

Loma Vista HOA
Meeting Minutes (Not approved)
July 28, 2020

Roll Call at 7:37 pm via Zoom

Ryan Evans- Present
Travis Scharmann- Present
Laura Burdine- Present
Rebecca Bracken- Present
David Gibby- Present

Treasurer update

Laura Burdine: All bills are updated and paid. We have done great on the water bill. Charlie has maintained the sprinklers and it looks great. Fence replacement started at the top of Skyline behind Caldwell, Allred, and Carter's homes. Half of the cost has already been paid to Jason Barker. Jason Barker had to reset posts because the posts were 6-8 ft apart. He took them all out and reset them at 5 ft and placed metal bar reinforcement on top and bottom panels. He will also replace fence caps. May of them were pried off with a screwdriver, not the wind. The short fence along the east side of the south monument area will be removed. It currently is doubled up with the Carter's fence. It will look better. We may match other side.

Common Area

Rebecca Bracken: New residents, not in the Loma Vista neighborhood, have been walking their dogs over to our park strip along Droubay. There is dog poop everywhere! How would you feel about sending a letter?

David Gibby: That is what I was going to say, send a letter that this is a private park strip owned by the HOA, please clean up after your pets.

Laura Burdine: One of our residents send an email also. So, if you haven't been on, please review it.

Ryan Evans: I might be able to take care of that.

Rebecca Bracken: If you run out of time, I am able to help as well.

Ryan Evans: I will do that tonight before I fall asleep.

Compliance

Rebecca Bracken: I saw David's email. He has gone around and completed his compliance checks already.

David Gibby: Disregard the attachment. Some of the pictures are with the incorrect address. 25 were on the list from last year, 7 had identified non-compliance, the rest were landscaping. One resident that has been out of compliance many years has just started today. I will resend my section.

Rebecca Bracken: Ryan and Travis do you have any question about the checks? Have you started?

Ryan Evans: I just want to make sure it is the same area as last year.

Laura Burdine: Will you share it with Travis so he knows this information. We separated them last year, so we were not sending letters to our immediate neighbors.

David Gibby: I just looked at the spreadsheet and it is defined on that.

Rebecca Bracken: Yes, I organized them so it was helpful. Good. I am sharing a picture of the map that is color coordinated.

Laura Burdine: We talked about the format and using the same letter as last year. It is simple, mark the name, date, and check the compliance issue and mail them.

Ryan Evans: So, the approach here is what we can see from the sidewalk. We are not walking on their property.

Rebecca Bracken: Yes and last year it was completed from the sidewalk and road.

David Gibby: We don't have the right to trespass. If they do not have a fence up, I took a photo.

Rebecca Bracken: Whatever is visible. It was helpful for me to go through the notes from last year. So, I could check to see if those issues were remedied and then checked everyone.

Ryan Evans: The October 2019 version is the most recent?

Laura Burdine: I think we have a lot of improvements done this spring and summer. It is wonderful people have been working so hard. I am hoping we have less people with noncompliance issues.

Ryan Evans: I have spent a lot of money this year and still have my side yard and some work to do. But I was hoping to have it done by now.

David Gibby: We live across the street and it looks fantastic.

Ryan Evans: We treated and sprayed it. It is so much work and I wish I was home more but when I am working 70 hours, it is hard to find the time in the dark. So people are doing good work in the neighborhood and I am excited to see that.

Rebecca Bracken: I was going to send you a private message to ask about your yard. It does appear complete from the sidewalk. Thank you for being honest. I will send you letter so do not be sad about it. It is formality so everyone is treated the same.

Ryan Evans: No, no like I said, our hope was to get it done. It is what it is.

Rebecca Bracken: It looks fantastic.

Ryan Evans: Well not yet but thank you.

Rebecca Bracken: Are we going to use the same letter as last year?

