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Office of the Homeowners'  
Association Ombudsman  
UTAH DEPARTMENT OF COMMERCE

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### ADVISORY OPINION NO. 2026-05

<u>Applicant Name:</u>	Janice Weirich
<u>Association Name:</u>	Hill Farms Subdivision Homeowner Association
<u>Association Type:</u>	Community Association
<u>Governing Statutes:</u>	<a href="#">Utah Community Association Act</a> <a href="#">Utah Revised Nonprofit Corporation Act</a>
<u>Advisory Opinion Date:</u>	February 13, 2026

### LEGEND OF DEFINED TERMS

<b>Association</b>	Hill Farms Subdivision Homeowner Association
<b>CC&amp;Rs</b>	Master Declaration of Covenants, Conditions and Restrictions of Wolf Creek Resort, dated September 7, 1982, as subsequently amended
<b>Board</b>	Board of Directors
<b>Governing Documents</b>	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
<b>Ms. Weirich</b>	Janice Weirich
<b>Office</b>	Office of the Homeowners' Association Ombudsman
<b>WR</b>	Welch Randall Real Estate

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. Weirich and the Association regarding the keeping of chickens and the presence of a chicken coop structure on her property within the Association. Ms. Weirich alleges that the Association has engaged in selective enforcement of the CC&Rs and asserts that a subsequent effort to amend the Governing Documents to permit chickens was successful based on a majority vote of participating members. Conversely, the Association maintains that the Governing Documents strictly prohibit poultry and that the proposed amendment failed to reach the necessary 67% threshold of all eligible association votes required for adoption. The parties further disagree on the re-characterization of the coop structure as a potential doghouse, the validity of assessed fines, and the interpretation of provisions regarding property access and voting requirements. The material facts and timeline, as presented to the Office, are as follows:

- On November 26, 2013, the CC&Rs were recorded, including Article 13.9, which prohibits raising, breeding, or keeping poultry of any kind on any Lot.
- Ms. Weirich has resided in the Association since 2015. During this period, the Applicant alleges she observed neighbors keeping chickens in violation of the CC&Rs.
- In July 2024, control of the Association transitioned from Destination Homes to the homeowners.
- In either late 2024 or early 2025, Ms. Weirich's spouse constructed a chicken coop structure in their backyard at an approximate value of \$2,500.
- On June 4, 2025, WR issued, by mail and email, a "Notice of Violation" to Ms. Weirich regarding the presence of the chicken coop and chickens, citing CC&R Section 13.9 and providing a cure deadline of June 19, 2025.
- Ms. Weirich received the written violation notice on June 12, 2025.
- On June 13, 2025, Ms. Weirich emailed the Board requesting that the prohibition on chickens within the Association be removed.
- On June 17, 2025, the Board emailed Ms. Weirich stating the Board had decided not to amend the existing rule and requested removal of the chickens and coop by June 19.
- Ms. Weirich sent a "Demand for Cessation of Selective Enforcement" letter to the Board on June 18, 2025, asserting that the removal notice was unreasonable and alleging selective enforcement.
- On June 20, 2025, the Board responded to Ms. Weirich's letter.
- On June 30, 2025, a Board member left a voicemail for Ms. Weirich stating the Board voted 3-to-2 to delay action on the chickens and coop until she returned from a planned vacation.
- The HOA held a meeting regarding CC&R changes on July 2, 2025, which Ms. Weirich attended.
- The Board emailed Ms. Weirich on July 9, 2025, stating that \$300 in fines had been assessed (\$250 for the structure and \$50 for the pet violation) because the chickens and coop remained on the property.
- The Applicant responded to the fine that same day, citing the previously discussed vacation grace period.
- On July 14, 2025, Ms. Weirich requested via email that the fines be rescinded and asked about the procedure for a community vote on changes to the CC&Rs.
- In response to Ms. Weirich's question about a community vote, the Board provided Ms. Weirich with a petition template that contained the correct layout, prompts, and information about how

to complete the petition to comply with Utah law and the Governing Documents. The Association also posted this template on the Association’s website for all homeowners.

