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Office of the Homeowners'  
Association Ombudsman  
UTAH DEPARTMENT OF COMMERCE

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### ADVISORY OPINION NO. 2026-13

<u>Applicant Name:</u>	Devin Wisner
<u>Association Name:</u>	Swan Creek Village Homeowners 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>	03/30/2026

### LEGEND OF DEFINED TERMS

<b>Association</b>	Swan Creek Village Homeowners Association
<b>Board</b>	Board of Directors
<b>CC&amp;Rs</b>	Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village, dated October 3, 2008, as subsequently amended
<b>Fine Schedule</b>	Swan Creek Homeowners Association Fine Policy and Schedule of Fines, dated October 7, 2019, as subsequently amended
<b>Governing Documents</b>	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
<b>Mr. Wisner</b>	Devin Wisner
<b>Notice</b>	Notice of Board Meeting and Prospective Rule Change for The Swan Creek Village Homeowners Association, dated September 23, 2025
<b>Office</b>	Office of the Homeowners' Association Ombudsman
<b>Rules</b>	Swan Creek Home Owners Association <i>[sic]</i> Rules and Regulations
<b>Second Amendment</b>	Second Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village, dated October 15, 2008, as subsequently amended

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. Wisner and the Association regarding the legality and application of rental restrictions, the validity of newly adopted administrative rules, and the Board's authority to impose significant financial penalties. Mr. Wisner asserts that he has grandfathered rights under state law to continue short-term rentals, arguing that the Association's recent rules on advertising and lease terms unlawfully infringe on those rights. Conversely, the Association maintains that its 2008 governing documents have long prohibited short-term rentals and that its subsequent adoption of rules regarding minimum lease terms, advertising, and attorney fees is a valid exercise of Board authority intended to regulate the community.<sup>1</sup>

- On October 3, 2008, the CC&Rs were recorded. Section 3.2 permitted owners—excluding those of RV lots—to rent property for periods greater than 30 days. The document remained silent regarding rentals of fewer than 30 days.
- On October 17, 2008, the Association recorded the Second Amendment. Section 9.3.2 authorized fines of \$50 to \$250 per occurrence.
- On October 7, 2019, the Board adopted the Fine Schedule, which included the rental restriction fines of \$1,000 per day and \$7,000 per occurrence.
- On December 20, 2022, Mr. Wisner purchased Lot T-049 within the Association.
- On June 9, 2025, the Board distributed a communication to owners regarding a proposed Third Amendment to the CC&Rs. The proposed amendment stated that rentals of 30 days or more are allowed, but all other rentals are prohibited.
- On June 24, 2025, Mr. Wisner sent a letter to the Board asserting grandfathered rights for short-term rentals under [Utah Code § 57-8a-209](#) and voted against the proposed CC&R amendment.
- On July 3, 2025, the Board emailed Mr. Wisner to acknowledge his request and requested his purchase date and rental history data to make a status determination.
- On July 31, 2025, the Association notified the membership that the ballot initiative for the Third Amendment failed to meet the required voting threshold for passage.
- On August 6, 2025, the Board emailed Mr. Wisner and denied his request for grandfathered status. The Board stated that Section 3.2 of the CC&Rs had prohibited short-term rentals since 2008.
- On August 9, 2025, the Board issued a "Notice of Lot T-049 Violation" and imposed a fine of \$314,000 against Mr. Wisner.
- That same day, August 9, 2025, Mr. Wisner emailed the Board to dispute the fine, citing a lack of prior warning and due process.
- On August 25, 2025, Mr. Wisner sent a formal dispute of the fine via email and certified mail, characterizing the fine as unlawful, retroactive, and excessive.
- On September 8, 2025, Mr. Wisner submitted an initial request to the Office regarding the fines imposed by the Association.
- On September 18, 2025, the Office received a response from the Association regarding Mr. Wisner's initial request, stating that the fines in question were being removed from Mr. Wisner's account.

