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Division Director

ADVISORY OPINION NO. 2026-03

Applicant Name:	James Wilson
Association Name:	Scenic Mountain Homeowners Association
Association Type:	Community Association
Governing Statutes:	Utah Community Association Act Utah Revised Nonprofit Corporation Act
Advisory Opinion Date:	February 4, 2026

Legend of Defined Terms

Association	Scenic Mountain Homeowners Association
Board	Board of Directors
Bylaws	By-Laws of Whispering Pines Property Owners Association, dated July 15, 2016, as subsequently amended
CC&Rs	Declaration of Covenants, Conditions, and Restrictions for Scenic Mountain, dated October 24, 2018, as subsequently amended
Governing Documents	The CC&Rs (Declaration), Bylaws, and Rules/Policies of the Association
Mr. Wilson	James Wilson
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. Wilson and the Association regarding financial transparency, the procedural validity of rule adoptions, and the uniform enforcement of community covenants. Mr. Wilson contends that the Association failed to provide the specific line-item financial records required by law and implemented unauthorized fees and rules in 2024 without the necessary open board meetings or owner comment periods. Additionally, he alleges that the Association has misallocated infrastructure costs across unit types and failed to disclose potential conflicts of interest. In response, the Association asserts that it has satisfied its legal obligations by providing standard balance sheets and financial reports, maintaining that it is not required to create new records or formats to suit individual owner preferences. The Association further maintains that its 2025 rule adoptions followed proper statutory notice and voting procedures, that the allocation of common expenses among homeowners fully complies with Utah law and the Governing Documents, and that no conflicts of interest exist with any Association contracts. The material facts and timeline, as presented to the Office and approved by the parties, are as follows:[1]

- On October 24, 2018, the CC&Rs were recorded with the Utah County Recorder.
- As part of the development of the Association, multiple buildings and homes utilize sewer lift stations. From the information provided to the Office by the parties, it appears that lift station #1 serves townhomes and the Association's clubhouse, while lift station #2 serves townhomes and some detached homes.
- On May 30, 2024, the Association sent an email to owners regarding updated pool and clubhouse rules, which included new fee provisions.
- On June 10, 2024, the Association held a community meeting. Mr. Wilson alleges that although the email regarding rule changes was sent before the meeting, those rule changes were not discussed during the meeting.
- On November 22, 2024, Mr. Wilson emailed the Association requesting a breakdown of fees and assessments. In response, the Association provided the annual budget.
- On December 3, 2024, Mr. Wilson submitted a formal records request to the Association seeking information on how the monthly assessment was spent per item for both single-family homes and townhomes within the Association.
- On December 13, 2024, Mr. Wilson emailed the Association to adjust the records request, asking for expenses to be broken out by line items to show specific spending.
- On December 16, 2024, the Association directed Mr. Wilson to the community website and provided a folder containing financial balance sheets for the period of June 2024 through December 2024.

[1] Mr. Wilson raised additional allegations in his Advisory Opinion request related to the conduct of Board members toward homeowners and other claims related to the general conflict climate within the Association. However, allegations of this nature are outside the Office's jurisdiction pursuant to Utah Code § 13-79-103(4)(a) and Section 13-79-104(7)(a)(iii). Additionally, Mr. Wilson raised concerns about potential selective enforcement of rules, given the Board's decision to enforce them based on homeowner complaints. However, Mr. Wilson stated that he has no information indicating that selective enforcement is occurring within the Association. Accordingly, the issue of selective enforcement is not ripe for review, and the Office lacks jurisdiction to opine on this possibility under Utah Code § 13-79-104(7)(a)(i). Finally, Mr. Wilson presented allegations regarding the Association engaging in off-budget spending without approval from homeowners; however, Mr. Wilson has not presented any specific instances of such spending or when such spending occurred. As a result, the Office lacks jurisdiction to address these allegations under Utah Code § 13-79-104(7)(a)(i). Accordingly, the Office does not address these allegations within this Advisory Opinion.

