



# CONDOMINIUM OWNERSHIP AGREEMENT AND HOMEOWNER AGREEMENT INFORMATION

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**Important Notice:** This information relates to the Condominium Ownership Act, Utah Code § 57-8-13.1, and the Community Association Act, Utah Code § 57-8a-105. The information provided herein is not to be construed as legal advice or taken as such.

This document is meant to serve as a resource for compliance purposes and frequently asked questions. Following is a list of items covered:

- An Overview of Home Owner Associations in Utah
- Rights as a Homeowner in an HOA or COA
- Owner's Rights after an Allegation of Violating Association Rules or Provisions
- Information Required before a Sale to an Independent Third Party
- Frequently Asked Questions
- Statutes & Additional Resources

## An Overview of Homeowner Associations in Utah:

In Utah, two key laws govern homeowners associations (“HOAs”) and condominium owners associations (“COAs”). The Condominium Act, Utah Code § 57-8, applies to COAs, and deals with individually owned units supported by collectively held facilities and areas, such as condominiums or townhomes. The Community Association Act, Utah Code § 57-8a, applies to all other types of homeowner associations. These laws contain provisions governing HOAs and COAs, but those laws are enforced in informal proceedings before the association or in civil court and not by the Utah Department of Commerce.

Registration of both HOAs and COAs is mandatory and is not the same registration that is required to register a business with the Division of Corporations and Commercial Code.

The information on this site is meant to be an overview of state law governing associations HOAs and COAs. It is not all-inclusive, and you may want to consult the laws directly for more specific details on a given topic.

## What are my Rights as a Homeowner in an HOA or COA?

The first step to understanding your rights in an association is to review your association's “governing documents.” Governing documents include the declaration of covenants, conditions, and restrictions (commonly known as CC&Rs), articles of incorporation, bylaws, and rules of the association. Under law, homeowner associations are allowed to exercise the authority described in their governing documents. Homeowner rights vary by HOA/COA depending on what is in the HOA's/COA's governing documents.

All HOAs and COAs are required to register with the Department of Commerce. You can search to see if your association is registered [here](#). For associations that are registered, you can find

important information about the association including the names and contact information for the HOA's/COA's leadership. These individuals have access to your governing documents and must share them with you upon request. Utah Code §§ 57-8a-227(1)(a)(ii), 57-8-17(1)(a)(ii). You can also check with your local county recorder's office to obtain a copy of the CC&Rs and bylaws.

In addition to rights provided under your governing documents, you have rights under state law under either the Condominium Act or the Community Association Act, depending on if you live in a COA or any other type of association (HOA). Most of these rights are common to HOAs and COAs, though some additional rights exist that are specific to COAs and HOAs. Some of a property owner's general rights include:

- All association rules must be reasonable. Utah Code §§ 57-8a-218(14), 57-8-8.1(6).
- An owner has the right, subject to some exceptions, to have the association's rules applied in a similar way to all owners in the association. Utah Code § 57-8a-218(1).
- No rule can interfere with the freedom of an owner to determine the composition of the owner's household, subject to occupancy limits. Utah Code §§ 57-8a-218(5), 57-8-8.1(3).
- An owner has the right to obtain a statement of payoff fees within five business days of a request. The association may charge for this, but not more than \$50. Utah Code §§ 57-8a-106, 57-8-6.3.
- A unit owner has the right to inspect documents kept by the HOA/COA, subject to costs and some limitations. Utah Code §§ 57-8a-227, 57-8-17.
- The HOA/COA may not charge more than the actual cost of reviewing and approving submitted plans for construction or improvement of a lot or unit. Utah Code §§ 57-8a-109, 57-8a-6.7.
- The HOA/COA cannot require more than a supermajority (67%) vote of the unit owners to amend the governing documents. Also, the association cannot require that any specific member give approval before an amendment to those documents. Utah Code §§ 57-8a-104, 57-8a-104, 57-8-39.
- If you own a condominium in a shared structure, you have a right to sell your individual unit as if it were its own independent property. Utah Code § 57-8-4.
- While HOA/COAs may set restrictions on the number of units that may be rented, it must allow a unit to be rented if the owner is:
  1. Currently deployed by the military;
  2. Renting the unit to a parent, child, or sibling;
  3. Relocated by the owner's employer for less than two years;
  4. A business owned by the unit's resident; or
  5. A revocable trust created for the unit's resident or the resident's parent, child, or sibling. Utah Code §§ 57-8a-209(2), 57-8-10.1(2).
- Upon written request, owners have a right to obtain a written statement showing any unpaid assessment on the owner's property. Utah Code §§ 57-8a-206, 57-8-54.
- A reserve fund may be maintained by the HOA or COA to cover costs of repairing, replacing, or restoring common areas (but usually cannot be spent on typical maintenance). Reviews of the need for and the appropriate amount that should be in a reserve fund should

be conducted every six years. Homeowners have a right to receive a summary or copy of the most recent reserve analysis. Utah Code §§ 57-8a-211, 57-8-7.5.