- The Association sent a mass email to all homeowners on July 21, 2025, outlining the required procedures for Governing Document amendment proposals.
- On July 28, 2025, Ms. Weirich emailed the Board to ask if the coop could be repurposed as a doghouse and if doghouses required approval as lot improvements.
- In early August 2025, Ms. Weirich submitted an initial petition to the Board seeking to amend the CC&Rs. The first petition was rejected because it did not follow the provided template format and did not describe the action sought without a meeting or call for a special meeting. Several homeowners informed the Board they felt misled by the first petition’s vague wording, so the Board required a second petition with specific language.
- Between August 4 and 14, 2025, Ms. Weirich collected signatures for a second petition. Neither party disputes that the second petition met the 25% owner threshold required to call a special meeting.
- A “Tenth Amendment to the Declaration” and an official ballot were prepared and distributed to homeowners on October 30, 2025.
- A voting period of 30 days throughout November 2025 was provided to all homeowners, and an in-person special meeting occurred during the voting period. The Board allowed an online voting option via Google Forms.
- During the voting period, Ms. Weirich distributed flyers related to the proposed amendment with QR codes to 298 homes.
- The Association emailed weekly reminders about the proposed amendment and included the link, paper ballot, and instructions each time. These email reminders were sent on November 7, 17, and 24, 2025.
- The deadline for ballot returns passed on November 30, 2025.
- On December 3, 2025, the Association notified Ms. Weirich that the proposed amendment had failed to get the required votes and would not be formally adopted.
- On December 4, 2025, Ms. Weirich requested information from the Association regarding the vote count and recount process.
- That same day, December 4, 2025, Ms. Weirich submitted her request for an advisory opinion to the Office.
- On December 22, 2025, the Association informed Ms. Weirich that they were awaiting legal guidance on sharing results and provided information on the appeals process.
- Ms. Weirich filed a formal appeal regarding the chicken coop on January 1, 2026, stating her intent to repurpose it as a doghouse.
- The deadline for the removal of the chickens, coop, and specific fencing expired on January 3, 2026.
- On January 5, 2026, the chicken coop was still in place, and Ms. Weirich had not submitted an application to repurpose the chicken coop into a dog house as required under the Governing Documents. As a result, the Association assessed fines against Ms. Weirich.
- As of January 26, 2026, the chicken coop has been removed from Ms. Weirich’s property.

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 Enforcement Rights of an Association? (2) What are the Obligations of an Association when a Homeowner Seeks a Vote on an Amendment to the Governing Documents?

### 1. What are the Enforcement Rights of an Association?

**Summary:** Utah law permits homeowners' associations to assess fines for governing document violations after proper notice and a cure period, while granting boards some discretionary authority to enforce governing documents without fear that non-enforcement will automatically constitute a legal waiver of future rights. In this matter, the Association maintains its right to enforce the prohibition against chickens because both Utah law and the Governing Documents protect the Board's enforcement flexibility, and there is no indication that the Association does not consistently apply the rule to other homeowners who violate it once the violation becomes known to the Association.

**General Legal Principle:** [Utah Code § 57-8a-208\(1\)](#) permits an association's board to assess a fine against a homeowner for a violation of the association's governing documents, provided that the specific requirements of the statute have been met. [Utah Code § 57-8a-208\(2\)\(a\)](#) requires that, before a fine is assessed, an association must provide the homeowner with a written warning that describes the violation, including the specific rule or provision of the governing documents that has been violated, clearly states that the association may assess fines if a continuing violation is not cured or if the homeowner commits a similar violation within one year after the date of the notice, and provides a time of not less than 48 hours for the homeowner to cure the violation if it is continuing. Once this warning notice has been provided to the homeowner, an association may begin assessing fines if the homeowner fails to cure the continuing violation or commits a similar violation within one year, as stated in [Utah Code § 57-8a-208\(2\)\(b\)](#). Additionally, under [Utah Code § 57-8a-208\(2\)\(c\)](#), an association can continue to impose fines for repeated violations within one year, or for every 10 days after the cure period, so long as the governing documents permit such repeated fines.