- On December 27, 2024, the Association responded to Mr. Wilson, declining to create new records or reorganize data and asserting that the provided records complied with legal obligations.
- In Spring 2025, the Association received multiple bids for a new landscaping contract. Ultimately, the Association accepted the contract from a landscaping company owned by a homeowner within the Association.
- On April 28, 2025, the Association uploaded the 2024 financial documents to the owner portal.
- On May 30, 2025, Mr. Wilson received an email notice from the Association regarding a vote on the approval of various Association rules.
- On June 16, 2025, the Association held a board meeting where the Board voted to adopt the proposed rules.
- On October 14, 2025, Mr. Wilson submitted a request for an Advisory Opinion to the Office regarding financial transparency, allocation of expenses, rule adoption, enforcement, conflicts of interest, and budget oversight.

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

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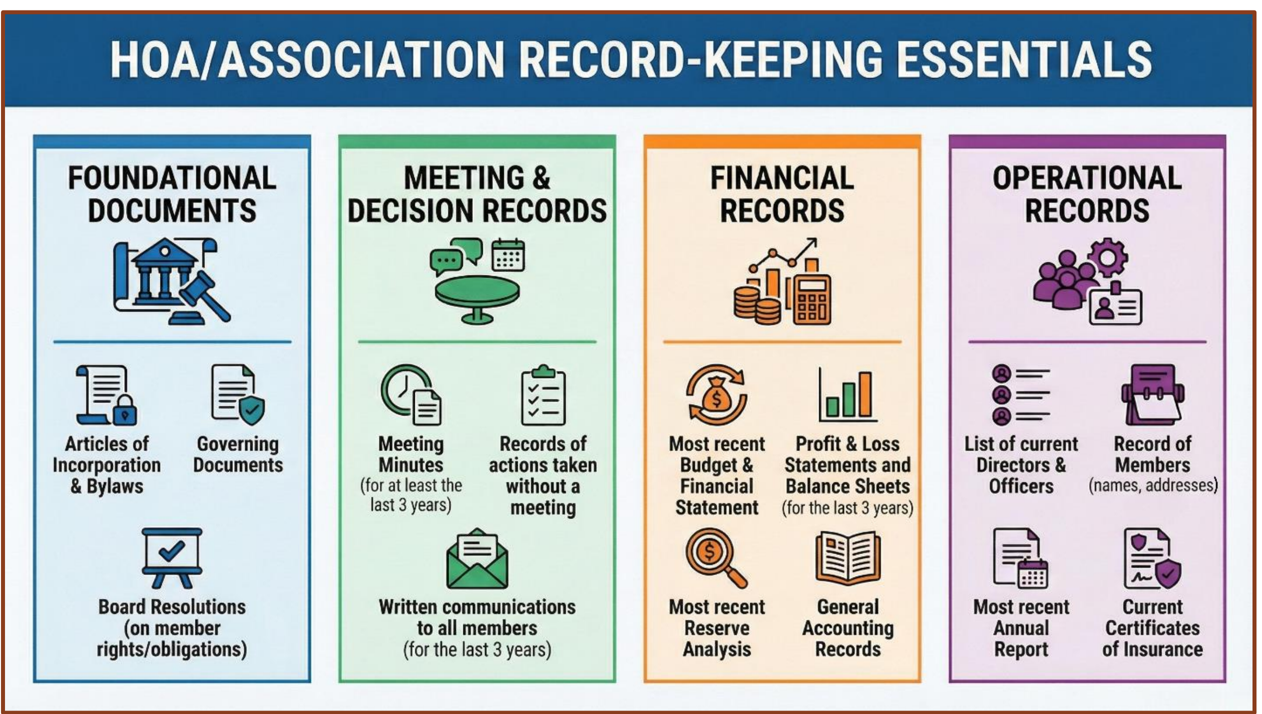
ANALYSIS OF QUESTIONS PRESENTED & GOVERNING LEGAL PRINCIPLES

This dispute raises the following legal questions for the Office: (1) What records is an association required to maintain and produce upon request? (2) What are the requirements when an association adopts rules? (3) What are the requirements and limitations for the use of reserve funds? (4) What are the requirements and limitations for an association regarding contracting?

