



UTAH

Governor
Spencer J. Cox

Lieutenant Governor
Deidre M. Henderson

Office of Homeowners'
Association Ombudsman

Director
Erin Rider

ADVISORY OPINION NO. 2026-32

<u>Applicant Name:</u>	Donald Gannon-Jones
<u>Association Name:</u>	Swain's Creek Pines Lot Owners' Association
<u>Association Type:</u>	Community Association
<u>Governing Statutes:</u>	Utah Community Association Act Utah Revised Nonprofit Corporation Act
<u>Issue Date:</u>	09/16/2026

LEGEND OF DEFINED TERMS

Association	Swain's Creek Pines Lot Owners' Association
Board	The Association's Board of Directors
Bylaws	Amended and Restated Bylaws adopted September 1, 2024, recorded November 5, 2024
CC&Rs	Declaration of Establishment of Protective Conditions, Covenants, Reservations and Restrictions affecting Swains Creek Pines Unit No. 1, executed June 16, 1969, recorded August 4, 1969
Events Module	The module within the Facebook Group that allowed homeowners to post events within the community
Facebook Group	The private Facebook group named "Swains Creek Pines Lot Owners Association"
Governing Documents	The Declaration (CC&Rs), Bylaws, and Rules/Policies of the Association
Mr. Gannon-Jones	Donald Gannon-Jones
Office	Office of the Homeowners' Association Ombudsman
Post Approval	The requirement that identified members' posts and comments receive Board-member approval before publication

PART I – OPINION BACKGROUND & BASIS

A. Dispute Background

The dispute in this matter centers on the Board's decision to change the Facebook Group's usage and functionality, which homeowners had used as a means of communication and connection with others in the community. A prior Board had established the private Facebook Group several years earlier as an online forum for Association members. The Board's longstanding position is that the Association owns and manages the Facebook Group. No official policy governing members' use of the Facebook Group had been adopted before July 6, 2026. After the Events Module restrictions and Post Approval requirement took effect, Mr. Gannon-Jones requested an advisory opinion. The Association answered that the measures concerned the Board's internal operating procedures and that deciding the dispute would require the Office to interpret the Governing Documents. Since the dispute remains unresolved, the Office issues this advisory opinion pursuant to Utah Code § 13-79-104.

B. Facts

The following is the timeline as known to the Office, drawn from the documents submitted by both parties. Where the parties' accounts conflict, the conflict is stated rather than resolved.

- June 16, 1969: The Declaration of Establishment of Protective Conditions, Covenants, Reservations and Restrictions affecting "Swains Creek Pines Unit No. 1" was executed and later recorded with the Kane County Recorder. It created a three-member Board of Supervisors and stated that the Board "shall have the power to prescribe rules and regulations from time to time."
- May 31, 1974: The Articles of Incorporation of Swain's Creek Pines Lot Owners' Association were filed. Article III, ¶ 8 states the purpose "[t]o adopt and enforce reasonable rules and regulations governing the use of said subdivision lots and any other properties and facilities under its jurisdiction."
- November 13, 1990: Articles of Amendment were filed, identifying the subdivisions within the Association, including Swains Creek Unit No. 1, Swains Creek Pines Units No. 1, 2, 3, and 4, and Harris Spring Ranches.
- September 1, 2024: Members adopted the Amended and Restated Bylaws, which were certified on October 8, 2024, and recorded on November 5, 2024. The Bylaws address Board powers, rules, open meetings, notice, and action without a meeting. They contain no general dispute-resolution procedure applicable to this matter.
- Several years before 2026: A prior Board established the private Facebook Group as an online forum for Association members. The Board's position, then and now, is that the Association owns and manages it.
- July 6, 2026: The Events Module was removed from the Facebook Group, ending members' ability to post events such as barbeques, get-togethers, and bingo nights.
- July 6, 2026: Mr. Gannon-Jones and several other members in good standing became subject to Post Approval. Neither the Events Module restrictions nor the Post Approval requirements were considered at a noticed open meeting, and the Association does not assert that a meeting occurred.
- July 7, 2026: Mr. Gannon-Jones filed this request with the Office, describing the Events Module restrictions and the Post Approval requirements and their effect on his ability to communicate through the Facebook Group.

C. Jurisdictional Findings

Chapter 8a governs the Association.