David Gibby: I don't remember the exact letter, but it might benefit us to pull the section from the bylaws sighting a basic grievance. That sets in motion for them to formally having to respond and for us

to respond as well. I would be willing to look at it and make revisions. We don't need to redo the whole thing. Just add a little language.

Laura Burdine: I have it so I will send it to you.

David Gibby: I will add language from the bylaws making it more assertive to the people receiving that they do not just throw it in the trash.

Rebecca Bracken: Ryan and Travis, when do you expect to have your sections done?

Travis Scharmann: I will have mine done here real quick.

Ryan Evans: I think just reading through the messages I will have it done by Thursday or Friday.

Rebecca Bracken: If you guys just want to mark on the sheet, I will mail everything out together.

Ryan Evans: That'd be great.

Travis Scharmann: Sure.

David Gibby: I will send mine over too.

Rebecca Bracken: Oh yes and what about responses from the residents? Should we respond to the letters in each of our areas? Designate a Board member to watch the email each day/week? How can we all participate?

Travis Scharmann: Our areas.

David Gibby: Let's take our areas because they are divided up, we know what we saw. If we need to, we can consult Board members.

Ryan Evans: I am good with that as well. If there are any interpretation decisions to be made, we can consult the Board.

Rebecca Bracken: I added the fine schedule timeline to our agenda. The compliance committee proposed a fine schedule. Do we want to go forward with that? Make changes? Implement it next year? What are your thoughts?

David Gibby: In my opinion, I really like what they came up. It is well thought out. I would like something ready to present at the annual meeting and say this is what we are going to adopt, and we want to make everybody aware of it that it will start January 1 or whatever date is.

Rebecca Bracken: So that will need to go out with the annual meeting notice. Are we planning on adopting it that evening or turning it over to the next Board?

David Gibby: I think we should present it that evening maybe not adopt it. We should open it up, but I think the idea that it will be adopted very soon after the meeting, we will have a proposed effective date to implement it.

Ryan Evans: So, the proposal is to implement it with this Board and present it at the meeting?

David Gibby: Developing with this Board and presenting at the meeting with a proposed implementation date and get comments at the meeting if there is a lot of outcry or good comments at the meeting. Then we could proceed quickly into adopting and implement it.

Ryan Evans: At the annual meeting before the Board is turned over?

David Gibby: I am not really sure one way or another. I just want to make sure people do not feel like it was put on them without consideration.

Rebecca Bracken: I know it is difficult to get everyone together, but I would like to propose that a special meeting be called separate from the election process. My concern is it was contentious and caused disorganization. I would like the election process to be peaceful and positive experience for all our residents.

David Gibby: I think that is a very good proposal. It disrupted what the annual meeting process would be. We are in a different world right now, so it would be electronic meeting. But I think it is a big enough issue with enough sensitivity, a separate special meeting is acceptable.

Ryan Evans: Yes.

Laura Burdine: I feel like if we call a special meeting, we should call that before the annual meeting. I don't think we should wait just because people want other people on there that were against the fine schedule so it would not be put in place. So, if we as a Board have agreed this fine schedule should be put in place, we should do it before this term ends.

Rebecca Bracken: We could put it into place and then put a specific date to implement it. People should have the information before they run for an election of what they are agreeing to sign up for.

Laura Burdine: We could also get some nominations for volunteers for the compliance committee.

David Gibby: I think if we could have a special meeting regarding the fine schedule early October and the annual meeting later October and get them both in.

Laura Burdine: We need to give 15 days' notice before the meeting.

David Gibby: We need to decide the format because we will not be able to hold it in person because we can't maintain social distancing. The government may tighten things again. If we could do an online meeting. I don't know much about zoom but could we make that work.

Rebecca Bracken: Yes, we can make it work. I also have go to meeting for work and they use it at the county for planning meetings.

David Gibby: People don't need to have that app, they can just log onto the website?

Rebecca Bracken: Yes, go to meeting or zoom.

Ryan Evans: I would be interested to know what the other county Board's are doing.

