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Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

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ADVISORY OPINION NO. 2026-07

<u>Applicant Name:</u>	Scott Johnston
<u>Association Name:</u>	Red Pine Community Association
<u>Association Type:</u>	Condominium Association
<u>Governing Statutes:</u>	Utah Condominium Ownership Act Utah Revised Nonprofit Corporation Act
<u>Advisory Opinion Date:</u>	03/13/2026

LEGEND OF DEFINED TERMS

Association	Red Pine Community Association
Bylaws	By-Laws of Red Pine Chalets, Phase Two, dated May 15, 1980, as subsequently amended
CC&Rs	Condominium Declaration for Red Pine Chalets, Phase Two, dated May 15, 1980, as subsequently amended
Committee	Red Pine Community Association Management Committee
Governing Documents	The CC&Rs (Declaration), Bylaws, and Rules/Policies of the Association
Mr. Altiery	Mario Altiery, Board member
Mr. Bradley	Tim Bradley, Committee President
Mr. Johnston	Scott Johnston
Office	Office of the Homeowners' Association Ombudsman
PPS	Ptarmigan Property Services

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. Johnston and the Association regarding the transparency of governance, the validity of recent Bylaw amendments, and the propriety of the Association's financial and administrative practices. Mr. Johnston and a group of owners challenge the Board's use of closed executive sessions to vote on significant policy changes, the legality of specific Bylaw provisions concerning Board qualifications and appointments, and the methods used to notify owners of special meetings. Conversely, the Association maintains that its actions, including the transition to closed sessions for discussing board member conduct and the reliance on legal counsel regarding meeting notice defects, are consistent with its Governing Documents and necessary for effective Association management. The material facts and timeline, as presented to the Office and approved by the parties, are as follows:¹

- Between September 24 and 26, 2025, Mr. Bradley proposed canceling the scheduled fourth quarter open meeting in favor of an executive session to vote on Bylaw changes concerning a code of conduct and background checks; two Board members agreed, while two others objected on the grounds of transparency.
- On October 3, 2025, Mr. Altiery requested that an agenda be distributed for the scheduled open meeting, noting that owners expected the meeting to proceed as planned.
- A proposed agenda for the October 9 meeting was circulated to the Board on October 6, 2025. The proposed agenda included items regarding a legal opinion on clubhouse usage, a savings report, and erroneous charges.
- On October 7, 2025, PPS notified owners that the previously scheduled open Board Meeting for October 9, 2025, was changed to a closed executive session. Mr. Altiery formally objected to the closure, asserting that the Bylaw discussions did not constitute legal issues warranting a closed meeting.
- The Board held the closed session on October 9, 2025, during which it reportedly voted to send the proposed bylaw amendments to the owners.
- On October 18, 2025, a draft reserve study was received by the Board.
- PPS emailed owners on October 30, 2025, with the proposed bylaw changes regarding the code of conduct and background checks, providing a voting link with a deadline of November 7, 2025.
- A group representing 30% of the unit owners submitted a request for a special meeting on November 6, 2025, for the purpose of voting to remove certain members from the Committee.
- On November 7, 2025, the deadline for voting on the bylaw amendments passed, and a notice for a special meeting scheduled for November 18 was delivered to owners via email.

¹ Mr. Johnston has also raised concerns about a special assessment imposed on homeowners in approximately July 2024. He also disputes the Board's authority to appoint the "at-large member" of the Committee, even though the amendment to the CC&Rs permitting that practice was adopted and recorded in 2009. Because these issues were known to Mr. Johnston more than one year before submitting his request to the Office, the Office lacks jurisdiction to address them under [Utah Code § 13-79-104\(2\)\(a\)\(iii\)](#). Additionally, Mr. Johnston has raised concerns and allegations regarding general governance, misconduct by Committee members, and attempts to consolidate power and authority in violation of their fiduciary responsibilities. These allegations, however, appear to be part of a broader pattern known to Mr. Johnston more than one year before he submitted his request to the Office. Accordingly, the Office lacks jurisdiction to address these allegations under [Utah Code § 13-79-104\(2\)\(a\)\(iii\)](#). Because the Office lacks jurisdiction to opine on the allegations identified herein, it does not include facts or information and only addresses the complaints upon which the Office can issue an Advisory Opinion.