- The annual budget should include the amount the board or committee determines to set aside each year for the reserve fund. Within 45 days of the adoption of the budget, the owners may hold a special meeting to consider a veto of the amount being put into reserve. Utah Code §§ 57-8a-211(7)(a), 57-8-7.5(7)(a).
- An owner has the right to enforce their rights pertaining to the reserve fund in court. But before beginning an action, the owner must submit a notice to the association with information about the alleged failure to comply. Utah Code §§ 57-8a-211(8), 57-8-8.5(8).
- Owners in a COA may not be charged a fee greater than \$500 a month in aggregate fines for violations of the same rule or provision of the governing documents. Utah Code § 57-8-37.
- Owners in an HOA have the right to display religious and holiday signs, symbols, and decorations, subject to association rules about time, place, and manner. Utah Code § 57-8a-218(3). They also may display political signs, subject to time, place, manner, and design criteria of the HOA. Utah Code § 57-8a-218(4).
- An HOA may not set a rule forbidding an activity within the confines of a dwelling or lot if it is otherwise legal within the confines of a dwelling under local laws and ordinances. Utah Code § 57-8a-218(6).
- For other HOA specific rights, see Utah Code § 57-8-218.
- For time-share owners, under Utah Code § 57-8a-102, a time-share condominium unit shall be entitled to the exclusive ownership and possession of the physical unit that the time period relates and shall be entitled to the use and enjoyment of the common areas and facilities during the time period unit allowed as said in the declaration.

#### **Information Required before a Sale to an Independent Third Party:**

For condominiums and other properties under an association, under Utah Code §§ 57-8-6.1 and 57-8a-105.1, before the sale of any unit or property under a declaration of a COA/HOA association, the grantor must provide the independent third party with a copy of the association of unit owners' recorded governing documents and the link, or document, directing attention to the Department of Commerce's COA/HOA information webpage. This needs to be given by the grantor before closing. The association must provide this information to the grantor upon request. It does not matter when the association was formed, if there is a COA/HOA in existence, then the association must disclose the governing documents to a prospective buyer.

#### **Unit Owner Responsibilities under an HOA:**

As with rights, understanding your responsibilities under an HOA or COA begins with reviewing the association's governing documents. As noted above, governing documents include the declaration of covenants, conditions, and restrictions (commonly known as CC&Rs), articles of incorporation, bylaws, and rules of the association. All owners within an HOA or COA are required to reasonably comply with their governing documents. Utah Code §§ 57-8a-212.5, 57-8-8. This means that if your association has a rule, you may have to pay fees or face other legal

consequences if you do not abide by the rule. Most of your responsibilities will be found within the association's governing documents rather than in the state code.

Owners are required to pay monthly and other assessments from the association on time. Utah Code §§ 57-8a-201, 57-8-44(1). Failure to pay fees and assessments as they become due may lead to a termination of utility service, access to and use of recreational facilities, a lien on the property or even a non-judicial foreclosure by the COA/HOA.

### **Frequently Asked Questions:**

**a. Who needs to register a HOA/COA with the Department of Commerce?**

Registration of any HOA/COA is mandatory and is separate from filing a business registration with the Division of Corporations and Commercial Code. The registration requirements maintain transparency with current and accurate contact information in the event contact is required for financial and legal matters regarding HOAs.

The HOA/COA registration is mandatory and must be current.

**b. Are there exemptions to HOA/COA registration?**

There are no exemptions. All condominiums and other community associations must be registered with current information with the Utah Department of Commerce.

**c. What information is required for HOA/COA registration?**

To prepare to register a COA, you will need the following information:

- The name and address of the COA;
- The name, address, telephone number, and, if available, email address of the COA president;
- The name and address of each management committee member; and
- The contact information (name, address, telephone number, and if desired, email or fax) of the individual at the COA who will be the contact for payoff information.