Chapter 8a governs this Association. The chapter applies if the association's declaration states that it applies or, "if the association's declaration does not state whether this chapter or Chapter 8, Condominium Ownership Act, applies to the lot, the plats within the association are not designated as condominium plats."¹ The section applies regardless of when an association is created. The 1969 CC&Rs contain no statutory citation of any kind and do not identify either chapter, and the recorded plats are subdivision plats for platted blocks and lots; the word "condominium" does not appear in the declaration. The second condition is therefore satisfied. Bylaws § 1.03 is consistent, making the Bylaws subject to the Community Association Act and the Utah Revised Nonprofit Corporation Act. Neither party disputes that Chapter 8a applies.

D. Scope of Review

The Office is responsible for "analyz[ing] a complaint and issu[ing] an advisory opinion only for issues relating to a violation of a state statute."² The Office may not provide any service that requires interpreting the governing documents of an association of lot owners or an association of unit owners, including determining whether a provision of those documents is reasonable.³ Because the rules of the association are governing documents, the bar applies to adopted rules to the same extent as to the declaration, the articles, and the bylaws.

The question, as both parties framed it, is whether the Facebook Group is a "common amenity." Answered as framed, that question asks the Office to supply a meaning for a phrase that appears in no statute and in none of these documents, and then to decide whether the Facebook Group satisfies it. The Office does not answer it and declines it in Part III.A of this advisory opinion. The same is true of who owns the Facebook Group and whether Bylaws § 5.10 or § 5.11(h) authorizes what the Board did.

The Office instead reaches a different question, which is statutory and does not depend on what any document means. The Community Association Act imposes procedural requirements on a board that adopts, amends, or expands an association's rules, and it limits how a board may act at all. Whether the Board followed those procedures is a determination about compliance with statutes. The statutory definition of "rule" is the hinge, and it is drawn without reference to amenities, common areas, or ownership: it asks whether a policy or procedure of the association, not set forth in the governing documents, governs the conduct of persons. Each input to that test is established here by the parties' own descriptions, and the second is established by their agreement that the documents say nothing on the subject. Establishing that a document does not address a subject at all is not ascertaining what the document means.

¹ Utah Code § 57-8a-103(2).

² Utah Code § 13-79-103(4)(a).

³ Utah Code § 13-79-103(5).

PART II – ISSUES DECIDED

Issue 1 – Whether the Office may decide this dispute without defining “common amenity”

A. Question

The Association argues that the Office has no authority over this dispute because resolving it would require interpreting the Governing Documents and supplying a meaning for “common amenity,” a term the Community Association Act does not define, and the Association’s documents do not use. May the Office decide whether the Board complied with the Act’s rulemaking and meeting requirements?

B. Short Answer

Yes, as to the statutory questions, and no as to the question the parties framed. The Association is correct that the Office cannot define “common amenity” or decide whether the Facebook Group is one; that question is declined. The Office’s authority does not depend on it. The statutory definition of “rule” is drawn without reference to amenities, common areas, or ownership, and asks only whether a policy or procedure of the association, not set forth in the Governing Documents, governs the conduct of persons. Applying that definition and the procedural requirements that follow from it is a determination of statutory compliance, which is the function the Legislature assigned to the Office.

C. Why, in plain terms

The Association’s point is that the owner’s complaint rests on calling the Facebook group a “common amenity”; that this phrase is not in any Utah statute; that it is not in the Association’s own recorded documents either; and that the Legislature has forbidden this Office from interpreting those documents. If the Office had to decide what constitutes a “common amenity” before it could proceed, the Association would be correct, and the Office would stop.

What the argument misses is that the statute does not ask that question. Utah law defines a rule by what a measure does, not by what it concerns. A rule is a policy or procedure of the association, not written into the recorded documents, that governs how persons behave or that governs the use or appearance of property. Those are two alternatives, joined by “or.” A measure requiring identified members to have a board member approve their posts before publication governs how those members behave. It satisfies the first alternative on its own, so nothing turns on whether the Facebook group is an amenity, a common area, or property at all.

Two features of this record make the point cleanly. Nobody disputes that the board, acting as the board, did this. And nobody claims the recorded documents address the Facebook group; the owner says no rule existed, and the Association says the documents do not address the subject, which is the premise of its own objection. Where both sides agree that a document says nothing about a subject, the Office can take that as given. Noticing that a document is silent is not the same as interpreting it.