- Mr. Bradley issued a notice to owners on November 10, 2025, advising them not to attend the November 18 special meeting, alleging that the special meeting was not being run by the Association and that the voting logistics for the meeting had been compromised.
- On November 11, 2025, PPS notified homeowners of the results of the Bylaw amendment vote. All proposed amendments failed to receive the required votes for adoption.
- On November 15, 2025, PPS sent notice of the November 18, 2025, meeting to homeowners via email.
- On November 17, 2025, the Association’s legal counsel issued a memorandum stating that while the call for a special meeting was proper, the delivery of the notice via email was defective under the governing documents, which required personal delivery or registered mail.
- On November 18, 2025, homeowners held the special meeting. That same day, Mr. Johnston submitted his advisory opinion application to the Office.
- PPS notified owners on November 21, 2025, that the November 18 meeting was legally defective and stated the Committee would schedule a new meeting before December 6, 2025, in accordance with the opinion received from the Association’s legal counsel.
- That same day, November 21, 2025, PPS sent notice to all homeowners that a meeting would be held on November 25, 2026. During that meeting, there would be “discussion and formal adoption of a special meeting date.”
- The annual owners’ meeting took place on December 6, 2025.

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 requirements for management committee meetings? (2) What are the requirements for calling and holding special meetings? (3) What are the requirements for amending governing documents, and what is the effect of those amendments?

1. What are the Requirements for Management Committee Meetings?

Summary: Utah law requires homeowners' association meetings to be open to all homeowners and to be noticed at least 48 hours in advance, unless the discussion involves specific topics such as legal advice or personnel issues. In this case, the Committee violated these requirements by failing to give proper notice and by holding a closed session to vote on Bylaw updates, which must be conducted in an open meeting.

General Legal Principle: Utah Code § 57-8-3(27) states that a management committee meeting is “a gathering of a management committee, whether in person or by means of electronic communication, at which the management committee can take binding action.” Utah Code § 57-8-57(3) requires that, except in limited circumstances, management committee and other member meetings of an association be “open to each unit owner or the unit owner’s representative.” Utah Code § 57-8-57(3)(b) provides that an association’s management committee can close a meeting to (1) consult with an attorney to obtain legal advice; (2) discuss ongoing or potential litigation, or other legal proceedings; (3) discuss personnel matters; (4) discuss contract negotiations, including reviewing bids; (5) discuss matters implicating an individual’s privacy; or (6) to discuss delinquent assessments or fines. Outside these exceptions, however, a management committee meeting must be open to homeowners. In addition to being allowed to attend management committee meetings, homeowners are entitled to notice of those meetings if they request it. Utah Code § 57-8-57(2)(a) requires that, at least 48 hours before a board meeting, the Association provide written notice to all members who request such notice. This notice is to be delivered via email and must provide information regarding the date/time/place of the meeting, as well as methods of remote attendance if available under Utah Code § 57-8-57(2)(b).

HOA MEETINGS: KNOW YOUR RIGHTS

GET NOTIFIED

48 HOURS

EMAIL NOTICE with TIME, DATE, LOCATION, ELECTRONIC LINK (if available)

Unless it's an emergency

OPEN VS. CLOSED SESSIONS

OPEN MEETINGS (Standard Rule)

ALL MEETINGS OPEN TO HOMEOWNERS

You have the RIGHT TO ATTEND and a REASONABLE OPPORTUNITY TO COMMENT

CLOSED SESSIONS (The Exceptions)

CLOSED ONLY TO DISCUSS SENSITIVE TOPICS

- LEGAL ADVICE & LAWSUITS
- PERSONNEL MATTERS
- CONTRACT BIDS
- INDIVIDUAL PRIVACY
- UNPAID DUES & FINES

Office of the Homeowners' Association Ombudsman
CLEAR REPRESENTATIVE OF CONSCIENCE