1. What Records is an Association Required to Maintain and Produce Upon Request?

Summary: Utah law requires associations to provide members with access to specific maintained records upon a good-faith, sufficiently detailed request for a proper purpose. However, an association may redact sensitive data and is not required to create new documents or provide specialized accounting services. Because Mr. Wilson's request sought a detailed explanation of how assessments are allocated rather than specific existing records, the Association appears to have complied with the law so long as it has made the required financial documents available.

General Legal Principle: Under Utah Code § 57-8a-227(1) and Utah Code § 16-6a-1601, an association is required to maintain and provide access to the following records to its members:



Importantly, under Utah Code § 16-6a-1601(2), an association is required to keep "appropriate accounting records." However, this term is not defined within the Nonprofit Corporations Act. According to basic financial principles, accounting records are the primary financial summary reports that provide an overview of an organization's economic health, including balance sheets, income statements, and cash flow statements. While homeowners may seek other information related to an association's finances, and its board is welcome to provide such information if it chooses, Utah law does not require more than these summary, high-level documents.

Additionally, while requests for records may be made under Utah Code § 16-6a-1602, such requests must be made in good faith and for a proper purpose, as outlined in Utah Code § 16-6a-1602(3)(a).

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Utah Code § 16-6a-1602(3)(b)-(c) requires that the request include sufficient detail to allow the association to understand the records being requested and how those records are tied to the stated purpose of the request. When fulfilling a request, an association is allowed to redact information from the required documents under Utah Code § 57-8a-227(1)(b) if the information contains social security numbers, bank account numbers, or is subject to attorney-client privilege.

Application to Matter: The parties do not dispute that some of the requested records have been provided to Mr. Wilson. Instead, Mr. Wilson argues that the Association has failed to provide him with additional documents necessary to properly evaluate the use of Association funds and determine how the assessment amounts are allocated. The Association maintains that it has provided all the necessary documents under Utah Code § 57-8a-227 and Section 16-6a-1601, and that Mr. Wilson is not entitled to any additional documents beyond those stated in these sections, particularly when they require the creation or reorganization of information. Based on the information provided by the parties, it appears that Mr. Wilson's records request made on December 3, 2025, contained the information required under Utah Code § 57-8a-227 and Utah Code § 16-6a-1602 to the extent it requested specific records the Association is required to maintain. However, parts of the December 3, 2025, request, along with his subsequent follow-up and modification requests, do not meet the requirements of these statutes and instead seek answers to accounting and other questions. Specifically, Mr. Wilson's later request, in relevant part, states, "I would like to know how the $44 is being spent on each item outlined within the budget." This is not a request for documents, but a question seeking detailed accounting. Even though portions of his initial request were proper under Utah law, the additional requested information is not required to be provided by the Association. The parties do not appear to dispute that general financial records required under Utah law were and are available on the Association's website, where Mr. Wilson or any other homeowner could access them at any time; however, Mr. Wilson argues that the required documents for the required timeframe are not all included on the website or available to homeowners. So long as the Association has made all documents discussed above available on its website or in another manner accessible to homeowners, it has complied with its obligations under Utah law. While it may be helpful for Mr. Wilson's purposes to have access to more detailed information regarding the specific allocation of all funds received by the Association, that level of specificity is not required under Utah law. Therefore, to the extent the Association has provided all the documents actually requested by Mr. Wilson required under Utah Code § 57-8a-227 and Section 16-6a-1601, it has not violated Utah law; however, to the extent required documents have not been maintained by the Association or provided to Mr. Wilson in response to a valid request, the Association would need to correct this going forward.

