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Office of the Homeowners'  
Association Ombudsman  
UTAH DEPARTMENT OF COMMERCE

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### ADVISORY OPINION NO. 2026-12

<u>Applicant Name:</u>	Jeffrey Warne
<u>Association Name:</u>	Ideal Beach Resort Homeowners Association
<u>Association Type:</u>	Community Association
<u>Governing Statutes:</u>	<a href="#">Utah Condominium Ownership Act</a> <sup>1</sup> <a href="#">Utah Revised Nonprofit Corporation Act</a>
<u>Advisory Opinion Date:</u>	03/27/2026

### LEGEND OF DEFINED TERMS

<b>Assessment</b>	Individual Assessment for Each Primary Unit Owner in Buildings C, F, I, J, and K, dated November 17, 2025
<b>Association</b>	Ideal Beach Resort Homeowners Association
<b>Board</b>	Board of Directors
<b>CC&amp;Rs</b>	Amended and Restated Declaration of Condominium for Sweetwater Park Beach Resort Condominiums, dated October 9, 2015, as subsequently amended
<b>Governing Documents</b>	The CC&Rs (Declaration), Bylaws, and Rules/Policies of the Association
<b>Mr. Warne</b>	Jeffrey Warne
<b>Office</b>	Office of the Homeowners' Association Ombudsman
<b>Project</b>	2025 Roof Repair Project

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.

<sup>1</sup> Although both parties have referenced the [Utah Community Association Act](#) in the information provided to the Office, based on the Association's Governing Documents, the Association is subject to the [Utah Condominium Ownership Act](#) as identified in Recital E of the CC&Rs.

## INTRODUCTION & BACKGROUND FACTS

A dispute has arisen between Mr. Warne and the Association regarding the imposition of an individual assessment of \$12,600 for the Project. The Association maintains that the Project is a necessary maintenance measure to address deteriorating conditions discovered during inspections and asserts that it has the authority to levy these costs as individual assessments without a general membership vote. Conversely, Mr. Warne challenges the Association's authority to bypass a vote on the Project and raises concerns about the inclusion of material upgrades, such as new rain gutters, in the assessment. Additionally, the parties differ on the sufficiency of the inspection reports provided to Mr. Warne and the circumstances surrounding the rescission of a proposed hardship payment plan following a dishonored partial payment.<sup>2</sup> The material facts and timeline, as presented to the Office and approved by the parties, are as follows:

- During the Annual Homeowners Meeting in October 2024, a unit owner raised concerns regarding roof leaks and deterioration, supported by documentation from Farris Roofing.
- On February 8, 2025, the Board reviewed findings from Farris Roofing indicating that 1998 metal roofs had been improperly installed over 1973 cedar shakes, resulting in rotting and leaks. The Board unanimously approved a motion to conduct a full examination of all resort roofs and to solicit bids for the project.
- On March 25, 2025, the Association determined that temporary repairs and patching were no longer sufficient to maintain the roofs.
- On July 16, 2025, Farris Roofing performed a forensic report on Building E to confirm if the deterioration found in Buildings J and K was consistent across the resort.
- Mr. Warne emailed the Association Vice President, Tony Wegener, on September 2, 2025, with inquiries regarding the Project, specifically addressing manufacturer warranties, the number of active leaks, repair alternatives, and insulation.
- Mr. Wegener emailed Mr. Warne on September 19, 2025, regarding the technical liabilities and pricing associated with adding roof insulation.
- On September 26, 2025, the Association distributed a "Proposed Roof Project Fact Sheet" to members. The document outlined the history of the leaks, the Board's recommendation to replace roofs on five buildings, and preliminary assessment estimates of \$14,647.62 for 2-bedroom units and \$21,971.44 for 3-bedroom units.
- At the Annual Homeowners Meeting on October 11, 2025, the Project was formally presented. Members expressed concerns regarding costs and requested additional bids. Mr. Warne attended this meeting and discussed the Project's scope and the Board's position on homeowner voting with other owners.
- On October 31, 2025, following the request for additional bids, the Association selected a proposal from Affordable Roofing. The new scope included rain gutters and vertical metal, while reducing the overall project cost by 45%.
- On November 17, 2025, the Association issued a revised "Notice of Individual Assessment" on November 17, 2025, setting reduced amounts of \$8,400 for 2-bedroom units and \$12,600 for 3-bedroom units, with a payment deadline of January 1, 2026.