David Gibby: So, we would need to send out the notice with instructions on how to attend and connect. Have a link on the main page of the website.

Ryan Evans: Another thing I was thinking about, we are under the assumption everyone has a computer, phone and internet but if someone has a hardship or something we could add it to the letter to let us know and maybe we can safely make arrangements for that group.

Rebecca Bracken: I agree. We will come up with a solution. The last item on our agenda is filing out of compliance letters with the Tooele County Recorder. Laura can you give us information about this.

Laura Burdine: So according to the county, the Board can file out of compliance letters with the Tooele County Recorder. One page, up to 10 parcels is \$40.00. It flags the title as non-compliant and if there is a title search done or I try to sell my home, the out of compliance note is on there. If they get compliant, the title company will reach out to the HOA and the Board can clear let them know they are or not in compliance.

David Gibby: How is that removed from the recorders office when it is taken care of? Do we file an amended list?

Laura Burdine: The title company would get the letter from the HOA to clear the compliance issue.

David Gibby: I have a concern if they cannot be removed that there could be a liability for the Board if someone is trying to sell their home. It could flag it as non-compliant and I would pull back from a possible sell if there were any title issues.

Rebecca Bracken: I will look into this. I know liens are never removed from a property either, the payment of the lien "inactivates" it. So let me find out more.

Ryan Evans: I am sure it depends how to county recorder records it. I would be interested to know more information also, how it is handled; it might be something to mention it at the next Board meeting.

David Gibby: It could be a tool for the Board to be used in the future for residents that could help them come into compliance. I don't believe it should be used in this round of non-compliance because when a heavy hammer is used, we want to make sure people understand.

Laura Burdine: I invite any of you to call the recorder's office and get additional information and we can talk about it at the next meeting. It could be an affordable alternative.

Rebecca Bracken: Is that all for that item? Does anyone have anything else? Ok let's move onto number 5 and regarding the annual meeting. We have already discussed doing it electronically. So lets talk dates for the special and annual meeting.

David Gibby: Yes I would like a date out there because I may be taking another trip to see my kids in October so I would not want to conflict with the meeting. I don't know when the UEA holiday is.

Laura Burdine: It is in October.

David Gibby: Why don't you guys throw out some dates.

Laura Burdine: I am going to throw out September 22.

Rebecca Bracken: Laura has proposed Tuesday September 22 for the special meeting. Anyone apposed?

David Gibby: Is that seem a little rushed?

Ryan Evans: That will be a bad week for me I'm afraid. I have auditors that week.

Rebecca Bracken: What about the following Tuesday September 29?

Rebecca Bracken: That would put us 2-3 weeks before the annual meeting?

Ryan Evans: That may work.

David Gibby: The 29th will give us enough time to get things together.

Travis Scharmann: I am on Board with the 29th.

Rebecca Bracken: Sounds like that will work for everyone. That will give us a few weeks in between so we have time to put things together before the next meeting. Adding to the calendar.

Ryan Evans: Thank you.

Rebecca Bracken: Of course. Do we have any proposed dates for the annual meeting?

David Gibby: There is more flexibility when we can do it online rather than scheduling Tooele City's auditorium. So just pick a date.

Laura Burdine: So we are required to have another 3 weeks notice correct?

Rebecca Bracken: Could we send the notices together to save on postage?

David Gibby: What is the maximum amount of time?

Ryan Evans: I am looking at the language. Not less than 10 no more than 30 days in advance.

David Gibby: I say sent out two meeting notices.

Ryan Evans: The special meeting notice is no less than 3 days and no more than 20 days, so they are different.

Laura Burdine: If we did Tuesday October 20, that would be sufficient if I am reading the calendar correctly. That would be 3 weeks after the special meeting.

David Gibby: We don't need to wait to send out the notices for the annual meeting until after the special meeting.

Ryan Evans: For me, I can plan on it.

Travis Scharmann: I am good with them. I am starting a new job but I will let you know if that conflicts.