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<sup>1</sup> Mr. Wisner has also raised allegations related to the adoption of fines in the Rules in excess of those provided in the CC&Rs. However, the Association has conceded that it cannot impose fines on homeowners that differ from those set forth in the CC&Rs. As such, the Office considers this point moot and does not address these concerns pursuant to [Utah Code § 13-79-104\(7\)\(a\)\(i\)](#).

- As a result of the Association’s September 18, 2025, response, the Office did not issue an advisory opinion regarding the issuance of the fine.<sup>2</sup>
- On September 23, 2025, the Association sent the Notice, identifying a proposed rule that would impose a minimum lease term of six months and a prohibition on advertising for leases of less than six months.
- On October 7, 2025, the Board held a meeting to consider the proposed rule change. During the meeting, the Board changed the proposed minimum lease term from six months to 30 days and added a provision for attorney fees.
- On October 8, 2025, the Rules were posted to the Association’s website. However, due to a technical problem with the website, the Association could not verify that the Rules were visible and available to homeowners until October 27, 2025. Section III was added to the then-existing Rules to include the lease and advertising restrictions, which were modified to a 30-day minimum lease requirement, an advertising prohibition, and an attorney-fee provision.
- On October 31, 2025, the Association emailed Mr. Wisner stating that the \$314,000 fine had been rescinded.
- In late November 2025, Mr. Wisner became aware of the Rules with the updated Section III posted on the Association’s website.
- On December 9, 2025, Mr. Wisner submitted his second request for an Advisory Opinion challenging the Rules regarding advertising, short-term rentals, attorney fees, and grandfathering status.
- On February 10, 2026, the Association notified the Office that it had identified an issue related to the delivery of the Rules, whereby not all homeowners had access within the statutorily required 15-day deadline. As a result, the Association notified the Office that they acknowledge the requirements of Utah law had not been met, and they would not seek to enforce them until a subsequent meeting could be held that complies with all legal requirements.
- On February 13, 2026, the Association provided notice to all homeowners of a meeting scheduled for March 10, 2026, to readopt the Rules in compliance with Utah law.
- On March 10, 2026, the Association posted the readopted Rules to the Association’s website.
- On March 11, 2026, Mr. Wisner notified the Office that the Rules had been formally adopted on March 10, 2026, and distributed to homeowners.
- On March 12, 2026, the Association distributed the readopted Rules to all homeowners via either email or USPS.

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

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<sup>2</sup> Because the original fine has been removed from Mr. Wisner’s account, the Office considers that matter settled. Information related to the original fine and prior contact with the Office is included for background and procedural purposes only.

## ANALYSIS OF QUESTIONS PRESENTED & GOVERNING LEGAL PRINCIPLES

This dispute raises the following legal questions for the Office: (1) What are the limitations on an association’s rulemaking authority regarding attorney fees? (2) What are the extent and limitations of grandfathering rights for short-term rentals?

### 1. What are the Limitations on an Association’s Rulemaking Authority Regarding Attorney Fees?

**Summary:** Under Utah law, a homeowners’ association board has the authority to create or change rules, including fees and fines, as long as they provide residents with proper notice and a chance to offer input at a meeting. While homeowners do not vote to approve these rules upfront, they have the legal right to petition for a special meeting to cancel a new rule within 60 days of its adoption. In this case, the Association’s rule requiring a homeowner to pay for legal fees resulting from a violation is valid because it is a specific penalty for individual violations rather than a general expense that must be shared by all owners. Consequently, the Association did not violate the law by adopting the 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\(1\)\(b\)](#). 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. Similarly, when an association provides notice to homeowners regarding a board meeting, whether or not rule changes are scheduled to be discussed, under [Utah Code § 57-8a-226\(2\)\(b\)](#), they must include the date and time of the meeting, the location of the meeting, and information regarding electronic access and communication if permitted.