However, [Utah Code § 57-8a-213](#) allows an association's board to use its best judgment and discretion in determining how to enforce the governing documents. This includes the decision on whether to seek enforcement action regarding any specific violation. Specifically, [Utah Code § 57-8a-213\(1\)\(b\)](#) provides several reasons that a board may determine that it is not in the association's best interest to pursue enforcement related to a specific situation. If an association's board decides not to pursue enforcement for one of the reasons stated in [Subsection \(1\)\(b\)](#), [Utah Code § 57-8a-213\(2\)](#) makes it clear that that decision does not prevent it from taking action in another. Ultimately, however, any decision to enforce or not enforce cannot be arbitrary, capricious, or contrary to public policy, as outlined in [Utah Code § 57-8a-213\(3\)](#).

**Application to Matter:** In this matter, Ms. Weirich argues that, although she was aware chickens were prohibited under the CC&Rs before she purchased them, because other homeowners within the Association have had chickens for a number of years, the Association has waived their right to enforce Article 13.9 of the CC&Rs against her. The Association contends that, as soon as it became aware of other homes in violation of Article 13.9, the same enforcement action was taken against those owners as was taken against Ms. Weirich. Additionally, the Association points to Article 23.1 of the CC&Rs, which states that "the failure to take enforcement action shall not be construed as a waiver of the contents contained in [the CC&Rs] in the future or against similar violations." This anti-waiver provision, along with [Utah](#)

[Code § 57-8a-213\(2\)](#), provides the Board and the Association with the flexibility necessary to make decisions for the Association that serve the common good under the specific circumstances presented to them. In addition to the anti-waiver provision in the CC&Rs, Ms. Weirich cannot claim that her violation should be waived if it was intentional. Regardless of whether other members of the Association had chickens, and regardless of whether the Association had acted, granted an exception, or chosen not to enforce the CC&Rs against those alleged homeowners, Ms. Weirich knew that getting and keeping the chickens was a violation of the CC&Rs before she ever acquired them. A general claim of waiver is not an excuse for a knowing violation of the CC&Rs. If the Association truly is addressing violations as soon as it becomes aware of them or making specific determinations based on the circumstances presented to it, as indicated to the Office, then there is nothing arbitrary, capricious, or against public policy in the enforcement simply because the Association becomes aware of one violation later than another or because it relies on homeowner complaints to identify violations. Therefore, based on the protections afforded to the Board's decisions regarding enforcement under [Utah Code § 57-8a-213\(2\)](#) and Article 23.1 of the CC&Rs, along with the ongoing enforcement of Article 13.9 against other homeowners within the Association, the Association has not waived its right to enforce Article 13.9 and has not violated Utah law in so doing.

2. [What are the Obligations of an Association when a Homeowner Seeks a Vote on an Amendment to the Governing Documents?](#)

**Summary:** Under Utah law, a non-profit association may amend its governing documents via a member-initiated petition and written ballot, provided the association meets specific notice requirements and provides voters with information sufficient to make an informed decision; however, the board is not legally obligated to summarize proposed changes, campaign for the amendment, or override the association's governing documents regarding voting thresholds. In this case, the Association complied with these principles by distributing the full text of Ms. Weirich's proposed amendment and correctly applying the CC&Rs' approval requirement. Because the proposed amendment did not achieve the required 67% approval from all homeowners, the Association was correct in determining that the measure failed and did not formally amend the CC&Rs.