There is one more thing worth saying, because it shows the framework is not the Office’s invention. The Association’s main defense on the merits is that what it did falls within the statute’s exception for a board’s internal business operating procedures. That is an argument about where, within the definition of “rule,” this conduct falls. To make it, the association has to accept that the definition is the test.

D. Analysis

1. *The statutory definition of “rule” does not ask what the measure concerns.*

A “rule” is “a policy, guideline, restriction, procedure, or regulation of an association” that “is not set forth in a contract, easement, article of incorporation, bylaw, or declaration” and that governs “the conduct of persons” or “the use, quality, type, design, or appearance of real property or personal property.”⁴ The Legislature wrote the second element in the alternative. Clause (A) reaches the conduct of persons; clause (B) reaches the use, quality, type, design, or appearance of property.⁵ A measure that satisfies clause (A) is a rule, whether or not it also satisfies clause (B). Only clause (B) would require the Office to characterize the thing regulated. Nothing in the definition refers to common areas, to amenities, or to what the association owns.

This is why the parties’ dispute over “common amenity” is beside the point rather than fatal. Mr. Gannon-Jones used the phrase because it was the natural way to describe what the forum had become to the community. The Association seized on it because the phrase has no legal content. Both are right about the phrase and wrong about its significance. The Office measures the Board’s conduct against the statute the Legislature wrote, not against the label a party chose.

2. *Each element is established without construing a Governing Document.*

On the first element, the Association’s own response supplies the answer. It states that the Board “decided to operate the Facebook page differently,” describes what it did as “a Board an authorized action about the internal operating procedures of the Board,” and defends the decision as one “made as a Board.” The requester describes the same conduct. A standing practice under which posts and comments by identified members require a Board member’s approval before publication is a procedure of the Association. No party contends that a member acted privately or that the practice is anything other than the Board’s.

On the second element, both parties agree that the Governing Documents do not address the Facebook Group. Mr. Gannon-Jones states that “no prior Rule existed regarding the Facebook group.” The Association states that its Governing Documents “do not explicitly define the term” and rests its jurisdictional objection on the absence of any written provision on the subject; its brief adds that the Association cites governing-document provisions only “without waiving its objections.” Where the parties agree that the documents are silent on a subject, the Office accepts the agreement rather than construing the documents to reach the same conclusion. Silence is not ambiguity, and establishing that a document does not address a subject at all is not the same as ascertaining its meaning.

On the third element, a requirement that a member obtain a Board member’s approval before a post or comment appears governs that member’s conduct. It operates on people. It tells them what they may not do without permission, and it conditions their participation in the Association’s forum on prior consent. That is the conduct of persons within clause (A).

3. *The Association’s principal defense presupposes the framework it disputes.*

The Association argues that the measures fall within the exclusion for “the internal business operating procedures of a board.”⁶ That is an argument about where within the statutory definition the Board’s conduct falls, and it presupposes that the definition supplies the governing test. The Office cannot

⁴ Utah Code § 57-8a-102(27)(a).

⁵ Utah Code § 57-8a-102(27)(a)(ii).

⁶ Utah Code § 57-8a-102(27)(b).

evaluate it without applying § 57-8a-102(27), and applying that subsection is the exercise of the authority the Association disputes.

4. *What the Office declines.*

The Office declines to decide whether the Facebook Group is a “common amenity,” whether it is a common area within § 57-8a-102(5), who owns or controls it or the account through which it operates, and whether any provision of the CC&Rs, the Articles, or the Bylaws authorizes or forbids what the Board did. Each is declined under § 13-79-104(7)(a)(iii) because it is beyond the scope of the Office’s statutory duty to review, and ultimately unnecessary in deciding the issues that follow.

Issue 2 – Whether Post Approval had to be adopted as a rule

A. Question

On July 6, 2026, identified members in good standing became subject to a requirement that a Board member approve their posts and comments in the Facebook Group before publication. Was that requirement a rule the Board was required to adopt through the procedure in § 57-8a-217(2)?

B. Short answer

Yes. The requirement is a procedure of the Association, not set forth in the Governing Documents, that governs the conduct of persons. It is not an internal business operating procedure of the Board because it applies to members rather than to the Board's own affairs. The Board was therefore required to deliver notice to lot owners at least 15 days before the meeting at which it would consider the change, to provide an open forum at that meeting, and to deliver a copy of the adopted change to lot owners within 15 days afterward. The record establishes that none of the three occurred, and the emergency exception does not apply.