Importantly, 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. 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:

# THE HOA RULEMAKING PROCESS



**Application to Matter:** Mr. Wisner argues that the adoption of the Rules, requiring a homeowner to pay the Association's attorney fees if the Association is required to bring enforcement actions related to a violation of the Governing Documents, is an impermissible shifting of financial burdens among homeowners under [Utah Code § 57-8a-218\(8\)\(a\)](#). The Association argues that [Utah Code § 57-8a-218\(8\)\(a\)](#) applies only to the shifting of common expenses, such as annual assessments, and that Utah law explicitly allows for fines and fees to be levied against individual homeowners, provided the Association has complied with the requirements for adopting such fines and fees.

Under a plain reading of [Utah Code § 57-8a-218\(8\)\(a\)](#), the purpose and intent is to prevent the Association from adopting rules that change the allocation of common expenses, *i.e.*, homeowner assessments. The attorney-fee provision adopted in the Rules imposes an additional burden on homeowners who violate the Governing Documents, requiring the Association to take action to address the violation. This is fundamentally different than annual assessments, as it is not based on reallocation of financial burdens generally incurred by the Association. Rather, the attorney-fee provision is akin to a fee or fine under [Utah Code § 57-8a-208](#), which, by its very nature, shifts financial responsibility. Accordingly, [Utah Code § 57-8a-218\(8\)](#) is intended to address an association that attempts to shift financial obligations related to common expenses and assessments, and does not prohibit the Association from adopting a rule requiring a homeowner to bear the attorney fees of the Association in an enforcement action against them, provided that the rule complies with [Utah Code § 57-8a-217](#) and [Section 208](#). Therefore, the Association has not violated Utah law by adopting the attorney-fee-shifting provision in the Rules.

## 2. What are the Extent and Limitations of Grandfathering Rights for Short-Term Rentals?

**Summary:** Utah law allows homeowners to continue renting their property if an association creates new rules that limit the number or length of rentals. In this case, Mr. Wisner argues he is protected by Utah's rental grandfathering provisions because he has been offering short-term rentals since 2022, before the Rules were passed. However, the original Governing Documents set the minimum rental term at more than 30 days, meaning Mr. Wisner's short-term bookings were in violation of the Governing Documents from the very beginning. Because his rentals were never legally permitted under the CC&Rs, he does not qualify for protection and must comply with the Association's current rental restrictions.

**General Legal Principle:** Under [Utah Code § 57-8a-209\(1\)\(a\)](#), an association may create restrictions on the number and term of rentals within the association or may prohibit them entirely. These restrictions or prohibitions must, under [Utah Code § 57-8a-209\(1\)\(b\)](#), be contained in a recorded declaration or amendment to a declaration, except for minimum lease terms of six months or less, which can be established through an association's rules under [Utah Code § 57-8a-209\(1\)\(c\)](#). However, under [Utah Code § 57-8a-209\(2\)\(b\)](#), if an association "prohibits or imposes a restriction on the number and term of rentals," the association must allow a lot owner who has a rental in the association before the time the rental restriction is put in place to continue renting without imposing a rental administrative fee, if the association has adopted one, until the lot owner occupies the lot or the lot is transferred. Critical to the evaluation of whether [Utah Code § 57-8a-209\(2\)\(b\)](#) applies to an association's rental restrictions is the determination of whether a restriction on either the number of rental units or the rental terms is sufficient to qualify, or whether the restriction must include both the number of units and the terms; said another way, whether the "and" within the clause is inclusive or exclusive.

