, because the Association did ultimately obtain approval from 77% of the homeowners, it satisfied the necessary consent requirements and avoided a violation of Utah law.

General Legal Principle: If an association is a nonprofit corporation, which is the case here, it must comply with the requirements of [Utah Code § 16-6a-1201](#) when the proposed sale of property occurs during the regular course of business or [Utah Code § 16-6a-1202](#) when the proposed sale occurs outside the usual and regular course of business. In determining what constitutes the “regular course of business,” you must look to “the inherent nature of the business in question and in the methods systematically employed for the conduct of the business as a business.” *Merrill Bean Chevrolet v. State Tax Comm’n*, 549 P.2d 443, 446 (Utah 1976). If the sale occurs during the regular course of business and is subject to [Utah Code § 16-6a-1201](#), the association is not required to obtain approval from its members unless otherwise specified in the bylaws. If, however, the transaction in question does not fall within the regular course of business and [Utah Code § 16-6a-1202](#) controls, an association’s board must propose the transaction, and it must be approved by the members entitled to vote. Before such a vote occurs, under [Utah Code § 16-6a-1202\(5\)](#), an association must provide notice to all members in accordance with [Utah Code § 16-6a-704](#), which must include information regarding the meeting time, place, and a description of the proposed transaction. During the meeting, members are entitled to vote, and the voting requirements of [Utah Code § 16-6a-714](#) and [Utah Code § 16-6a-715](#) must be satisfied, unless a greater vote is required under the association’s governing documents.

Application to Matter: In this case, the parties agree that the Bylaws contain requirements for transactions involving Association assets, as outlined in Article VI, Section 5. Article VI, Section 5 of the Bylaws establishes a sliding scale, based on transaction value, that determines whether member approval is required to finalize a transaction involving Association assets. The main question here is whether the Association correctly valued the transaction and followed the correct approval process as outlined in Article VI, Section 5. Mr. Kearney argues that, considering all assets and liabilities, the entire transaction exceeds \$5,000, which requires a vote of the members before proceeding. Conversely, the Association asserts that because the value of the property being conveyed was less than \$5,000, a membership vote was not necessary. *Black’s Law Dictionary* defines “transaction” as relevant to this situation as “something performed or carried out; a business agreement or exchange.” See also, *Aagard v. Jorgensen*, 2014 UT App 269, ¶ 21 (“a transaction is defined as a business deal: an occurrence in which goods, services, or money are passed from one person, account, etc., to another”) (internal quotation marks omitted). Additionally, *Black’s Law Dictionary* defines “value” as “the monetary worth or price of something; the amount of goods, services, or money that something commands in an exchange.” This definition does not require that money actually change hands, only the determination of the monetary value itself. Based on the documents

provided by the parties, the transaction involved more than simply exchanging two parcels of similarly sized and valued property, as argued by the Association; rather, the transaction proposed for the members to vote on involved the exchange of the parcels, water shares, the lease agreement with the water company, and a subsequent survey. When evaluating the entire transaction, it is clear that the total value for the whole exchange is valued at no less than \$9,000, which is the amount identified by the Association just for the value of the water shares, with the actual value of the land and lease being added on top of that amount. Therefore, under Article VI, Section 5 of the Bylaws, the Association was required to hold a vote to obtain member approval.

Based on the information provided by the parties, the proposed transaction from August 2025 would not have required a vote, as it was below the \$5,000 threshold outlined in the Bylaws. Following the failure of the August 2025 transaction vote, the November 1, 2025 meeting was held to further discuss potential changes to the transaction. The subsequent transaction, as solidified following the meeting, was more than the \$5,000 threshold requiring a vote under Article VI, Section 5 of the Bylaws. Since there is no evidence that a transaction of this nature occurs in the regular course of business of the Association, the Association was required to hold a vote of the members before the finalization of the transaction pursuant to [Utah Code § 16-6a-1202](#). The Association did hold a vote on the proposal, which was approved by 77% of the homeowners. To the extent this vote occurred following the finalization of the transaction, the Association failed to comply with the requirements of Utah law; however, since Article VI, Section 5 of the Bylaws requires “approval of a majority of the membership” for transactions over \$5,000 in value, the Association ultimately obtained the necessary consent and approval to proceed and cured any defects that may have occurred in the original process.² Therefore, the Association has not violated Utah law in connection with the transaction.

² While neither party has provided information to the Office regarding the date of the finalization of the transaction, the information that has been provided appears to support the Association’s position that the owners’ meeting and formal vote occurred before the conclusion of the transaction. However, to the extent that this is not the case and the vote was curative, in the future, the Association must obtain the necessary approval before finalizing future Association asset transactions.

CONCLUSION

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

1. **Common Area Transfer Requirements:** Although the Association asserts that the value of the land swap alone is below the \$5,000 threshold, the total transaction value—including land, water shares, and leases—clearly exceeded the \$5,000 threshold set forth in the Bylaws. However, because the Association did ultimately obtain approval from 77% of the homeowners, it satisfied the necessary consent requirements and avoided a violation of Utah law.



Erin Rider (Jan 14, 2026 15:21:48 PST)

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 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/>.