**General Legal Principle:** [Utah Code § 57-8a-212\(2\)](#) provides that a declaration can contain information or requirements a declarant considers appropriate for an association, including requirements related to amending the declaration. However, if an association is a non-profit corporation, as is the case here, it must also comply with the amendment processes and requirements set forth in the [Utah Revised Nonprofit Corporation Act](#). In evaluating and applying this set of statutes to an association, it is important to note that, under [Utah Code § 16-6a-102\(6\)](#), bylaws for a non-profit corporation are “one or more codes of rules, other than the articles of incorporation, adopted...for the regulation or management of the affairs of a...nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.” In the context of a homeowners’ association, and under the definition set forth above, the declaration and bylaws of an association qualify for the amendment requirements of the [Utah Revised Nonprofit Corporation Act](#).

[Utah Code § 16-6a-1010](#) outlines the process and requirements for amending a non-profit association's governing documents. As part of this process, [Utah Code § 16-6a-1003\(1\)](#) states that “the board of directors or the members representing at least 10% of all of the votes entitled to be cast on the amendment may propose an amendment,” unless a different percentage is required under an association’s governing documents. Generally, when members seek to propose an amendment to the governing

documents, they do so through a special meeting, as outlined in [Utah Code § 16-6a-1003\(4\)](#). [Utah Code § 16-6a-702\(1\)\(b\)](#) allows members to call a special meeting provided a petition is signed and dated by members holding at least 10% of all entitled votes and the petition states the purpose for the meeting, unless the association's governing documents provide different requirements for calling special meetings.

Once the members have called a special meeting, an association must provide notice of the meeting's date and time, along with its purpose. If the purpose of the special meeting requires a member vote, there are three ways the vote can take place. Members may vote in person (or through the use of proxies under [Utah Code § 16-6a-712](#)) at a meeting of the members, may vote by written ballot as outlined in [Utah Code § 16-6a-709](#), or may act without a meeting provided all requirements of [Utah Code § 16-6a-707](#) have been met. If an association decides to hold a vote through written ballot, it must provide information required under [Utah Code § 16-6a-709\(4\)](#), namely, the number of responses needed to meet the quorum requirements, the percentage required to approve each matter on the ballot, specify the time the ballot must be received to be counted, and must be accompanied by written information sufficient for the voter to make an informed decision regarding the vote. Assuming these requirements have been met, there is no requirement under Utah law that an association or the board take a definitive position on any proposed amendment, nor is there an obligation to take proactive measures to promote the voting process or provide information beyond that required under [Utah Code § 16-6a-709\(4\)](#) when the vote occurs via written ballot.

Regardless of the method of voting adopted by an association, the determination of quorum and vote passage requirements is controlled by [Utah Code § 16-6a-714](#) and the association's governing documents. [Utah Code § 16-6a-714\(1\)\(b\)](#) states that unless stated otherwise in the governing documents, the members present at a meeting constitute a quorum for acting on a matter. If an association conducts voting via written ballot, as was the primary, but not only voting method here, [Utah Code § 16-6a-709\(3\)\(b\)](#) provides that unless otherwise stated in the governing documents, the number of votes cast by written ballot constitutes a quorum for action on the matter. Once a quorum has been established, whether through the statutory defaults or an association's governing documents, the Association must also count the votes and make a determination of whether the number of votes in favor of the passage of the amendment or item has been received. Generally, under both [Utah Code § 16-6a-709\(3\)](#) and [Utah Code § 16-6a-714\(3\)](#), action on a matter is approved if a majority votes in favor, unless the governing documents require a greater percentage. Further, if the vote in question regards an amendment to an association's declaration, [Utah Code § 57-8a-104](#) also applies to the voting threshold requirements. [Utah Code § 57-8a-104\(1\)\(a\)\(i\)](#) provides that the approval requirements of the governing documents are controlling; however, the required approval percentage cannot be higher than 67%.