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<sup>2</sup> Mr. Warne also raised concerns related to obtaining Association records; however, through the advisory opinion process it was identified that the records required to be provided under Utah law had been provided to him. As such the Office does not opine on this issue.

- A formal invoice for the \$12,600 individual assessment was sent to Mr. Warne on December 1, 2025.
- Mr. Warne emailed the Association on December 3, 2025, to confirm the total cost, inquire about payment plans, and request to view the Project bids. The Association replied with a summary of the bidding process and noted that the Board would consider hardship payment plans.
- On December 9, 2025, Mr. Warne requested copies of the roofing assessment reports mentioned in the February 2025 Board minutes. The Association provided a link to a video report and directed a Board member to compile additional reports.
- The Board member emailed Mr. Warne a digital folder on December 10, 2025, containing multiple PDF roof inspection reports. Mr. Warne acknowledged receipt of the files the same day.
- The Association notified Mr. Warne that the Board was in Executive Session on December 11, 2025, for contract negotiations but would provide the remaining reports as soon as permitted.
- On December 19, 2025, Mr. Warne submitted a formal written request for a hardship payment plan, proposing monthly payments of \$1,000 through July 2026.
- On December 22, 2025, the Board offered a compromise payment plan: a payment of \$6,300 by January 1, 2026, with the remaining balance due by March 1, 2026, without penalty. The Board requested a formal acceptance of these terms.
- Mr. Warne emailed the Association multiple times on December 29, 2025, to request specific roofing reports, question the lack of a membership vote under Article 5.6 of the Governing Documents, and inquire about other units.
- On January 1, 2026, Mr. Warne submitted a partial payment of \$6,300.
- Mr. Warne submitted his application for an Advisory Opinion to the Office on January 14, 2026.
- Also on January 14, 2026, the Association emailed Mr. Warne to rescind the December 22, 2025, payment plan offer, citing a lack of formal acceptance. Accordingly, the Association demanded payment in full of \$12,600 by February 1, 2026.
- On January 21, 2026, the Association distributed an “Assessment Update” to members regarding the timeline for purchasing materials and the scheduled March 1, 2026, commencement of construction.

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

## ANALYSIS OF QUESTIONS PRESENTED & GOVERNING LEGAL PRINCIPLES

This dispute raises the following legal questions for the Office: (1) Does an association's board have the authority to change an assessment for capital expenditures without homeowner approval? (2) What are the limits of a board's discretion with respect to common area maintenance?

1. [Does an Association's Board Have the Authority to Change an Assessment for Capital Expenditures Without Homeowner Approval?](#)

**Summary:** Under Utah law, associations may assess unit owners for common expenses, such as maintenance, provided the charges comply with the community's governing documents. In this case, the Project benefited only certain units, not the entire community. Since the Governing Documents allow individual assessments when maintenance is limited to certain homes, the Association did not violate the law by imposing individual assessments on the affected homeowners and bypassing the full community vote required for a community-wide special assessment.

**General Legal Principle:** Under [Utah Code § 57-8-3\(1\)](#), an assessment is “any charge imposed by the association, including common expenses on or against a unit owner, pursuant to the provisions of the declaration, bylaws, or [the [Utah Condominium Ownership Act](#)].” [Utah Code § 57-8-3\(6\)](#) defines common expenses as “all sums lawfully assessed against the unit owners; expenses of administration, maintenance, repair, or replacement of the common areas and facilities; expenses agreed upon as common expenses by the association of unit owners; and expenses declared common expenses by [the [Utah Condominium Ownership Act](#)], or by the declaration or the bylaws.”

