

<p><b>HOA LEGAL UPDATE &amp; BOARD MEMBER TRAINING</b></p>	<ul style="list-style-type: none"> <li>• <b>Taylor R. Jones</b></li> <li>• <a href="mailto:tjones@utahattorneys.com">tjones@utahattorneys.com</a></li>   <li>• 5732 S. 1475 E., South Ogden, Utah</li> <li>• 801-479-4777</li> <li>• <a href="http://utahhoa.com">utahhoa.com</a></li> </ul>
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<p><b>U.C.A. § 57-8a-231</b> <b>Water-Efficient Landscaping</b></p>
<p>This bill:</p> <ul style="list-style-type: none"> <li>➤ Requires homeowner associations to permit owners to use water-efficient landscaping.</li> <li>➤ It also forbids homeowner associations from requiring on owner to have grass on a park strip.</li> </ul>

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<p><b>U.C.A. § 57-8A-231</b></p>
<p><b>Water Wise Landscaping</b></p> <ul style="list-style-type: none"> <li>➤ 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.</li> <li>➤ 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.</li> </ul>

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**U.C.A. § 57-8A-231 (Continued)**

**Water-Wise Landscaping**

- The previous requirements do not 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:

- (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.

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**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(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 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.

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

This bill:

- Prohibits an HOA from stopping an owner from installing an EV charging system in (1) 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-701  
(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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Corporate Structure

Members- lot & unit owners

Board of Directors

Officers

President

VP- landscaping enforcement newsletter

Secretary

Treasurer

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## Board of Directors

. Elected by Members

Only removed  
by vote of  
members

Must be a  
member/owner  
(usually)

Need quorum  
to act

Schedule  
meetings; give  
notice

Board votes on  
all decisions

Each board  
member's vote  
is equal

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## Officers

. Elected by Board

Elected by Board  
(removed by board)

Officers (Pres., VP,  
Sec., Treas.)

Accountable to the  
Board

Elected from Board  
(usually)

Have defined areas  
of responsibility  
with accompanying  
authority

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## President

. Elected by Board

Presides at  
meetings  
(conducts, keeps  
it moving)

Asks for reports  
from  
officers/board  
members

Oversees  
enforcement of  
rules/CC&Rs

Sets tone; takes  
temperature;  
leads

Checks vendor  
compliance

Follows bylaws &  
covenants

Sees and shares  
vision of HOA

A leader  
is  
A teacher!

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## Vice President

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Elected by Board

Presides at meetings when president absent	May be assigned:	
Contract negotiations	Enforcement: complaints, parking, pets, nuisance smoking, meth., renters	
Insurance	Maintenance/landscaping	

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## Secretary

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Elected by Board

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

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## Treasurer

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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

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## Collecting Common Expenses

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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

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- **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

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“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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# HOA and Board Responsibilities

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## BOARD RESPONSIBILITIES

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- 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

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- 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

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**FAILURE TO ENFORCE COVENANTS**

When does an HOA abandon a covenant, or waive the ability 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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**ENFORCEMENT OPTIONS**

- **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**

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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](http://www.utahhoa.com)**

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**THANK YOU**

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