

WELCOME
28th
ANNUAL

**Utah Condominium
&
Homeowners Association
Seminar**

Session # 3 (Nov. 17, 2021)

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Presenters

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HOA Compliance Checklist
Annual Review by Board Members

Incorporated	Record Retention
Budget	Pets
Collections/Receivables	Companion Animals
Reserves/Reserve Study	Enforcement of Violations
Vendor Contracts	Nuisance/Noise/Smoking
Annual Meeting	Parking/Towing
Elections	Renters
Maintenance	Current CC&Rs/Bylaws
Insurance	HUD financing
Fair Housing	ADA

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Which HOA issues can be addressed through revising the Rules & Regs and which issues require a recorded amendment to the CC&R's?

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Amendments to Governing Documents

- Notice
- Vote (50%, 67%, 75%)
- Vote without a meeting
- Change in ownership during voting
- Non condo HOAs & amending rules

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Examination of HOA Records

UCA 57-8-17 & 57-8a-227 Availability for examination

- HOA shall keep & make records available per RNCA.
- Owner may inspect, copy or scan documents.
- Owner to pay 3rd party duplicating service or \$0.10/page and \$15/hour to HOA.
- Failure to comply=HOA pays costs and attorney fees.
- Procedure created for notice, hearings, penalties, etc.
- What constitutes an HOA record?
- What about emails between board members?

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Releasing Association Records

- **Maintain accurate/organized records**
- **Generally open to members**
- **Protect: employment & sensitive records**
- **Dealing with unreasonable requests**
- **Storage (hard copies or website)**
- **Copying costs (fee schedule)**
- **Retention period**

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Nonprofit Corporations Act: 16-6a-1601

Must keep as permanent records: Minutes, records of all actions taken without a meeting, waiver of notices.

Must maintain appropriate accounting records and an alphabetical record of its members, including addresses, in written form.

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Nonprofit Corporations Act: 16-6a-1601

Must keep these records at the HOA's principal office:

- **Articles of Incorporation**
- **Bylaws (& CC&Rs)**
- **Resolutions**
- **Minutes of all member meetings**
- **Written communication with members**
- **Financial statements**

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**FINANCES
&
TREASURER**

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COLLECTING COMMON EXPENSES

**-The most common mistake HOAs make:
waiting too long to start the collection process.**

-Adopt a Reasonable Collection Policy--follow it.

-Collecting late fees

-Collecting interest

-Collecting from tenants

-No Fee Collection

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Johannessen v. Canyon Road Towers HOA

332 UT App 2002

- 1993- J negotiated purchase of penthouse suite
- prior to sale, Board reduced HOA fees to \$416/mo
- 1996, new Board increased fees per CC&Rs
- J sued- promissory estoppel (reasonable reliance)
- Board: "cannot change assessment without 100% vote"
- Court: "HOA Board made an illegal contract"; it was not enforceable; J knew of covenants and could not reasonably rely on the agreement with the Board because J knew the Board acted contrary to CC&Rs.

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Reinvestment Fees

Limited to 0.05% of value of unit being sold (\$500 per \$100,000)

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Annual Budget

UCA 57-8a-215

1. Board shall prepare and adopt annual budget.
2. Present the budget to members at a meeting.
3. 51% of owners may vote within 45 days to disapprove the board's budget.
4. If a budget is disapproved, the board's last budget continues another budget is approved.

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Condo Budget Per Unit Cost

144 Unit Condo Project

Operating Expenses	Average Monthly Expenses
Garbage Disposal	\$15
Water Irrigation	\$7
Electric (for irrigation and signage)	\$2
Street Cleaning (not construction cleanup)	\$2
Mowing (4 times per month during season)	\$13
Turf Maintenance (fertilizer, weed control)	\$3
Landscaping Upkeep/Signage	\$3
Snow Removal (Seasonal estimate/12 months)	\$3
Attorney/Accounting	\$1
Management Fee	\$9
Insurance (Building Exterior)	\$21
	\$79
Capital Improvements	\$16
Total	\$95

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**Mike McCauley
CPA**

HOA Finances and Records

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Reserve Studies

- **What do they cover?**
- **Why are they required?**
- **How beneficial are they?**
- **What do they generally cost?**

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RESERVE ANALYSIS

§ 57-8a-211 & § 57-8-7.5

*-Purpose: funds needed to repair or replace common area w/
useful life of more than 3 years & less than 30 years.*

- Conduct at least every 6 years
- Review & update every 3 years (if necessary)
- Plan must: List components; useful life; cost to replace; annual contribution; funding plan;
- Provide summary of analysis annually
- Line item in budget; "prudent" amount
- Owners may veto within 45 days by 51% vote
- Noncompliance- owners may bring suit

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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”?

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Financial Record Keeping at a Minimum

- **Accounts Receivable**
- **Accounts payable**
 - General Ledger
 - Budget
- **Revenues, Expenses, Assets, Liabilities,
Members Equity**

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Tax & Fiduciary Compliance Responsibilities

- **-Payroll**
- **-Record Keeping (GAPP)**
- **-Income Tax Return**
 - Annual corporate report
(Division of Corporations and Commercial Code)

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To what extent may a director of a nonprofit corporation be personally liable for wrongful actions taken in the course of directing an HOA?

When he or she fails to perform their duty and the breach of duty constitutes:

- 1) willful or intentional harm on the corporation or its members, or**
- 2) there is gross negligence**

UCA 16.6a-822

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Why does the State of Utah require Incorporation?

- 1- registration insures the business name cannot be legally used by another business.**
- 2- registration is required so a comprehensive state registry of all business and corporate information is available for public reference so the public knows with whom it is doing business.**
- 3- registration is required by law to provide public Notice regarding who owns or stands behind a business entity.**

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What are some of the risks associated with an HOA not being incorporated?

- 1- The president and board are often personally named in lawsuits against the HOA.**
- 2- Your credit scores could be negatively impacted.**
- 3- The California factor**
- 4- Make sure your Directors and Officers insurance is adequate.**

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**Websites to Verify State Registration,
Licenses & W.C. Insurance**

State Registration:

<https://secure.utah.gov/bes/action/index>

Licensing:

<https://secure.utah.gov/lv/search/index.html>

Workers Compensation:

[http://laborcommission.utah.gov/divisions/Industrial
Accidents/x_poc.html](http://laborcommission.utah.gov/divisions/IndustrialAccidents/x_poc.html)

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**THANK YOU
FOR COMING**

**SEE YOU IN
2022**

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