C. Why, in plain terms

Utah law lets a board make rules for the community. It attaches a price: before the rule takes effect, owners know it is coming and can say something about it. Fifteen days’ notice before the meeting, a chance to speak at the meeting, and a copy of what was adopted within fifteen days after. The requirement exists because a rule binds people who did not vote on it.

The Association says none of that was owed because no rule was made. What it did, on its account, was internal board housekeeping, which the statute carves out of the definition. The carve-out is real, but it does not stretch this far. Internal board procedures are how a board runs itself: how it sets an agenda, keeps minutes, forms committees, or instructs a manager. A requirement that a named member get permission before speaking is not something the board applies to itself. It faces outward. And if the carve-out covered every measure a board adopts about something the board administers, it would cover nearly every rule an association ever makes, because boards administer nearly everything. A reading that erases the rule it is an exception to is not the right reading.

The Association also relies on a provision in its bylaws that gives the Board all powers necessary to manage the Association’s affairs. It still does not help, for a simple reason: the question here is not whether the Board had the power to act on this subject. It is whether the Legislature attached a procedure to the exercise of that power. It did.

D. Analysis

1. *The statute grants the rulemaking power and conditions it in the same breath.*

“Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit, create exceptions to, or expand the rules of the association.”⁷ Subsection (1)(b) makes that action subject to, among other things, “this section,” any limitation the declaration imposes, the limitations on rules in §§ 57-8a-218 and 57-8a-219, the board’s duty to exercise business judgment, the owners’ and declarant’s right of disapproval, and Subsection (7).⁸

The procedure is in Subsection (2). Except as provided in Subsection (3), before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules of the association, the board shall:

(a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is considering a change to a rule or design criterion; (b) provide an open forum at the board meeting allowing lot owners to be heard at the board meeting before the board takes action under Subsection (1)(a); and (c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board meeting.⁹

The only exception permits adoption without prior notice “if there is an imminent risk of harm to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling,” and requires the board to give notice of such a rule afterward.¹⁰

7

2. *The Post Approval requirement satisfies the definition of a rule.*

The elements are set out in Issue 1 and are not repeated at length here. The requirement is a procedure of the Association, as the Association’s own description of the Board’s action confirms. It is not set forth in a contract, easement, article of incorporation, bylaw, or declaration, as both parties agree. And it governs the conduct of persons: it conditions a member’s ability to speak in the Association’s forum on the prior approval of a Board member.

One feature of the record deserves emphasis because it bears on the character of the measure rather than on its wisdom. The requirement was applied to the identified members, and it operates prospectively on everything they write. It is not a one-time decision about a single post. A standing condition on a class of members’ future conduct is a rule in the ordinary sense as well as the statutory one.

3. *The exclusion for internal business operating procedures does not reach it.*

“‘Rule’ does not include the internal business operating procedures of a board.”¹¹ The phrase describes how a board runs its own affairs: how it sets agendas, keeps records, organizes committees, delegates to a manager, or conducts its deliberations. Two features of the exclusion’s text support that reading. It

⁷ Utah Code § 57-8a-217(1)(a).

⁸ Utah Code § 57-8a-217(1)(b).

⁹ Utah Code § 57-8a-217(2).

¹⁰ Utah Code § 57-8a-217(3).

¹¹ Utah Code § 57-8a-102(27)(b).

is limited to internal and board procedures. A measure that regulates what members may say is neither. It imposes an obligation on persons who are not on the Board, and the Board does not apply it to itself.

The structural argument is stronger still. If Subsection (27)(b) covered any measure a board adopts concerning a resource the association administers, it would swallow Subsection (27)(a), because nearly every rule an association adopts is administered by its board. Rules about parking are administered by the board; so are rules about landscaping, signs, pets, and amenities. On the Association's reading, each could be recharacterized as the board's internal operating procedure for managing the matter at issue. An exception that consumes the definition it qualifies is not a permissible construction. Reading the exclusion to cover the Board's own internal workings leaves both provisions with work to do.

4. The Bylaws do not displace a statutory procedure, and the Association's quotation of § 5.10 is incomplete.

The Association relies on Bylaws § 5.10 for the proposition that authority to manage the Association carries authority to act as it did. The Office does not construe § 5.10 and need not do so. Two observations suffice, neither of which requires interpretation.