Application to Matter: In this matter, Mr. Johnston alleges violations regarding the October 9, 2025, board meeting, which was converted from an open meeting to a closed executive session. Specifically, he argues that because the Committee discussed and voted on amendments to the Bylaws, it was required to do so in an open meeting. Based on information presented by one member of the Committee to the Office,² the purpose of the meeting was to discuss ongoing conduct by individuals, both on the Committee and in the community, and that the decision to hold a closed meeting was therefore legally permissible. The information provided to the Office, however, supports Mr. Johnston's position. In particular, on October 7, 2025, Mr. Bradley sent an email to the Committee explicitly stating the purpose of the closed meeting was to vote on proposed updates to the Bylaws. Further, on October 9, 2025, PPS sent an email to all homeowners stating that the meeting scheduled for that day, which had been planned as an open meeting, was being changed to a closed meeting to consider proposed Bylaw updates. Even assuming the Association's argument is correct, under [Utah Code § 57-8-57\(3\)](#), the Committee cannot keep a meeting closed during periods in which it is discussing and voting on items that would otherwise be open to the community. Voting on proposed updates to the Bylaws is not one of the enumerated permissions for a closed session, so these statements, in and of themselves, support Mr. Johnston's argument that the purpose of the meeting was to take action, thereby requiring the meeting to be open to homeowners under [Utah Code § 57-8-57\(3\)\(a\)](#). If the Committee needed to discuss specific conduct of members, they had the authority to close the meeting for the period of time required to conduct those discussions; however, they would then have had to reopen the meeting once they began discussing general matters of Association business and governance, such as Bylaw amendments. Additionally, the notice informing homeowners that the scheduled board meeting was being changed from open to closed executive session was not delivered at least 48 hours before the meeting. Therefore, not only did the notice fail to comply with the timing requirements of [Utah Code § 57-8-57\(3\)](#), but it also made it clear that the Committee intended to take action during the meeting. Accordingly, to the extent the Committee discussed topics during the October 2025 meeting that statutorily should have been discussed in an open meeting, including potential amendments to the Bylaws, it violated Utah law.

2. [What are the Requirements for Calling and Holding Special Meetings?](#)

Summary: Under Utah law, a homeowners' association must hold a special meeting if a sufficient number of members make a written request, and the association must then provide "fair and reasonable" notice as defined by state statutes and the association's own bylaws. Although state law allows various types of notice, an association must strictly follow the specific delivery methods required by its governing documents, such as personal delivery or registered mail. In this case, the Association's original notice was correctly identified as invalid because it was sent by email rather than by personal delivery or registered mail, as required by the Bylaws. However, the Association still violated the law by failing to properly schedule and provide a corrected notice for the special meeting after the first attempt was declared invalid.

General Legal Principle: [Utah Code § 16-6a-702\(1\)\(b\)](#) requires a nonprofit association to hold a special meeting if it receives "one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held and are signed and dated by members holding at least 10%

² It should be noted that, although requests for information were sent to all five (5) members of the Committee by the Office, only two (2) members provided any response. Further, the responses received by the Office were not provided as a joint statement representative of the Association as a whole, but rather as individual responses from the perspectives of those members. For purposes of this Advisory Opinion, however, where reference is made to a comment from a Committee member, it will be considered an argument of the Association.

of all the votes entitled...to be cast on any issue proposed to be considered at the meeting.” However, an association’s governing documents may impose additional or varying requirements for calling a special meeting. Once an association receives a compliant written demand, [Utah Code § 16-6a-702\(3\)](#) requires the association to give notice of the special meeting pursuant to [Utah Code § 16-6a-704](#) within 30 days of receiving the demand. If an association does not provide this notice within the required timeframe, a person who signed the meeting demand may provide the requisite notice. [Utah Code § 16-6a-704\(1\)](#) requires that notice of meetings be provided to members in accordance with an association’s bylaws, and that the notice be fair and reasonable. [Utah Code § 16-6a-704\(3\)](#) states that “notice is fair and reasonable if the nonprofit corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than 10 days before the meeting [and]...the notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members or for which the members’ approval is sought [and]...the notice of a special meeting includes a description of the purpose or purposes for which the meeting is called.” [Utah Code § 16-6a-704\(2\)](#) also states that while a notice that complies with [Subsection \(3\)](#) is fair and reasonable, other means of notice may also be fair and reasonable when considering the totality of the circumstances. In addition to the notice requirements of [Utah Code § 16-6a-704](#), an association must also comply with those of [Utah Code § 57-8-42](#). While management committee meetings require notice pursuant to [Utah Code § 57-8-57](#), a special meeting called by the homeowners constitutes a member meeting and is subject to the notice requirements in [Utah Code § 16-6a-704](#) and [57-8-42](#). [Utah Code § 57-8-42\(1\)](#) provides that a method of notice outlined in the [Utah Revised Nonprofit Corporation Act](#) constitutes fair and reasonable notice to homeowners before a meeting. Under [Utah Code § 57-8-42\(2\)\(b\)](#), any notice provided that is not outlined in the [Utah Revised Nonprofit Corporation Act](#) may still qualify as fair and reasonable after considering all the circumstances.