2. What are the Requirements When an Association Adopts Rules?

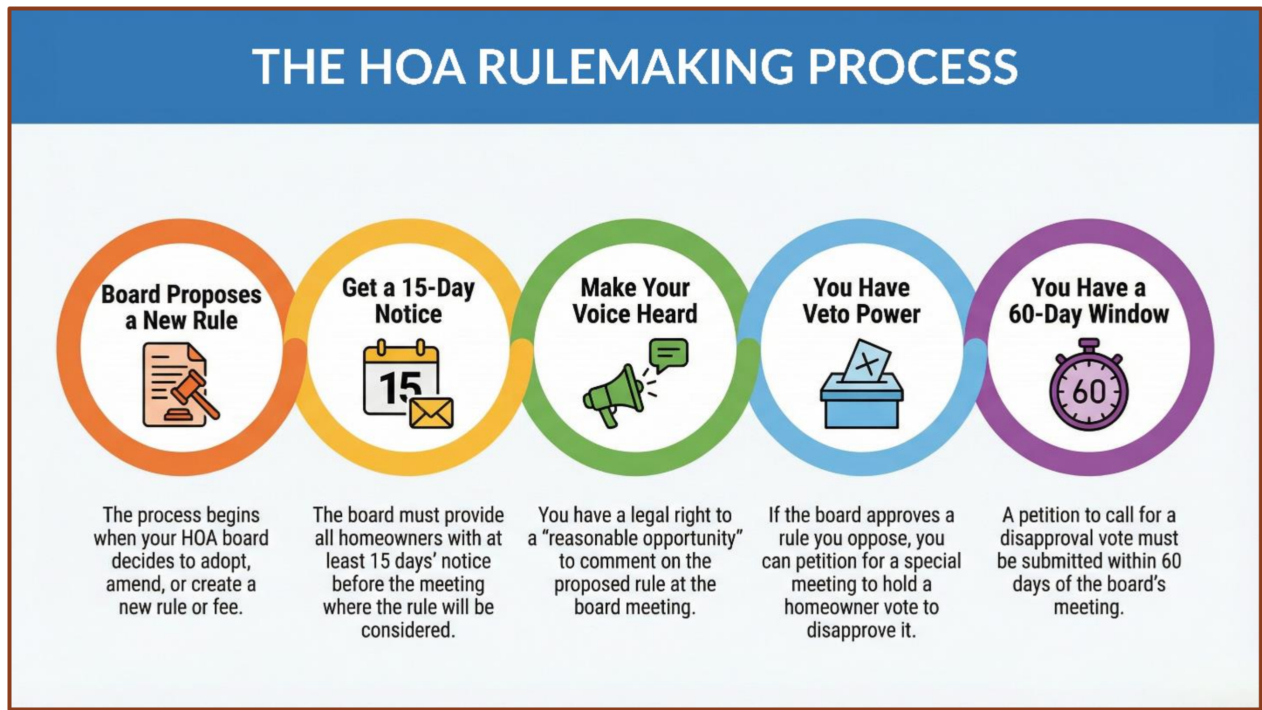
Summary: Under Utah law, an association's board is empowered to adopt or amend rules through a process that requires 15 days' notice to homeowners, an opportunity for public comment at the board meeting, and the distribution of the final rules within 15 days after adoption. The Office lacks jurisdiction to address alleged procedural defects from 2024 as they occurred more than one year prior to the request, and the parties do not dispute that the 2025 rule-making process met all statutory requirements. Accordingly, the Association did not violate Utah law in adopting the 2025 rules.

General Legal Principle: Utah Code § 57-8a-217(1)(a) grants an association's board the authority to "adopt, amend, modify, cancel, limit, create exceptions to, or expand the rules of the association," subject to the restrictions and limitations contained in Utah Code § 57-8a-217(1)(b). While Utah Code § 57-8a-226(2)(a) provides that an association is only required to give a 48-hour notice to homeowners who

have requested notice, this is not the case if rule changes will occur at the board meeting. Before a board may adopt or otherwise change an association's rules, Utah Code § 57-8a-217(2) requires that an association provide notice to homeowners at least 15 days before the board meeting where the proposed rule will be considered, and that there be an opportunity for homeowners to offer input during that meeting. Additionally, a copy of the adopted rules must be provided to all homeowners in accordance with Utah Code § 57-8a-214 within 15 days after the board meeting. Because proposed rule changes must be addressed at a board meeting, an association must also comply with the requirements of Utah Code § 57-8a-226(2)(b), which requires an association to include in its notice the date and time of the meeting, the location of the meeting, and information regarding electronic access and communication if permitted.