First, the quotation is accurate as far as it goes, but partial. The Association quotes § 5.10 as providing that the Board "shall have the duty to manage and supervise the affairs of the Association and shall have all powers necessary or desirable to permit it to do so." The section continues, in the same paragraph, that the Board shall have power to exercise "all of the powers, rights, and authority of the Association not reserved to Members in the Declaration, the Articles, these Bylaws, or the Acts." The Office reports the omitted language rather than construing it, and notes that the Bylaws define "the Acts" to include the Community Association Act.

8

Second, and independent of what § 5.10 means, a general grant of managerial authority in a bylaw does not relieve a board of a procedure the Legislature imposed. Section 57-8a-217(1)(b)(i) makes the rulemaking power subject to "this section," which is the section containing the procedure. Bylaws § 1.03 says the same thing from the other direction, providing that the Bylaws control "unless the provisions of the Nonprofit Act or the Association Act, or both, are mandatory and not default provisions." The question is not whether the Board had authority to act on this subject. It is whether the Act required a particular procedure before it did.

5. None of the three required steps occurred, and the exception does not apply.

The record establishes the failure of facts that neither party disputes. No Board meeting was held to consider either measure, so there was neither notice 15 days before the meeting nor an open forum at the meeting. No copy of an adopted change was delivered to lot owners, because nothing was adopted. The requester states that the decisions were undertaken without any discussion in an open meeting; the Association does not contend otherwise, and its position is that no meeting was required because no rule was adopted.

The exception in Subsection (3)(a) does not apply. It requires "an imminent risk of harm to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling." The Association has not asserted any such risk, and nothing in the record suggests one. The Office notes that even where the exception applies, Subsection (3)(b) requires the board to provide notice of the rule afterward, and no notice of any kind was delivered here.

The Association therefore did not comply with § 57-8a-217(2).

Issue 3 – Whether the removal of the Events Module was also a rule

A. Question

On the same day, the Events Module was removed from the Facebook Group, ending members' ability to post events. Was that a rule requiring the § 57-8a-217(2) procedure?

B. Short Answer

Yes, to the extent its effect is to eliminate what members may do. A measure whose operative effect is that members may no longer do something they could do before restricts the conduct of persons, whatever mechanism accomplishes it. The statutory definition encompasses a "policy, guideline, restriction, procedure, or regulation" regardless of form. The Association did not comply with § 57-8a-217(2) as to this measure either. This holding does not reach routine administration, which leaves member conduct unchanged.

C. Why, in plain terms

Turning a feature off in a software platform looks like administration, not regulation. If the Board had rearranged how it manages the page without changing anything members could do, the housekeeping exception would likely cover it.

But that is not what happened. The effect, as both sides describe it, was that members lost the ability to post events. Members could do something on July 5 that they could not do on July 7, and the Board is the reason. Whether the restriction is written in a policy document or implemented by unchecking a box, members experience the same outcome, and the statute does not distinguish between the two. If it did, any association could avoid the notice and open forum requirements by implementing restrictions through settings rather than words.

D. Analysis

1. The Association's characterization has genuine force, and the Office states its limits.

A decision about which features of a platform to enable is capable of being characterized as the administration of a resource rather than the regulation of persons. Had the Board reconfigured how it manages the Facebook Group without altering what members may do, § 57-8a-102(27)(b) would have a plausible claim to cover it, and the Office would be reluctant to treat every technical adjustment as rulemaking. The Office does not hold that every administrative decision about the Facebook Group is a rule.

2. The operative effect here was to eliminate a category of member activity.

The record describes the consequence rather than merely the mechanism. Mr. Gannon-Jones states that removing the Events Module eliminated members' ability to post events such as barbecues, get-togethers, and bingo nights, and that members can no longer coordinate personally organized gatherings. The Association does not dispute the effect; its response addresses the removal as part of a decision about how to "manage" and "operate" the page.

A measure whose operative effect is that members may no longer do something they could do before restricts the conduct of persons. The statutory definition supports that conclusion textually: it reaches a "policy, guideline, restriction, procedure, or regulation," and the word "restriction" describes an effect rather than a form.¹² Nothing in the definition requires that a rule be written, titled, or recorded. An

¹² Utah Code § 57-8a-102(27)(a).

association could not escape Subsection (2) by implementing a restriction on members through a configuration change rather than a written policy, and reading the definition to permit that would make the procedural protections turn on the medium a board chooses.