Application to Matter: Mr. Johnston has raised concerns regarding the special meeting, called for November 18, 2025, which the Association declared invalid based on the notice provided to homeowners. While the general rules regarding notice timing apply to the special meeting, as discussed above, [Utah Code § 16-6a-704\(1\)](#) requires that notice of meetings be provided to members in accordance with the Bylaws, and that the notice be fair and reasonable. In this instance, Article III, Section 3 of the Bylaws requires that “notice of [a special meeting] shall be delivered not less than ten (10) days prior to the date fixed for said meeting.” While [Utah Code § 57-8-42\(3\)\(a\)](#) provides that the Association could, under the general legal principle, give notice via electronic means, its ability to do so is based on whether that is allowed for in the Governing Documents. Article III, Section 4 of the Bylaws states that “any notice permitted or required to be delivered as provided herein may be delivered either personally or by registered mail.” Because the language of Article III, Section 4 of the Bylaws provides two distinct methods for service and does not include caveats for methods beyond those identified, any notice of a special meeting of the Association must be delivered to homeowners either by registered mail or by personally giving each homeowner the notice document. Accordingly, the original notice sent by the Association regarding the special meeting did not comply with the Bylaw’s requirements and was therefore invalid under Utah law. While providing notice by email may, in some instances, be fair and reasonable under the totality of the circumstances, the Association is still required to comply with its Governing Documents under [Utah Code § 57-8-8](#), which explicitly outlines the types of notice permitted for special meetings. As such, the Association was correct in declaring the original notice and the resulting vote invalid. However, since the original threshold for calling the meeting had been met, the Association was required to schedule and provide notice of a special meeting in accordance with the Governing Documents, which it failed to do. Instead, a separate meeting was scheduled to discuss the special meeting, further delaying compliance with

Utah law and the Governing Documents. As such, the Association violated Utah law by failing to schedule the special meeting and provide the required notice after invalidating the first meeting.

3. [What are the Requirements for Amending Governing Documents, and What is the Effect of those Amendments?](#)

Summary: Under Utah law, homeowners’ associations have the authority to set board member qualifications, such as background checks, provided they follow the specific voting and recording procedures outlined in their governing documents. These laws also require that any board discussions or internal votes regarding such changes be conducted in meetings open to all members. In this case, while the Association had the legal right to propose a code of conduct and background checks, it violated Utah law by holding those initial discussions in private rather than in an open forum. Furthermore, because the proposed changes never received the required 66.66% homeowner approval, the amendments were never legally adopted or valid.

General Legal Principle: [Utah Code § 57-8-15](#) states that “the administration of every property shall be governed by bylaws” and that “no modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment and such amendment is recorded.” An association’s bylaws, under [Utah Code § 57-8-16\(8\)](#), are required to identify the “percentage of votes required to amend the bylaws.” If an association is also a nonprofit corporation, as is the case here, it must comply with the [Utah Revised Nonprofit Corporation Act](#) when amending its governing documents. As relevant to the current matter, [Utah Code § 57-8-59\(2\)](#) allows an association to prescribe qualifications for board members. Under [Utah Code § 57-8-59\(3\)](#), these can include an individual who has been convicted of a felony or is a sex offender. Additionally, [Utah Code § 16-6a-1010\(1\)](#) allows an association’s board to amend its bylaws “at any time to add, change, or delete a provision” unless the governing documents prohibit them from doing so or the change would change the voting rights of some members in favor of others. Therefore, if an association seeks to amend its bylaws, it must comply with the requirements set forth in its governing documents and the general requirements of Utah law.