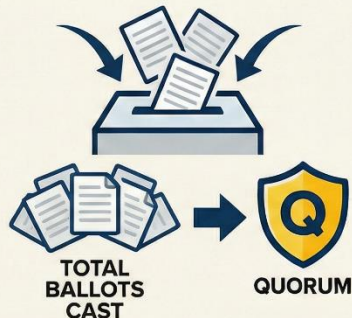
# Association Voting: The Written Ballot Process

## Step 1: Prepare the Ballot Packet



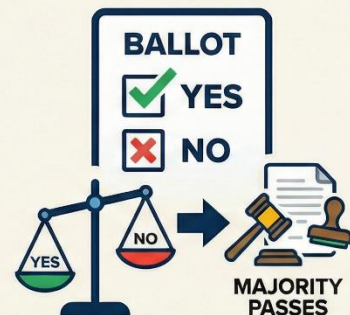
**Supporting Detail:** Before sending the ballot, you must include four key pieces of information for every member.

## Step 2: Establish Quorum



**Supporting Detail:** Unless your governing documents state otherwise, the total number of ballots cast constitutes a quorum.

## Step 3: Determine Approval



**Supporting Detail:** A measure passes if a majority of votes cast are in favor, unless your documents require a higher percentage.



**Application to Matter:** In this matter, the parties do not dispute the validity of the second petition Ms. Weirich submitted to the Association seeking to amend the CC&Rs to remove the prohibition on chicken ownership. Ms. Weirich argues that by sending a copy of the proposed amendment along with the ballot to homeowners, the Association failed to provide sufficient information for homeowners to make an informed decision and required them to do additional work before voting. The Association argues that by sending the complete proposed amendment, all homeowners had the necessary information to review the document, make an informed decision, and cast their votes. While Ms. Weirich may have preferred a more specific summary of the changes that would occur upon passage of the proposed amendment, that is not required under Utah law. The proposed amendment document is four pages long and contains the complete text of the paragraph to be changed. The Association is not required to expend time and resources to further summarize a paragraph that homeowners can compare to the current version contained in the operative CC&Rs, which they all have the right to access and review. Similarly, Ms. Weirich contends that the Board had an affirmative obligation to campaign or otherwise ensure that a high percentage of homeowners voted on the proposed amendment. However, nothing in Utah law requires the Board to undertake any action beyond providing the information required in the notice under [Utah Code § 16-6a-709\(4\)](#). Nevertheless, the Association also sent weekly email reminders to homeowners with the voting information to ensure the highest level of participation in the process, so there is no way to claim the Association did not provide the required information to homeowners. Finally, Ms. Weirich argues that, because 68% of voters favored the amendment, it should have passed. The Association contends that the Governing Documents require a 67% approval from all homeowners, not simply those who voted. Under [Utah Code § 57-8a-104](#) and [Utah Code § 16-6a-709](#), the voting threshold requirements in the Governing Documents control unless they require a greater percentage than 67%. Article 23.4 of the CC&Rs provides that “covenants can be modified by the affirmative vote of the Owners representing sixty-seven (67%) percent of the **total votes of the Association.**” (Emphasis added). Therefore, under the CC&Rs, the proposed amendment would have required approval from 67% of all homeowners, not

just those who voted. Accordingly, the Association has fully complied with Utah law in all respects regarding the proposed amendment.

## CONCLUSION

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

1. **Repair Requirements & Cost Allocation:** The Association maintains its right to enforce the prohibition against chickens because both Utah law and the Governing Documents protect the Board's enforcement flexibility, and there is no indication that the Association does not consistently apply the rule to other homeowners who violate it once the violation becomes known to the Association.
2. **Amendment Vote Obligations:** The Association complied with Utah law by distributing the full text of Ms. Weirich's proposed amendment and correctly applying the CC&Rs' requirement for approval by 67% of all homeowners within the Association. Because the proposed amendment did not reach the required 67% approval from all homeowners, the Association was correct in determining that the measure had failed and that it did not formally amend the CC&Rs.

  
Erin Rider (Feb 13, 2026 10:28:52 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/>.