3. The same procedural failure follows.

For the reasons stated in Issue 2, no notice was delivered, no open forum was provided, no copy of an adopted change was delivered, and the emergency exception does not apply. The Association did not comply with § 57-8a-217(2) as to this measure.

The Office states the boundary of this holding expressly, because a broad reading would be unworkable. Routine administration that does not change what members may do is not a rule: correcting a setting, updating a group description, organizing existing content, or removing an individual post that violates an adopted rule are different matters, and the Office does not address them. What distinguishes this measure is that it withdrew a category of member activity.

Issue 4 – Whether the Board could act without a meeting

A. Question

Neither the Events Module restrictions nor the Post Approval requirements were considered at a board meeting. May a board take action of this kind outside a meeting, and if so, how?

B. Short Answer

No, on this record. A board may take action only at a board meeting, unless it acts without a meeting in accordance with § 16-6a-813, which requires either unanimous written consent or a written notice-and-response process. The record shows neither. Because no meeting occurred, the Board also failed to provide either the open meeting or the reasonable opportunity to comment required by § 57-8a-226.

C. Why, in plain terms

A board is not a group of individuals who each decide things. It acts as a body, and Utah law says it acts at a meeting. There is an alternative for matters that cannot wait for one: the board can act on paper, either by obtaining every director's written consent or by sending a written notice stating what is proposed, when to respond, and what happens if they do not respond. Both routes leave a record.

Nothing in this record suggests either route was used. And meetings matter here for a reason beyond formality: an open meeting is where owners could have raised the concerns this dispute is about.

If the Board's concern was about a particular member's conduct, it did not have to air that in public. The statute lets a board close part of a meeting to consult its attorney, to discuss a personnel matter, or to discuss a matter involving an individual where the discussion would likely embarrass that person or invade their privacy. The problem is not that the Board wanted discretion. It is that it took action without a meeting at all.

D. Analysis

1. The default is action at a meeting.

“Except for an action taken without a meeting in accordance with Section 16-6a-813, a board may take action only at a board meeting.”¹³ A board meeting “shall be open to each lot owner or the lot owner’s representative if the representative is designated in writing,” subject to six enumerated grounds for closing a meeting.¹⁴ “At each board meeting, the board shall provide each lot owner a reasonable opportunity to offer comments,” which the board may limit to one specific time period.¹⁵ At least 48 hours before a board meeting, the association shall give written notice by email to each lot owner who requests notice, subject to stated exceptions.¹⁶

2. The alternative route requires a writing.

Section 16-6a-813 permits action without a meeting in two ways, each opening with “Unless otherwise provided in the bylaws.” Under Subsection (1)(a), action may be taken without a meeting “if all members of the board consent to the action in writing.” Under Subsection (2)(a), action may be taken if notice is transmitted in writing to each board member and each member either signs a writing for the action, signs a writing against it, abstains in writing, or fails to respond, and fails to demand in writing that the action not be taken without a meeting. Subsection (2)(b) prescribes what that notice must state, including the action to be taken, the time by which a director must respond, and the effect of failing to respond.¹⁷

3. Neither route was used.

Having concluded in Issues 2 and 3 that both measures are rules, the Office concludes that the Board could act only at a board meeting or through one of the two written processes. Mr. Gannon-Jones states that the decisions were undertaken without any discussion in an open meeting. The Association does not assert that a meeting occurred, that unanimous written consent was obtained, or that a notice with the contents Subsection (2)(b) requires was transmitted. Its position is that no meeting was required because no rule was adopted. The Association therefore did not comply with § 57-8a-226(1).

Because no meeting occurred, the Board also did not provide the open meeting that § 57-8a-226(3)(a) requires or the reasonable opportunity to comment that § 57-8a-226(4)(a) requires. The Office notes that the Bylaws themselves track these requirements: § 6.04 provides that a Board meeting at which the Board can take binding action shall be open to each Member and that the Board shall provide each Member a reasonable opportunity to offer comments, and § 6.08 requires 48 hours’ email notice to Members who request it.

4. The defect is not that the Board deliberated privately.

Section 57-8a-226(3)(b) permits a board to close a meeting to consult with an attorney for the purpose of obtaining legal advice, to discuss ongoing or potential litigation, to discuss a personnel matter, to discuss a matter relating to contract negotiations, to discuss a matter involving an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual’s reasonable

¹³ Utah Code § 57-8a-226(1).