Application to Matter: In this matter, Mr. Johnston argues that the Committee lacks the authority to amend the Bylaws to include a code of conduct for Committee members, which would allow the other Committee members to “suspend” a Committee member for violations. Additionally, Mr. Johnston argues that the inclusion of a required background check in the amended Bylaws violates individual privacy and is unlawful for the Committee to implement. The Association argues that these measures are necessary to ensure it can obtain liability insurance as required by Utah law, and that the code of conduct is a document that Committee members voluntarily signed prior to the decision to formally include it in the Bylaws. Under [Utah Code § 57-8-59](#), the Association may impose requirements and restrictions on homeowners who wish to serve on the Committee. Because these requirements may include ensuring that a prospective Committee member does not have a felony record or is not a sex offender, there is nothing in Utah law that prohibits the Association from adopting a background check requirement or from requiring Committee members to sign and adhere to a general code of conduct.

Article VIII of the Bylaws states that they “may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration.” Article XXVII of the CC&Rs requires that an amendment receive “the affirmative vote or approval and consent of not less than 66.66 percent of the undivided interest in the Common Areas and Facilities.” Therefore, before any amendment to the Bylaws is valid, it must be voted on and approved by no less than 66.66% of **all** voting interests, not just those that vote or attend the meeting. Importantly, however, based on the information

provided to the Office, it does not appear that the proposed amendment was actually voted on or passed. Rather, it appears that the Committee held discussions and an internal vote on whether the proposed amendment should be provided to all homeowners for the formal vote required under the CC&Rs. Ultimately, the Committee presented the proposed amendments to homeowners, and the majority voted to reject them. While these discussions were required to be held during an open meeting, as discussed above, there is nothing in Utah law that prevents the Committee from holding discussions and take internal votes on whether to move the proposed changes forward in the process, so long as those discussions and internal votes meet the requirements of the Governing Documents and Utah law regarding management committee meetings under [Utah Code § 57-8-57](#). Therefore, while the Association did not violate Utah law with respect to the process for proposing changes to the Bylaws, it did violate Utah law by failing to engage in that process in an open meeting.

CONCLUSION

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

1. **Open Meetings:** The Committee violated Utah law by failing to give proper notice and by holding a closed session to vote on Bylaw updates, which must be conducted in an open meeting
2. **Special Meetings:** The Association's original notice was invalid because it was sent by email rather than by personal delivery or registered mail, as required by the Bylaws. However, the Association still violated the law by failing to properly schedule and provide a corrected notice for the special meeting after the first attempt was declared invalid.
3. **Governing Document Amendments:** While the Association had the legal right to propose a code of conduct and background checks, it violated Utah law by holding those initial discussions in private rather than in an open forum. Furthermore, because the proposed changes never received the required 66.66% homeowner approval, the amendments were never legally adopted or valid.



Erin Rider (Mar 13, 2026 12:03:00 MDT)

Erin Rider

Director



Office of the Homeowners'
Association Ombudsman
UTAH DEPARTMENT OF COMMERCE

INFORMATION REGARDING ADVISORY OPINIONS

This document is an Advisory Opinion issued by the Office of the Homeowners' Association Ombudsman as an alternative dispute resolution method pursuant to [Utah Code § 13-79-104](#). The Office's jurisdiction is limited to alleged violations of state statutes, as outlined in [Utah Code § 13-79-103](#) and [Utah Code § 13-79-104](#). The opinions here are based on a review of the specific facts provided and may not correspond with outcomes in other cases where circumstances or laws differ. This opinion is not legal advice, does not establish an attorney-client relationship, and does not represent the official views of the State of Utah or the Department of Commerce. All parties are encouraged to seek legal counsel to protect their interests.

While this Advisory Opinion is not legally binding on any party, it could have potential consequences if the matter proceeds to litigation. Under Utah law, the opinion and related findings are not admissible as evidence in court, except for the specific purpose of evaluating attorney fees and costs. If a cause of action discussed in this opinion is litigated and resolved according to it, the prevailing party may recover reasonable attorney fees and court costs incurred from the date this opinion was issued. A court may also impose a civil penalty if it finds that the opposing party knowingly and intentionally violated the law. The decision to grant such awards rests within the court's discretion.

NOTICE TO ASSOCIATIONS

Condominium Associations must register with the Department of Commerce through the Office of the Homeowners' Association Ombudsman under [Utah Code § 57-8-13.1](#), and Community Associations must register under [Utah Code § 57-8a-105](#). Due to an updated registration system, any association that registered prior to September 2025 is required to complete a new registration, regardless of whether they have previously registered with the Department of Commerce. All associations must also renew their registration annually. Information about this process and the registration application is available at <https://commerce.utah.gov/hoa/new-registration/>.