An important distinction, when it comes to rules, is that, under Utah Code § 57-8a-217(1), it is an association's "***board*** [that] may adopt, amend, modify, cancel, limit, create exceptions to, or expand the rules of the association." Utah Code § 57-8a-102(26) defines a rule as "a policy, guideline, restriction, procedure, or regulation," thereby encompassing fees and fines that operate within an association. Under the language of this provision, homeowners do not vote to approve of a proposed rule; instead, under Utah Code § 57-8a-217(2)(b), homeowners are allowed to present comments and concerns during the meeting required under Utah Code § 57-8a-217(2), before the board takes action on the proposed rule changes. This period for homeowner comments must be conducted in a manner that affords a reasonable opportunity for those who wish to provide public comment to do so under Utah Code § 57-8a-226(4)(a). "Reasonable opportunity" is not defined within Utah Code § 57-8a; however, Utah courts have made it clear that whether an individual or group had a reasonable opportunity is "a question of fact" that must be evaluated considering the circumstances of the situation. *See, e.g., Colonial Pac. Leasing Corp. v. J.W.C.J.R. Corp*, 1999 UT App 91. Accordingly, what may be a reasonable opportunity for homeowners to be heard in one association does not necessarily mean that it would be reasonable in another.

If an association's board approves the proposed rule changes after the hearing as outlined above and homeowners strongly believe that the new rule changes should not have been approved, under Utah Code § 57-8a-217(4), they have the right to call for a special meeting in accordance with the association's governing documents for the express purpose of holding a homeowner vote to **disapprove** of the rule changes. Should an association's homeowners wish to use the disapproval process outlined in Utah Code § 57-8a-217(4), it must be done within 60 days of the date of the meeting where the proposed changes were discussed, and must be motivated by homeowner involvement, because, as stated in Utah Code § 57-8a-217(5), an association's "board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition." If homeowners do not take this step, Utah law considers the rule changes to be properly adopted and enforceable against all homeowners under Utah Code § 57-8a-217. See the graphic below for a timeline of steps that must occur to properly adopt rules and procedures within an association:



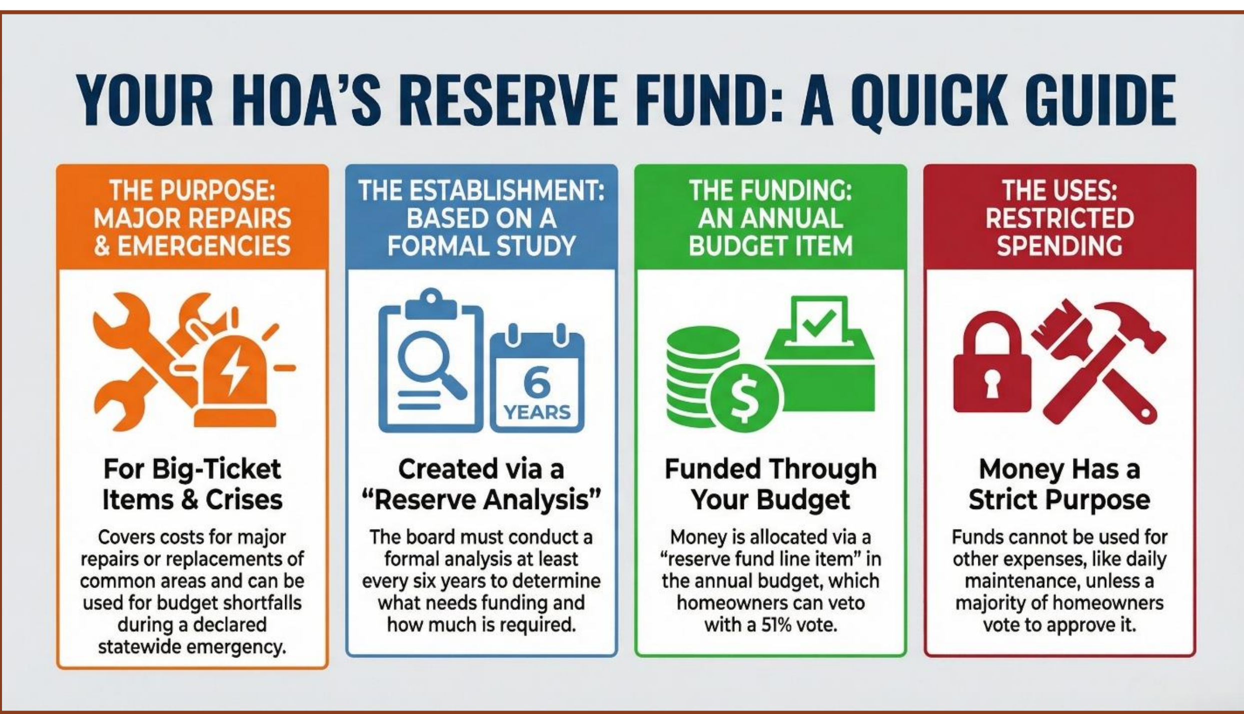
Application to Matter: Mr. Wilson alleges that, although the Association adopted rules in 2025 using the required procedure under Utah Code § 57-8a-217, this was done only to validate a change that had already occurred in May 2024. Mr. Wilson argues that the original change in 2024 was procedurally deficient and, therefore, could not have been enforced until the formal adoption process occurred in June 2025. However, under Utah Code § 13-79-104(2)(a)(iii), the Office lacks jurisdiction to address allegations that were known or should have been known more than one year before Mr. Wilson submitted his Advisory Opinion request. Therefore, because the Office cannot address the alleged procedural defects of the 2024 rules, and there is no dispute that the 2025 rules complied with the requirements of Utah Code § 57-8a-217, the Association has not violated Utah law in its adoption of the rules in June 2025.