¹⁴ Utah Code § 57-8a-226(3).

¹⁵ Utah Code § 57-8a-226(4).

¹⁶ Utah Code § 57-8a-226(2).

¹⁷ Utah Code § 16-6a-813.

expectation of privacy, or to discuss a delinquent assessment or fine.¹⁸ A board considering how to respond to a particular member's conduct in a community forum has more than one ground available to it. Bylaws § 6.05 mirrors the statutory list. The failure here is that the Board took action without a meeting and without using either a written process or a public deliberation.

Issue 5 – Whether the business judgment rule excuses the procedural failure

A. Question

The Association argues that the business judgment rule shields the Board's decision from review and that Mr. Gannon-Jones cannot overcome the presumption of reasonableness. Does that doctrine excuse noncompliance with § 57-8a-217(2)?

B. Short Answer

No. The business judgment rule addresses whether a court will second-guess the substance of a decision a board was empowered to make. It does not excuse non-compliance with a procedure the Legislature imposed as a condition on the exercise of that power. The Act itself lists the duty to exercise business judgment as one constraint on rulemaking authority, alongside the requirements of the section that contains the procedure.

C. Why, in plain terms

The Association is right that courts do not lightly second-guess a board's judgment. Directors are volunteers making practical decisions, and a member who disagrees with a decision does not get to relitigate it because he would have chosen differently. This opinion does not question the Board's good faith and makes no finding that the Board acted for a bad reason.

The doctrine answers a different question than the one presented. It asks whether the substance of a decision will be disturbed. Here, the problem is not the substance of what the Board decided; it is that the Legislature attached a procedure to making decisions of this kind, and the procedure was not followed. A board acting in complete good faith, for reasons entirely in the association's interest, still owes owners notice and a chance to speak.

D. Analysis

1. The doctrine and the procedure operate on different questions.

The business judgment rule is a standard of review for the substance of a decision. It presumes that directors acted on an informed basis, in good faith, and in the honest belief that the action was in the association's interest, and it places on the challenger the burden of establishing facts rebutting that presumption. Every part of that formulation addresses whether a decision's merits will be disturbed.

Section 57-8a-217(2) does not ask about the merits of the Board's decision. It asks whether owners received notice, whether they had an open forum, and whether the adopted change was delivered to them. A board could satisfy the business judgment rule completely and still fail Subsection (2) entirely, and that is what the Association's own position describes: a decision made deliberately, as a Board, in what it believed to be the Association's interest, without the procedural steps the statute requires.

¹⁸ Utah Code § 57-8a-226(3)(b).

2. The Act itself settles the relationship between the two.

Section 57-8a-217(1)(b) enumerates what a board's rulemaking action is subject to. The list includes both "this section," at Subsection (1)(b)(i), and "the board's duty to exercise business judgment on behalf of the association and the lot owners in the association," at Subsection (1)(b)(iv).¹⁹ The Legislature treated business judgment as one constraint among several, listed alongside the section's own procedural requirements. It is not a substitute for them, and nothing in the structure suggests that satisfying one excuses the other. Both must be satisfied.

The same pattern appears in § 57-8a-213, which the Bylaws track at § 5.14. That section directs a board to "use its reasonable judgment" in deciding whether to exercise the association's enforcement powers. Then it provides that "[t]he board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action."²⁰ Judgment is protected; it is not unbounded.

¹⁹ Utah Code § 57-8a-217(1)(b)(iv).

²⁰ Utah Code § 57-8a-213(3).

PART III – MATTERS NOT REACHED

The Office must provide a written statement when it declines to review an issue outside its statutory duty. It also may not provide a service that requires interpreting the Governing Documents, including determining whether a provision of those documents is reasonable. The following matters are declined or not reached. Unless this Part expressly states otherwise, a declination or decision not to reach a question expresses no view on its merits.

A. Whether the Facebook Group is a “common amenity”

Declined. The phrase “common amenity” appears nowhere in the Community Association Act and nowhere in this Association’s CC&Rs, Articles of Incorporation, or Bylaws. Mr. Gannon-Jones used it to describe what the forum had become to the community. The Association is correct that the Office cannot supply content for a term the Legislature never used and for documents never adopted, and that doing so would amount to interpretation and conjecture.

No holding in this opinion depends on the answer. Issues 2 and 3 rest on § 57-8a-102(27)(a)(ii)(A), which reaches a measure governing the conduct of persons, whether or not the measure also concerns property.