Ryan Evans: To make sure I have the dates right, I have September 29th and October 20.

Rebecca Bracken: That is correct.

Laura Burdine: October 20 is between UEA and Halloween so that should work for everyone.

Ryan Evans: I don't know the cost of the Zoom feature but it would be worth having it without the time limit.

Laura Burdine: I have used it for work and had over 100 participants in the meeting. It has the hand raise feature and it works well.

David Gibby: We can let the tech gurus figure it out.

Rebecca Bracken: Oh I just thought of something. Oh no! All the people that have asked to be a part of our Board meeting have not been notified since we have gone to the zoom meetings. I have not done that but we should go back to that because it is obviously not temporary.

David Gibby: That is a good idea.

Ryan Evans: Yes that is a good idea.

Rebecca Bracken: I am sorry about that everyone.

David Gibby: We will do what we do at work and blame everything on covid. We talk about it from a safety point but everything is so different and everything we are patterned in just aren't happening.

Ryan Evans: I have one other thing, if you don't mind. I talked to a resident that is putting up a pergola. It is composite material which upon review it appears ok. She is going to finish the cement in the park strip. According to CCRs cement in the park strip is ok. She is going to plant trees to. Are you ok if I sent that out?

Everyone: Yes that is ok.

Laura Burdine: Are you guys aware that someone had their vehicle broken into?

David Gibby: Yes I saw that online.

Laura Burdine: I have noticed residents parking cars on the street long term and that could put them at risk for that.

Rebecca Bracken: Because I drive my street every day. I know what is happening, but I don't know in your side of the neighborhood. So if you guys notice anything, will you please send me a text so it can be documented or put a letter under my mat and I can sent it out.

David Gibby: Don't we need to notify Tooele City regarding street parking?

Rebecca Bracken: There is language in the CCRs.

Ryan Evans: 4.13 has language.

David Gibby: I wasn't sure it was applicable to public streets. I could see if the streets were gated and it was private we could do it but if they are public I don't believe we can.

Laura Burdine: The City has a code for parking on city streets.

David Gibby: We would need to talk to the City's enforcement officer then.

Rebecca Bracken: So it is in our CCRs that cars should not be parked in the street for more than 24 hours. So we could send a letter and when the fine schedule is implemented, that could happen. However, if we are needing the car towed or moved, that would be through Tooele City Police Department not Tooele City Zoning.

Laura Burdine: As I understand, our CCRs may trump city code as we have learned in the past.

David Gibby: They would for private building lots for example for 1400 sf minimum lot size. But the streets are maintained by Tooele City. People pay them taxes to maintain the roads and street lights. We can certainly send out letters but in my opinion we do not have enforcement rights on public streets.

Ryan Evans: We would also have the burden of proof that a car hasn't moved. Travis, you know better than anybody here. What kind of evidence would we need to defend in the court of law.

Travis Scharmann: Just document it. I know when I with the County, there are HOAs in Stansbury that we would take care of it they were illegally parked. So we could talk to the City Attorney. We can send notices though.

David Gibby: When we had cars broken down in my last neighborhood, it drove me crazy. They were on people's lot and City Code enforcement came in and said they needed to be removed or they could be fined.

Rebecca Bracken: Does anyone else have anything else to discuss or can we go ahead and close the meeting?

Laura Burdine: I would like to make a motion to close the meeting.

David Gibby: I will second. All in favor?

Everyone: I

It was decided the special meeting would be Tuesday September 29 @7:00 pm and the annual meeting Tuesday October 20 @7:00 pm.

ADDENDUM:

David emailed draft revision of non-compliance letter to Board members 7/31/2020 and quorum approved August 2, 2020.

Ryan emailed draft letter regarding dog waste in our park strip 8/2/2020 and quorum approved 8/3/2020. Postmarked 8/4/2020.

Compliance checks were completed in each area between 7/23/2020 and 8/3/2020. 30 noncompliance letters were postmarked 8/4/2020 and delivered to mailboxes 8/6/ 2020.