3. What are the Requirements and Limitations for the Use of Reserve Funds?

Summary: Utah law requires homeowners' associations to maintain a separate reserve fund specifically for repairing or replacing common areas that the association owns and manages. These funds are intended for long-term maintenance of shared property and generally cannot be used for daily expenses without member approval. In this case, the Association acted legally in using reserve funds contributed by all homeowners because the lift stations are common areas that benefit all residents, either directly or through shared facilities such as the clubhouse. Since these stations serve the entire community, the Association is permitted to use collective reserve funds for their repair regardless of which specific homes they are located near.

General Legal Principle: Utah Code § 57-8a-211 requires an association to maintain a reserve fund for the purpose of covering the "cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years." Utah Code § 57-8a-102(5) defines common areas as "property that the association owns, maintains, repairs, or administers." To facilitate this statutory requirement, an association must include a specific line item in its annual budget, at an amount determined by the board to be prudent, for building and maintaining the

reserve fund, as required by Utah Code § 57-8a-211(6). Additionally, the reserve fund must be held separately from other association funds under Utah Code § 57-8a-211(9)(c). These funds cannot be used for daily maintenance expenses of the association unless a majority of the members approve of the use or there is a general budget shortfall that the board may use reserve funds to cover during a declared emergency, as outlined in Utah Code § 57-8a-211(9)(b). The graphic below provides a high-level overview of the purpose and structure of the reserve fund process for easy reference:



Application to Matter: In this case, Mr. Wilson argues that the Association has impermissibly used reserve funds to favor certain homes over others by repairing lift stations that serve only some homes within the Association. Whether a common area serves some or all of the Association, however, is not the requirement for the use of the Association's reserve funds. Utah Code § 57-8a-211(1)(c) requires the reserve fund to be used for the repair, replacement, or restoration of **common areas** of the Association. There is no dispute between the parties that the lift stations in question are owned and maintained by the Association, thereby making them "common areas" under the statutory definition. Therefore, whether different types of homes within the Association pay different assessment amounts is irrelevant to determining whether the Association's reserve fund can be used to pay for the maintenance or repair of the lift stations. Because the lift stations are owned by the Association as common areas, their maintenance and repair are funded from the Association's reserve fund.