In practice, an association may limit the number of rental units within the community, restrict rental terms, or prohibit rentals entirely; each of which is independently permissible under Utah law. Similar instances can be found throughout Utah law, including [Utah Code § 57-8a-211\(1\)\(c\)\(i\)](#), which states that an association's reserve funds are used "to cover the cost of repairing, replacing, or restoring common areas **and** facilities...." The use of "and" within the provision does not require that both common areas and facilities be maintained at the same time or equally, simply that either of them is subject to maintenance and repair individually or collectively with reserve funds as needed. The same exclusive interpretation of "and" must be applied in [Utah Code § 57-8a-209\(2\)](#), as it is similarly addressing multiple items that could occur either individually or collectively. An association does not have to restrict both the number **and** the term of rentals for the homeowner protections to take effect; it is sufficient to restrict either one.


**Application to Matter:** In this case, Mr. Wisner argues that, because he has consistently engaged in short-term rentals of his property since purchasing it in 2022, his conduct is grandfathered and the Rules cannot be enforced against him. The Association, in contrast, argues that the Rules do not meet the threshold requirements of restricting the number **and** term of rentals for the protections of [Utah Code § 57-8a-209\(2\)\(b\)](#) to apply, and therefore Mr. Wisner does not have any grandfathered rights. As discussed above, however, the fact that the Association only restricted the term of rentals, not the number of homes that can engage in rentals, does not mean that the requirements of the provision do not apply. However, this fact alone does not end the analysis. Section 3.2 of the CC&Rs states, in part, that "owners, except those owning RV lots, may lease or rent their property for periods greater than thirty (30) days. No rentals of any kind shall be permitted for RV lots." Mr. Wisner alleges that, because this Section does not contain an explicit prohibition on rentals of less than 30 days, they are permissible. However, upon reviewing the CC&Rs, Section 3.2 clearly states a minimum rental period, indicating that it is intended to restrict rentals

of fewer than 30 days. Under Utah law, the interpretation of Governing Documents “is governed by the same rules of construction as those used to interpret contracts.” *Todd Hollow Apts. At Deer Mt., LP v. Homes at Deer Mt. Homeowners Ass’n*, 2015 UT App 190, ¶ 19 (quoting *Swenson v. Erickson*, 2000 UT 16, ¶ 11) (internal quotation marks removed). Based on the requirement that Governing Documents be evaluated under contract interpretation principles, “well-accepted rules of contract interpretation require that we examine the language of a contract to determine the meaning and intent.” *Id.* (quoting *Glenn v. Reese*, 2009 UT 80, ¶ 10) (internal quotation marks omitted). Under this interpretive analysis, Mr. Wisner’s interpretation of Section 3.2 of the CC&Rs renders the entire section meaningless, as it would impose no restrictions on rentals within the Association. If rentals of 30 days or longer are allowed, and rentals of less than 30 days are also allowed because they are not explicitly prohibited, the 30-day minimum becomes meaningless. Accordingly, the plain reading of Section 3.2 of the CC&Rs establishes a minimum lease term within the Association, and rentals below that term are prohibited. Therefore, the short-term rentals Mr. Wisner had been offering and booking before the adoption of the Rules violated Section 3.2 of the CC&Rs, making him ineligible for the grandfathering protections of [Utah Code § 57-8a-209\(2\)\(b\)](#) that were otherwise triggered by the passage of the Rules.

## CONCLUSION


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

1. **Attorney Fees Rulemaking Authority:** The Association's rule requiring a homeowner to pay for legal fees resulting from a violation is valid because it is a specific penalty for individual violations rather than a general expense that must be shared by all owners. Consequently, the Association did not violate the law by adopting the Rules.
2. **Short-Term Rental Grandfathering:** Mr. Wisner argues he is protected by Utah's rental grandfathering provisions because he has been offering short-term rentals since 2022, before the Rules were passed. However, the original Governing Documents set the minimum rental term at more than 30 days, meaning Mr. Wisner's short-term bookings were in violation of the Governing Documents from the very beginning. Because his rentals were never legally permitted under the CC&Rs, he does not qualify for protection and must comply with the Association's current rental restrictions.

  
Erin Rider (Mar 30, 2026 10:44:57 MDT)  

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**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/>.