Rebecca emailed Board members 8/10/2020 meeting minutes to approve from 4/6/2020, 4/28/2020, 6/6/2020, and 7/28/2020. Ryan responded 8/17/20 that he will review them and respond asap. Laura responded 8/18/2020 and approved meeting minutes with one correction.

Ryan emailed the Board members 8/14/2020 a proposed draft letter for the attorney regarding CCR compliance per the Executive Session on 8/12/2020. Rebecca approved 8/19/2020.

Rebecca sent email to Board members 8/29/2020 asking for Board members to reply to Ryan's draft letter for the attorney, clarification on outbuilding and front door colors, and again asking for approval

for the executive meeting minutes from 8/10/2020 and 8/11/2020 (emailed 8/19/2020), 4/6/2020, 4/28/2020, 6/9/2020 and 7/28/2020 (emailed 8/10/2020). Only response was approval from Laura.

Rebecca sent all Board members the following message, "Hello everyone! It is unfortunate progress has been halted for lack of responses to many emails since the last meeting. I would prefer to tasks via email but that hasn't happened so I am proposing a meeting September 15 at 7:30." Laura replied, count me in. On 9/15/2020 Laura sent a text to all Board members asked if we are meeting. Then again sent a text to all Board members. Rebecca responded that no one else has responded.

The special meeting scheduled for September 29, 2020 did not occur because of lack of Board participation.

On October 16, 2020, Laura sent the following email to all Board members:

On Fri, Oct 16, 2020 at 9:40 AM Laura Burdine <lauraburdine@hotmail.com> wrote:

Hello Board!

I am just writing to figure out what in the world is going on. Back on July 28th, 2020, it was proposed that a special meeting was to be conducted to inform the neighborhood of the fine schedule. You all agreed upon Tuesday September 29th. Obviously, that date has come and gone without a meeting, or a change in plans. To my knowledge, the questions to the attorney were not sent and still need to be. Where are we at with the special meeting? Why was there not any follow through with this?

Also, on July 28th, 2020, it was agreed upon that the annual meeting be scheduled for October 20th, 2020. We are now 4 days away from the 20th and I have yet to see a single thing done to schedule the meeting. The board, as a whole, as well as individual members, have a fiduciary duty to uphold the CCR's and conduct business in the BEST interest of the community. Not scheduling the annual meeting is a huge blow to the members and is definitely NOT in the BEST interest of the community. Why has nothing been done?

The HOA cannot disappear as you might wish. So, where do we go from here? When are you going to make this board a priority? Don't tell me that you are just too busy, your phone isn't working or receiving group messages, or you didn't have time to read an email. All 5 of us work full time, in very stressful jobs. I have continued to pay the bills, check the mail, check the email, balance the books and still work full time and take care of my very busy family life. If I can make the time, so can you.

The Board needs to schedule the special meeting, annual meeting, organize a nominating committee, follow up with out of compliance residences to confirm voting rights, send questions to the attorney, and have participation. Remember, if you would like to suggest adding an additional 2 members to the board, you will need to have a minimum of 4 people to run for the board. There are emails waiting for answers from neighbors, and I know that it has been asked several times of you all, to please log on and take care of business. I as treasurer, am not in the position to answer particular emails requesting out of compliance info or projects for a home. I have attached the annual budget proposal for your review. Please look over the budget and give feedback as necessary. I included a management company once again this year, it seems lack of participation deems it necessary.

Please respond to this email asap with plans to get things moving. If you wait too long, it will be Christmas before you know it! Lol I'll leave you with one of my favorite quotes I tell my kids all the time. ***"If it's important to you, you will find a way. If it's not, you will find an excuse."***

Thanks,

Laura Burdine

On October 19, 2020 Rebecca replied to Laura's email and all Board members:

I have read your email and reviewed the budget you attached. Thank you for attempting to get the Board back on track. I have sent out emails and text messages also that have not been responded to. It is quite ridiculous, unprofessional and unbecoming of a Board member (that was campaigned for) to not respond to any communication since August. Participation is not optional. You were elected by our neighborhood to do a job. I would like to encourage Ryan, Travis and David to please step down and allow others that would like to participate the opportunity to do so.