Importantly, while the analysis above discusses the Association's obligations under Utah law, the Association must also ensure it complies with the requirements of its Governing Documents under Utah Code § 57-8a-212.5. As relevant to the current dispute, Section 4.2.2 of the CC&Rs states that "the common expenses will be apportioned equally among, and assessed equally to, all owners, provided that the portion of the common expenses attributable solely to the owners of the detached residences or solely to the owners of attached residences, because of the maintenance of such residences performed by the Association or other expenses incurred by the Association in connection with such residences, will be apportioned only to the affected **category of owners**." (Emphasis added). Under this requirement, if an

expense only serves or benefits a single category of owner, as defined in the Governing Documents as either solely single-family detached homeowners or solely townhome owners, then that category alone will be responsible for the costs. However, because Section 4.2.2 treats the owners of each of these property types as a single category, the benefit of a single owner within that category requires that all owners in the category share the expense.

The information provided to the Office by the parties indicates that lift station #2 serves and benefits a few single-family detached homes, in addition to the townhomes. Therefore, under Utah law and Section 4.2.2 of the CC&Rs, all members of both categories are responsible for the common expenses associated with the maintenance, repair, and replacement of lift station #2. Lift station #1, while it appears not to serve any detached homes, does serve the Association's clubhouse.[2] Therefore, because the clubhouse is a common area utilized by all members of the Association, it provides a service and benefit to both townhome and detached homeowners.

[2] From the information provided to the Office, lift station #1 serves those units identified in brown, while lift station #2 serves those units identified in pink.

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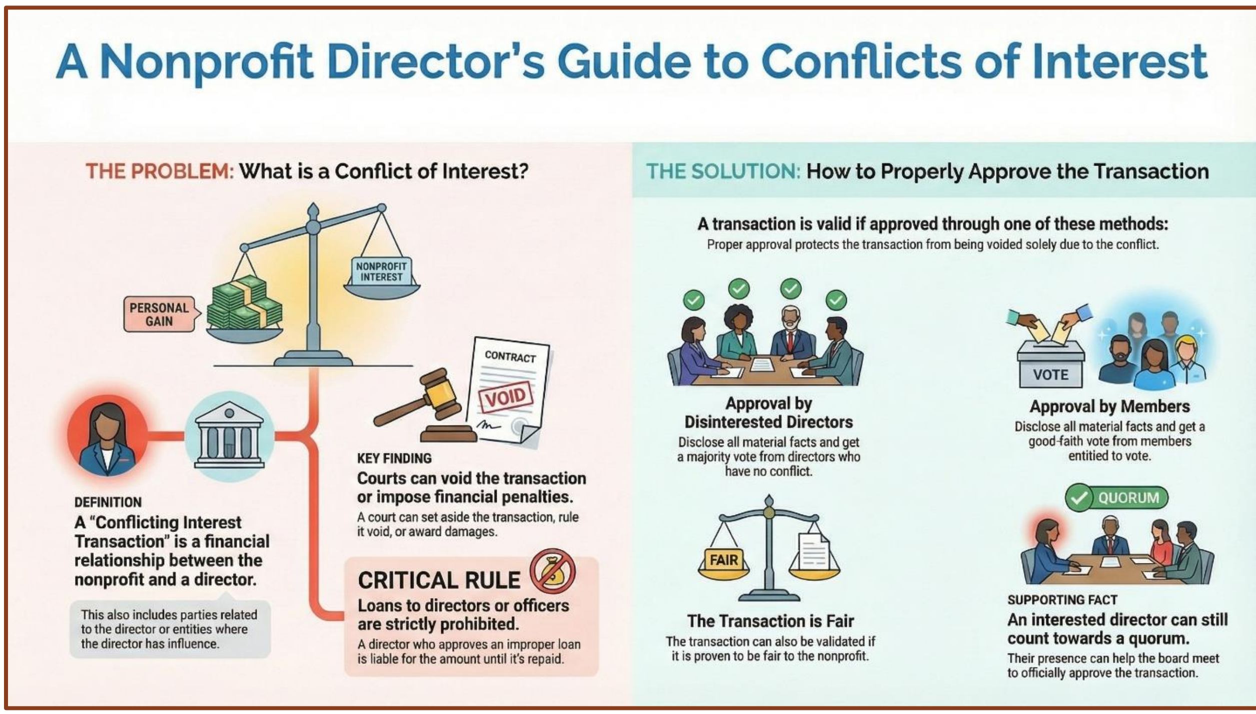
Because both lift stations provide service and benefits to all members of the Association, whether in townhomes or detached homes, all homeowners are responsible for contributions toward reserve funds for their maintenance, repair, and replacement. Accordingly, the Association has not violated Utah law in using reserve funds contributed by all Association members for these purposes.