**Application to Matter:** In this matter, Mr. Warne argues that the Association improperly classified the Assessment as individual assessments against homeowners rather than a special assessment. According to Mr. Warne, because the purpose of the Assessment was to engage in community-wide maintenance, the Assessment should be classified as a special assessment and therefore subject to a member vote. The Association, however, argues that because the maintenance impacted only certain homes within the community, the Assessment is properly considered an individual assessment against the impacted homeowners pursuant to the Association's Governing Documents. Section 4.2 of the CC&Rs places responsibility for the maintenance of common areas, including roofs, on the Association and, therefore, the Board. The ultimate question is whether it was proper for the Association to impose the costs of that maintenance on certain homeowners rather than on the community as a whole through a special assessment. [Utah Code § 57-8-3\(1\)](#) allows the Association, through the Board, to impose assessments in accordance with its Governing Documents. Under Section 5.7 of the CC&Rs, if the maintenance is directed toward or benefits only specific homes, the cost can be assessed against those homes. Neither party disputes that not all homes within the Association are subject to the Project and, therefore, not every home receives maintenance provided by the Project. Accordingly, the Association did not violate Utah law in creating and enforcing the Assessment against homeowners living in the impacted units, because the roofing project did not affect all units within the Association.

## 2. What are the Limits of a Board’s Discretion with Respect to Common Area Maintenance?

**Summary:** Under Utah law, homeowners’ associations are responsible for maintaining and repairing common areas, and their boards are generally presumed to act reasonably when making these business decisions. In this case, the Board acted within its authority by using inspections from several buildings to assess the roofing needs of the entire community and by seeking new bids based on member feedback. Ultimately, the Board’s decision to select a contractor that offered a more comprehensive project at a lower total cost is a valid exercise of its professional discretion.


**General Legal Principle:** [Utah Code § 57-8-7\(7\)](#) provides that an association “is responsible for the maintenance, repair, and replacement of common areas and facilities,” and under [Utah Code § 57-8-7\(6\)](#), “the necessary work of maintenance, repair, and replacement of the common areas and facilities and the making of any additions or improvements thereon shall be carried out only as provided in [the [Utah Condominium Ownership Act](#)] or in the declaration or bylaws.” Utah Courts have applied the business judgment rule in determining whether an association’s board’s actions are permissible. *See Fort Pierce Indus. Park Phases II, III & IV Owners Ass’n v. Shakespeare*, 2016 UT 28. Under this standard, the general presumption regarding a board’s decisions and actions is reasonableness. *See Id.*, 2016 UT 28, ¶ 28.

**Application to Matter:** In this matter, the Board obtained roofing inspections of several buildings within the Association, and the reports indicated the same general problems throughout those inspected. As such, the Board had the discretion to elect not to continue inspecting every building and to extrapolate that the problems identified would similarly exist in all buildings with the same roofing installed at the same time. Additionally, when the Board presented the initial estimate for the roof replacement, it had the discretion to listen to and accept the membership’s feedback on the cost and to seek additional bids. The fact that the bid ultimately selected by the Board included additional work does not prevent the Board from exercising its discretion in selecting the specific contractor, especially when the overall project cost resulted in a lower total for the Association. Accordingly, there was no violation of Utah law when the Board used its discretion to make prudent business decisions based on feedback from Association membership, experts, and the standard bidding process.

## CONCLUSION

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

1. **Assessments:** The project benefited only certain units, not the entire community. Since the Governing Documents allow individual assessments when maintenance is limited to certain homes, the Association did not violate the law by imposing individual assessments on the affected homeowners and bypassing the full community vote required for a community-wide special assessment.
2. **Board Discretion:** The Board acted within its authority by using inspections from several buildings to assess the roofing needs of the entire community and by seeking new bids based on member feedback. Ultimately, the Board's decision to select a contractor that offered a more comprehensive project at a lower total cost is a valid exercise of its professional discretion.

  
Erin Rider (Mar 27, 2026 10:58:12 MDT)  
**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/>.