Laura, I am in favor of the budget, including a management company. I agreed with Charlie last year when he argued for it and the lack of participation this year didn't change my mind. Is that the bid to run the entire Board, not just the compliance issues? I know we discussed 2 options last year. One management option takes over all duties and the other just handles compliance. I would like to throw some dates out but I already tried that and there wasn't a response. So do we make house visits? Or just schedule something and hope participation happens? Utah State law requires us to have a meeting annually:

57-8a-226 Board meetings -- Open board meetings.

(1) 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.

(2) (a) At least 48 hours before a board meeting, the association shall give written notice of the board meeting via email to each lot owner who requests notice of a board meeting, unless: (i) notice of the board meeting is included in a board meeting schedule that was previously provided to the lot owner; or (ii) (A) the board meeting is to address an emergency; and (B) each board member receives notice of the board meeting less than 48 hours before the board meeting. (b) A notice described in Subsection (2)(a) shall: (i) be delivered to the lot owner by email, to the email address that the lot owner provides to the board or the association; (ii) state the time and date of the board meeting; (iii) state the location of the board meeting; and (iv) if a board member may participate by means of electronic communication, provide the information necessary to allow the lot owner to participate by the available means of electronic communication. (3) (a) Except as provided in Subsection (3)(b), a board meeting shall be open to each lot owner or the lot owner's representative if the representative is designated in writing. (b) A board may close a board meeting to: (i) consult with an attorney for the purpose of obtaining legal advice; (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (iii) discuss a personnel matter; (iv) discuss a matter relating to contract negotiations, including review of a bid or proposal; (v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (vi) discuss a delinquent assessment or fine. (c) Any matter discussed at a board meeting closed pursuant to Subsection (3)(b)(ii) is not subject to discovery in a civil action in a state court under the Utah Rules of Civil Procedure.

(4) (a) At each board meeting, the board shall provide each lot owner a reasonable opportunity to offer comments. (b) The board may limit the comments described in Subsection (4)(a) to one specific time period during the board meeting.

(5) A board member may not avoid or obstruct the requirements of this section.

(6) Nothing in this section shall affect the validity or enforceability of an action of a board.

(7) (a) Except as provided in Subsection (7)(b), the provisions of this section do not apply during the period of administrative control. (b) During the period of administrative control, the association shall hold a meeting that complies with Subsections (1) through (5): (i) *at least once each year*; and (ii) each time the association: (A) increases a fee; or (B) raises an assessment.

Laura, will you respond to the letter Ryan drafted to the attorney so I can send it over to him. It sounds like you are in favor. I will ask the attorney what the repercussions are for not holding an annual meeting when I send that over.

Rebecca

October 19, 2020 the following email was emailed to the attorney John Richards:

Loma Vista

Mon 10/19/2020 9:26 AM

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To:

- John Richards;
- Stacy Lasson

Good morning John and Stacy,

I am the secretary for the Loma Vista HOA in Tooele. You kindly attended our annual meeting last October and we have exchanged a few emails this year while we have worked towards passing a fine schedule. Our Board has met another obstacle regarding the sale of homes that have noncompliance issues. Please see the attached letter below asking if it would be possible to address the questions below in less than one hour of your time. Also, may I ask what the legal ramifications are for our Board to NOT hold an annual meeting as required? I appreciate your assistance and have a wonderful day!

Rebecca Bracken, Secretary

Loma Vista HOA

Tooele, UT

From: Rebecca Bracken

Sent: Monday, October 19, 2020 9:03 AM

To: Loma Vista; Ryan Evans; Travis Scharmann; Laura Burdine; David Gibby

Subject: RE: Proposed request for a limited legal review

Thank you Laura!