B. Whether the Facebook Group is a common area, and who owns it

Declined. “Common areas” means property that the association owns, maintains, repairs, or administers.²¹ Whether an online forum hosted on a third-party platform is “property” within that definition, and whether this one is, are questions the Office does not answer, in part because determining them would not change any holding.

C. Whether the Governing Documents authorize or forbid the Board’s actions

Declined. The Association relies on Bylaws § 5.10 and, in the alternative, on § 5.11(h), which addresses the power to adopt rules governing the interpretation and implementation of the Declaration, the use of common areas, and the use of any property within the Property. Mr. Gannon-Jones contends that no provision authorizes what the Board did. Both positions ask the Office to determine what these provisions permit.

Issues 2 through 4 do not depend on the answer. If the Association is right that the Bylaws authorize it to act on this subject, § 57-8a-217(2) governs how it establishes a rule of general application, and § 57-8a-226(1) governs how it acts at all. If the Association is wrong, the measures fail for want of authority. Either way, the procedural requirements were not satisfied, and the Office reached that result without construing the Bylaws. The Office has quoted the omitted second sentence of § 5.10 in Issue 2 to report the provision’s contents accurately, not to construe it.

²¹ Utah Code § 57-8a-102(5).

D. Equal treatment of similarly situated lot owners

Declined. The record indicates that some, but not all, members in good standing were placed under the Post Approval requirements. Section 57-8a-218(1)(a) provides that “[e]xcept as provided in Subsection (1)(b), a rule shall treat similarly situated lot owners similarly.”²² Mr. Gannon-Jones did not present an equal treatment claim, and the Office does not decide one.

²² Utah Code § 57-8a-218(1)(a).

PART IV – EFFECT OF THIS OPINION AND DISCLAIMERS

This opinion is advisory. It is neither binding on any party to, nor admissible as evidence in, a dispute involving an association of lot owners or an association of unit owners, except as provided in § 13-79-104(10).²³ Evidence of a review by the Office and the opinions, writings, findings, and determinations of the Office are not admissible as evidence in a judicial action or arbitration, except as provided in that subsection.²⁴

If the Office issues an advisory opinion, the same issue that is the subject of the opinion is subsequently litigated in court, and the court rules in favor of the same party as the advisory opinion in a final judgment, then the court may award the substantially prevailing party reasonable attorney fees and court costs relating to the development of the cause of action from the date the Office delivers the opinion to the date of the court's resolution, and, if the court finds that the opposing party knowingly and intentionally violated the law governing the cause of action, a civil penalty of up to \$5,000.²⁵

Neither the Office nor its attorneys may represent private parties, state agencies, local governments, or any other individual or entity in a legal action that arises from or relates to a matter addressed in Chapter 79.²⁶ No attorney of the Office may be compelled to testify in a civil action filed concerning the subject matter of any review or advisory opinion arranged through the Office.²⁷ An action that an attorney employed by the Office takes within the scope of the attorney's employment does not create an attorney-client relationship between the Office or its attorneys and any lot owner, unit owner, association of lot owners, or association of unit owners.²⁸ The Office does not represent either party and cannot give legal advice.

The Office makes each advisory opinion it issues public.²⁹ This opinion will be posted on the Office's website. Copies are delivered to the parties identified in the caption and to the necessary parties identified under § 13-79-104(5)(a). This opinion does not construe the CC&Rs, the Articles of Incorporation, or the Bylaws, except to the extent stated herein.

16

Condominium Associations must register with the Department of Commerce through the Office of the Homeowners' Association Ombudsman under § 57-8-13.1, and Community Associations must register under § 57-8a-105. Due to an updated registration system, any association that registered before September 2025 must complete a new registration, regardless of whether it has 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/renew-your-hoa-registration/>.


Erin Rider (Sep 16, 2026 12:37:38 MDT)

Erin Rider
Director



**Department of
Commerce**

Office of Homeowners'
Association Ombudsman

²³ Utah Code § 13-79-104(9).

²⁴ Utah Code § 13-79-103(3).

²⁵ Utah Code § 13-79-104(10).

²⁶ Utah Code § 13-79-103(2)(a).

²⁷ Utah Code § 13-79-103(2)(b).

²⁸ Utah Code § 13-79-103(6).

²⁹ Utah Code § 13-79-103(4)(b).