HOA LEGAL UPDATE & BOARD MEMBER TRAINING

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U.C.A. § 57-8a-231 Water-Efficient Landscaping

This bill:

- Requires homeowner associations to permit owners to use water-efficient landscaping.
- ➤ It also forbids homeowner associations from requiring on owner to have grass on a park strip.

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U.C.A. § 57-8A-231

Water Wise Landscaping

- An association may not enact or enforce a governing document that prohibits, or has the effect of prohibiting, a lot owner of a detached dwelling from incorporating water wise landscaping on the property owner's property.
- ➤ An association may not require a property owner to install or keep in place lawn or turf in an area with a width less than eight feet.

U.C.A. § 57-8A-231 (Continued)

Water Wise Landscaping

- The previous requirements do <u>not</u> prohibit an association from requiring a property owner to:
 - (i) comply with a site plan review or other review process before installing water wise landscaping;
 - (ii) maintain plant material in a healthy condition;
 - (iii) follow specific water wise landscaping design requirements adopted by the association including a requirement that:
 - (A) restricts or clarifies the use of mulches considered detrimental to the association's operations;
 - (B) imposes minimum or maximum vegetative coverage; or
 - (C) restricts or prohibits the use of specific plant materials..

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U.C.A. § 57-8-8.1 & 57-8a-218 Rules Regarding Signs

This bill:

Places limitations on rules an Association can make to regulate political signs and religious or holiday decorations

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57-8a-218

(See U.C.A. § 57-8-8.1 for Condo Statute)

 $3(a)\!:\!A$ rule criterion may not abridge the rights of a lot owner to display a religious or holiday sign, symbol, or decoration:

- (i) inside a dwelling on a lot; or
- (ii) outside a dwelling on: (A) a lot; (B)the exterior of the dwelling, unless the association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the exterior; or (C) the front yard of the dwelling, unless the association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the yard.
- 3(b): Notwithstanding Subsection (3)(a), the association may adopt a reasonable time, place, and manner restriction with respect to a display that is: $\frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{2} \left(\frac{1}{2} \right$
 - (i) outside a dwelling on: (A) a lot; (B)the exterior of the dwelling; or (C) the front yard of the dwelling; and
 - (ii) visible from outside the lot.

57-8a-218

(See U.C.A.§ 57-8-8.1 for statute applicable to condominiums)

- 4(a): A rule may not prohibit a lot owner from displaying a political sign:
 - (i) inside a dwelling on a lot; or
 - (ii) outside a dwelling on: (A) a lot; (B) the exterior of the dwelling, regardless of whether the association has an ownership interest in the exterior; or (C) the front yard of the dwelling, regardless of whether the association has an ownership interest in the yard.
- 4(b) A rule may not regulate the content of a political sign.
- 4(c) Notwithstanding Subsection (4)(a), a rule may reasonably regulate the time, place, and manner of posting a political sign.
- $4(\mbox{d})$. An association design provision may not establish design criteria for a political sign.

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57-8a-218

(See U.C.A. § 57-8-8.1 for Condo Statute)

- (5)(a) A rule may not prohibit a lot owner from displaying a for-sale sign:
 - (i) inside a dwelling on a lot; or
 - (ii) outside a dwelling on: (A) a lot; (B) the exterior of the dwelling, regardless of whether the association has an ownership interest in the exterior; or (C) the front yard of the dwelling, regardless of whether the association has an ownership interest in the yard.
- 5(b) Notwithstanding Subsection (5)(a), a rule may reasonably regulate the time, place, and manner of posting a for-sale sign.

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U.C.A. § 57-8-17 & 57-8a-227 Association Records

This bill:

- Requires homeowner associations to keep HOA records in compliance with the Utah Nonprofit Corporation Act.
 It also requires an HOA to make the following records
- It also requires an HOA to make the following records available to the Owners: (A) governing documents; (B) most recent approved minutes; (C) most recent budget and financial statement; (D)most recent reserve analysis; and (E) certificate of insurance for each insurance policy the association holds.

U.C.A. § 57-8-8.2 & 57-8a-802 Electric Vehicle Charging

This bill:

- $\,\blacktriangleright\,$ Prohibits an HOA from stopping an owner from installing an EV charging system in (I) an owner's private parking space, or (2) on an owner's lot
- > Permits an HOA to require an owner to submit an application and comply with reasonable design criteria before installing an EV charging system.

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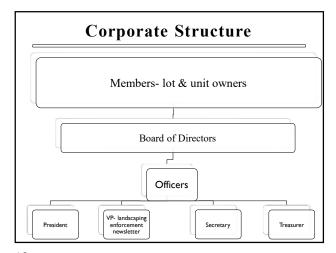
U.C.A. § 57-8a-70 I (Does Not Apply to Condominiums)

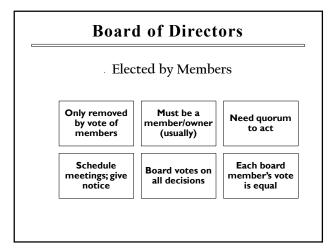
Solar Energy Systems

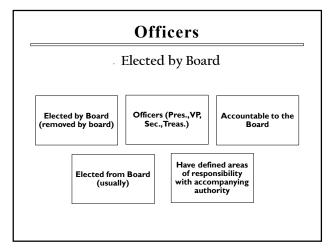
This bill:

- > Expands application of solar panel statute.
- > Previously, the statute only applied if HOA contained unattached dwellings.
- > Now applies to attached dwellings if (1) the HOA does not own, maintain, repair or replace the dwelling's roof or building exterior, and (2) all lot owners with attached dwellings in the building agree to the installation of the solar energy system.