With 3 approvals, I will send this over to the attorney's office. I will also ask what the legal ramifications are for not holding an annual meeting.

Rebecca

Sent from [Mail](#) for Windows 10

From: [Loma Vista](#)

Sent: Monday, October 19, 2020 9:41 AM

To: [Rebecca Bracken](#)

Subject: Re: Proposed request for a limited legal review

All, I approve these questions.

Laura Burdine
Loma Vista HOA
Treasurer

On Aug 19, 2020, at 6:56 PM, Rebecca Bracken wrote:

Thank Ryan, I approve. Thank you so much for talking the time to write this up for the attorney. I have read over it several times in the last 3 days and everything we talked about is clearly stated.

Rebecca

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On Aug 14, 2020, at 9:44 PM, Ryan Evans wrote:

Hello Board,
David confirmed communication sent - Please review the following and provide feedback as soon as possible per our Board executive session discussion 8/12 in which we decided that Board responsibility to reduce our Association members' legal liabilities is of utmost priority.
Thank you very much,
-Ryan

Hello Mr. Richards,

On behalf, and with permission of, the current Loma Vista HOA Board, hereby request a reply as to whether a one-hour (or less) time-frame to review and answer the following information and questions is reasonable? Thank you very much.

We are seeking a legal opinion of the following interpretations so we understand obligations/liabilities of any **HOA/Board involvement(s) in third party transfer/sale of lots/properties** (under the Association's jurisdiction of course) **between grantee/purchaser, grantor/seller.**

In reviewing the *Utah Community Association Act* (Utah Code Ann. § 57-8a-101, et seq.), the following sections appear applicable:

§ 57-8a-102;

§ 57-8a-105;

§ 57-8a-106;

§ 57-8a-218.

I. Are there any other applicable laws or statutes we are neglecting to consider, specific to the topic?

II. Are the following conclusions reasonable and accurate?

Example of potential HOA risk: Current owner/seller of an Association lot/property has a HOA Board-issued non-compliance issued prior to buyer/seller contract (for one or more CC&R/Bylaw clauses). No fees, dues or monies are owed between owner/seller and HOA prior to sale and no recording of non-compliances are filed with any county, city, government entity, etc. Seller has informed a buyer of the lot's HOA non-compliance issuance provided prior to selling. A title company inquires with both the seller and HOA about lot status in the HOA.

Interpretations of Utah laws:

1. The relationship of the HOA is with the lot owner - only lot owners are members of the Association.
2. The relationship of the grantor and grantee in the transfer/sale of a property is between those two parties. The HOA is not a party to the transaction [(referring to 57-8a-218(8)(a))].
3. It is incumbent on a party pursuing the purchase of a property to perform their due diligence. In an HOA environment that due diligence would include querying the seller regarding HOA CCRs, compliance, etc.
4. It is incumbent on the grantor/seller to provide relevant HOA information to the grantee/purchaser [see 57-8a-105.1, *Information required before sale to independent third party*]. State law explicitly calls this out as it not being the duty of the HOA to become involved in a sale or to provide information to grantee/purchaser without the explicit approval of the grantor/seller. [see 57-8a-106(3)(b)(iii); while this section is addressing the payoff of assessments/fees/liens it is consistent with the right to privacy afforded the grantor/seller upon which the HOA cannot infringe].