4. What are the Requirements and Limitations for an Association Regarding Contracting?

Summary: Under Utah law, association board members must act in the best interests of the association and may only engage in self-dealing transactions if the conflict is fully disclosed and approved by a vote of the remaining board and general membership. In this matter, the Board did not violate these standards by awarding a landscaping contract to a homeowner's business, as the homeowner was neither a board member nor related to a board member, thereby precluding a statutory conflict of interest. Additionally, the contract was awarded through a competitive bidding process focused on the Association's needs, so there was no violation of Utah law in awarding the contract to the homeowner.

General Legal Principle: Utah Code § 57-8a-501(5) states that an association's board acts on behalf of the association in all instances unless otherwise limited by the governing documents or Utah law. This requirement imposes the obligation on board members to act in the best interest of an association and its members. If an association is also a nonprofit corporation, which is the case here, its board members must also comply with the requirements of Utah Code § 16-6a-822, which outlines the standards of conduct for board members, including the requirement to act in the best interest of the association. Further, an association's board member may not engage in any transaction or financial relationship with the association under Utah Code § 16-6a-825(1) unless the nature of the relationship is fully and truthfully disclosed to other board members and the general membership of the association, and affirmative votes approving the transaction are received from the other members of the board and the membership at large as described in Utah Code § 16-6a-825(4).



Application to Matter: In this case, Mr. Wilson argues that the Board has engaged in conduct that at least appears to give the impression of conflict-of-interest transactions. Specifically, Mr. Wilson states that because a landscaping contract was awarded to a company owned by a homeowner within the Association, additional disclosures were required before that contract could have been awarded. The Association argues that the homeowner's company was one of several that submitted bids to the Association, which were then reviewed and evaluated in light of the Association's best interests. The fact that a homeowner owns a business that obtains a contract from the Association does not necessarily imply a conflict of interest. Neither party has presented evidence to the Office that the homeowner in question is a member of the Board or related to a member of the Board, a necessary fact for a conflict of interest within the meaning of Utah Code § 16-6a-825. The Board is acting within its rights to review bids from several providers and award the contract to one based on the overall value provided to and the needs of the Association. Therefore, the Board has not violated Utah law by awarding the landscaping contract to the homeowner's company.

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CONCLUSION

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

1. **Record Retention & Production:** The Association is not legally mandated to generate new reports or answer broad budgetary questions. Because Mr. Wilson's request sought a detailed explanation of how assessments are allocated rather than specific existing records, the Association appears to have complied with the law so long as it has made the required financial documents available.
2. **Rule Adoption Requirements:** The Office lacks jurisdiction to address alleged procedural defects from 2024 as they occurred more than one year prior to the request; however, the parties do not dispute that the 2025 rule-making process met all statutory requirements. Accordingly, the Association did not violate Utah law in adopting the 2025 rules.
3. **Reserve Funds:** The Association acted legally in using reserve funds contributed by all homeowners because the lift stations are common areas that benefit all residents, either directly or through shared facilities such as the clubhouse. Since these stations serve the entire community, the Association is permitted to use collective reserve funds for their repair regardless of which specific homes they are located near.
4. **Contracting Requirements:** The Board did not violate the statutory requirements related to conflicts of interest by awarding a landscaping contract to a homeowner's business because the homeowner was not a board member and was not related to a board member, thereby precluding a statutory conflict of interest.

Erin Rider (Feb 4, 2026 13:14:48 MST)

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/.

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