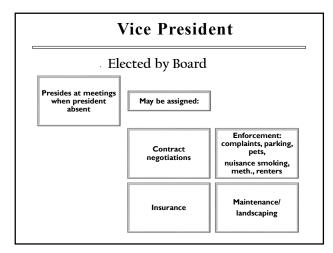
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			Presi	dent		
Elected by Board						
	Presides at meetings (conducts, keeps it moving)		Asks for reports from officers/board members		Oversees enforcement of rules/CC&Rs	
	temper	Sets tone; takes temperature; leads		Checks vendor compliance		bylaws & enants
	Sees and vision o			A leader is A teacher!		



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Secretary Elected by Board Gives notice of **Oversees** Responsible for HOA records all board & elections & voting member meetings Insures bylaw **Prepares Maintains** compliance (proxy, quorum) corporate ballots, minutes status (annual renewal) & board resolutions

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Treasurer Elected by Board Oversees collection of HOA fees Accounts payable Financial records and reporting Prepares budget (with board) Interfaces with bookkeeper, accountant or property manager Responds to lenders/buyers questions Oversees reserve fund

Collecting Common Expenses Available Options: Monthly Invoice Delinquency letter(s) Lien the unit File suit against owner, or Payment Agreement, or Confession of Judgment Garnish wages and bank account Foreclose the lien

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Collecting Common Expenses

- > The single most common mistake HOAs make in collections is waiting too long to start the collection process.
- > Adopt a Reasonable Collection Policy-follow it.
- ➤ No Fee Collection Option

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RESERVE ANALYSIS

§ 57-8a-211 & § 57-8-7.5

"An association of unit owners shall include a reserve fund line item in its annual budget. The amount of the reserve fund line item shall be determined by the management committee, based on the reserve analysis and the amount that the management committee determines is prudent under the circumstances . . ."

How does the board determine what is "prudent"?

HOA and Board Responsibilities

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BOARD RESPONSIBILITIES

- Follow CC&Rs & Bylaws
- Enforce Rules evenly & consistently
- Plan & Budget
- Prepare Reserve Analysis
- **■** Maintain Common Area
- Collect Assessments
- Solve ALL Problems

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HOA BOARDS HAVE THE RIGHT & DUTY TO STOP SOME ACTIVITIES

- Insurance rates may increase if fail to act
- Protect safety of property
- Protect health & safety of residents
- Prevent illegal activity
- Have a right to inspect common area when it is affected

FAILURE TO ENFORCE COVENANTS

When does an HOA abandon a covenant, or waive the ability to to enforce a covenant in the future?

Abandonment occurs when there is substantial and general noncompliance with a covenant.

- 1-Examine the nature & severity of the violations
- 2-Have there been prior acts of enforcement?
- 3-Is it still possible to realize to a substantial degree the benefits intended by the covenant?

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Nuisance

What is a Nuisance?

"A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." U.C.A. 78B-6-1101(1)

How can the Board stop nuisances / violations of the Association's governing documents?

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> Send Written Request to Comply > Assess a Fine > Call the Police (noise, trespassing, harassment or criminal activity) > File Suit (seek an injunction or damages) must have good records & witnesses > Amend your CC&Rs / Rules	ENFORCEMENT OPTIONS
 Assess a Fine Call the Police (noise, trespassing, harassment or criminal activity) File Suit (seek an injunction or damages) must have good records & witnesses 	Send Written Request to Comply
 Call the Police (noise, trespassing, harassment or criminal activity) File Suit (seek an injunction or damages) must have good records & witnesses 	
File Suit (seek an injunction or damages) must have good records & witnesses	Call the Police (noise, trespassing,
9	File Suit (seek an injunction or damages)
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UPDATING HOA DOCUMENTS When should CC&Rs or Bylaws be updated? ➤ When there are gaps ➤ Establish Late Fees (in Rules or CC&Rs)

≻Reinvestment Fees

➤ Collecting from Tenants

> To Conform with Changes in Utah Law

➤ What Businesses are Allowed In Units?

➤ Legal Fees & Enforcing Rules

➤ Pets- Size, Type, Number

> Fines for Habitual Rule Breakers

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UPDATING HOA DOCUMENTS (CONTINUED)

 Nondiscrimination Policy Compensation for Management Committee Services No Contracts Greater than One Year Limiting Number of Renters Smoking/Nuisance Issues Terminate Utility Services and Recreational Privileges for Nonpayment 	
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What's your Association's Vision	
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-Strong/clear/united leadership	
(infighting/bickering alienates)	
-High end/low end maintenance & services	
(maintaining pride and home values)	
-Community involvement/buy-in	
(sharing information & records) -Strict/lax enforcement of covenants/rules	
(do the monkeys run the zoo?)	
-Long term planning	
(you will get to where you are going)	
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Upcoming Board	
Member Trainings	
> Treasurer Training: September 14, 2022	
> Visit our website for updated training	
dates and announcements:	
www.utahhoa.com	
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THANK YOU	