5. Based on 57-8a-218(8)(a) a lawsuit could be reasonably brought against an HOA if the Association impeded or damaged the sale of the property by inappropriately divulging information or making demands on a purchaser prior to recording of the title transfer.
6. An HOA should not provide any information to a title company or grantee/purchaser without the explicitly written consent of the grantor/seller.
7. A reasonable legal action brought by a party against an HOA requires demonstrated damage(s) on the part of the HOA (in the case of titled property it would involve some infringement on the title by the HOA to which the grantee/purchaser was not made aware). Likely unreasonable for this to occur in actuality as any title action moving forward requires a formal recording with that county (e.g., lien against a property title).
8. A grantee/purchaser could bring a reasonable suit to an HOA if the HOA pursued a title action against the grantee/purchaser after the sale based on monies (i.e., assessment, fines) owed to the HOA by the previous owner.
9. A reasonable course of action for the HOA after the property transaction/sale, would be issuance of a (defensible) notice of current non-compliance (again, under current Bylaws/CCRs) to the new owners after the title transfer is recorded, and notice of any applicable fines, fees, etc under the HOA rules. Failure of the new owner to perform adequate due diligence would not be considered a damage on the part of the HOA under Utah statutes (example: failure to identify flood plain prior to purchase does not place damage on another party).

Lastly, the Loma Vista HOA's CCRs/Bylaws explicitly identify the use of liens for unpaid assessments, do not currently include a fine schedule for non-compliances, and there is no pathway or procedure authorizing recording non-compliance(s) with external entities, governments, etc.

In Utah, HOA Boards recording identified non-compliances with respective county/governments against property titles does not appear to be utilized in general practice. It has been suggested to consider this, but there is concern that doing so will result in increased potential civil actions against an HOA if any title (or more accurately, multiple titles over time) indicate a non-compliance at some point, and in fact the property is or becomes fully compliant (i.e. a discrepancy is reasonably interpreted to cause or have caused damages by the HOA via said filings). Impacting title status of Association members properties is questioned as being a reasonable action when compared to potential liability damages. **The current HOA Board has unanimously agreed that our responsibility in working to reduce Association potential legal liabilities to the lowest degree possible is of primary importance.**

Utah State rules do not appear to speak to recording anything against a title for noncompliance with HOA rules and would seem to bring an unknown increased potential for legal actions or challenges between

parties of the Association, again, in potential conflict with current Board's agreed objective to minimize HOA liabilities. The rules speak to the right of an HOA to impose reasonable fines, place liens against property for failure to pay assessment and fines and the ability to pursue foreclosure on a property on which liens have been placed. Properly noticed issuance(s) of HOA non-compliances (with associated authorized reasonable fines as applicable) seems to be the lower of potential liability risks for the purpose of enforcement, tracking unresolved non-compliances, and providing a pathway under the State HOA regulations for resolving non-compliances with current owners prior to transfer of title(s).

End.

Thank You Sincerely,

Loma Vista HOA Board

====Statute Excerpts Below====
[Utah Code Part 57-8a-1](#)

Utah Code Part 57-8a-1

...

57-8a-218(8) (a) Subject to Subsection (8)(b), a rule may not: (i) prohibit the transfer of a lot; or (ii) require the consent of the association or board to transfer a lot.

(b) Unless contrary to a declaration, a rule may require a minimum lease term

57-8a-105.1 Information required before sale to independent third party.

(1) Before the sale of any lot under the jurisdiction of an association to an independent third party, the grantor shall provide to the independent third party:

(a) a copy of the association's recorded governing documents; and

(b) a link or other access point to the department's educational materials described in Subsection 57-8a-105(6).

(2) The grantor shall provide the information described in Subsection (1) before closing.

(3) The association shall, upon request by the grantor, provide to the grantor the information described in Subsection (1).

(4) This section applies to each association, regardless of when the association is formed.

57-8a-102(11) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder

57-8a-106 Fee for providing payoff information needed at closing.

(1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, an association may not charge a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.

(2) An association may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or

(b) charge the fee if it exceeds \$50.

(3) (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

(b) A request under Subsection (3)(a) is not effective unless the request:

(i) is conveyed in writing to the primary contact person designated under Subsection 57-8a-105(3)(d);

(ii) contains: (A) the name, telephone number, and address of the person making the request; and (B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information: (A) identifying the person requesting the information as a person to whom the payoff information may be released; and (B) signed and dated by an owner of the lot for which the payoff information is requested.

(4) This section applies to each association, regardless of when the association is formed.

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