To prepare to register an HOA or other type of community association, you will need the following information:

- The name and address of the association;
- The name, address, telephone number, and if available, email address of the chair of the association's board;
- Contact information for the association's manager;

- The contact information (name, address, telephone number, and if desired, email or fax) of the individual at the association who will be the contact for payoff information.

**d. What are the fees relating to HOA registration?**

The initial registration is \$37 under both the Condominium Ownership Act and the Community Association Act under Utah Code §§ 57-8a-105, 57-8-13.1. Any amendment will require a \$10 fee.

**e. What are the penalties for noncompliance with the HOA registration?**

Penalties for noncompliance for HOA/COA registrations for condominiums may include not allowing pursuing or enforcing a lien, under Utah Code § 57-8-13.1(5). In simple terms, this means you may not be able to pursue a claim against a unit owner that owes the association fees. Similar provisions apply for noncompliance to other community associations under Utah Code § 57-8a-105(5).

**f. How do I start an HOA/COA?**

Drafting declarations and bylaws, as well as the process for initiating and managing a new COA/HOA are complex processes. Obtaining the advice of a licensed attorney is highly recommended before attempting to create an HOA or COA.

The defining event in the creation of a condominium project is filing the declaration of covenants, conditions, and restrictions (CC&Rs) and other deed instruments with the county recorder. Sometimes, a declaration is referred to as a "master deed." Condominium declarations are covenants running with the land. The Utah Condominium Act, Utah Code § 57-8 et seq., sets out certain information that a declaration must contain and the declaration may also contain any other matters the declarant considers appropriate. Plats and plans are a part of the declaration, and are required for all common interest communities. Each plat must show or project certain specified information. A declaration of condominium operates as a contract among unit owners and the association, spelling out the mutual rights and obligations of the parties. However, nothing requires that all restrictions on use must be identified in a condominium's declaration.

With condominiums, a developer is subject to the act upon signing and recording a declaration. When signing the declaration, a developer must also submit a "recording of the plat" and a set of preliminary bylaws for the project. These documents are to be recorded with the county recorder as well as in an index containing all information regarding condominium projects in the county. Neither the declaration nor any amendments to it are valid until recorded in the proper manner.

The creation of other community associations follows a similar process. Community members agree to covenants, conditions, and restrictions and these will run with the land. The purposes for community associations may be for shared up-keep fees, facilities that are used in common, or solar energy systems under Utah Code § 57-8a-701.

**g. How is a HOA/COA dissolved?**

There are many legal considerations for the dissolution of an HOA or COA that should be taken into consideration, and obtaining the advice of a licensed attorney is highly recommended before attempting to dissolve an HOA or COA. The dissolution process is done with Utah Division of Corporations following this general process:

- Under Utah Code § 16-6a et seq., HOAs/COAs that are registered nonprofit corporations may be dissolved following Utah Code § 16-1 et seq.
- This is done by a proposal from the members to the HOAs/COAs association boards for adoption.
- Next, to dissolve a corporation in Utah, a completed form of the Articles of Dissolution must be filed with the Utah Division of Corporations & Commercial Code along with the filing fee. Processing time may take a week or more.
- Then, once the statement of dissolution is given, it may be used to further process the winding up such as closing bank accounts and filing forms to close Utah tax accounts or with the IRS to close the employment identification number.

**h. Where do I find a copy of the declaration of covenants, conditions, and restrictions (“CC&Rs”)?**

Your HOA/COA is required to keep a copy of your CC&Rs and other governing documents and make them available to you on request. Note that your HOA/COA may charge for copies of the document, especially for physical copies. You can also find CC&Rs in local recording offices for the development. Note that CC&Rs may be subsequently amended and remain fully enforceable.

The HOA/COA registry at the Utah Department of Commerce does not keep records of the CC&Rs or HOA/COA declarations.

**Statutes:**

The Condominium Ownership Act § 57-8 *et seq.* may be found at:

<https://le.utah.gov/xcode/Title57/Chapter8/57-8.html>

The Community Ownership Act § 57-8a *et seq.* may be found at:

<https://le.utah.gov/xcode/Title57/Chapter8A/57-8a.html>

**Related Information:**

For information regarding Utah Domestic Non-Profit Corporations, please visit the Utah Department of Commerce, Division of Corporations' Business Entities page at:  
<https://corporations.utah.gov/business/index.html>

For information regarding Timeshares, please visit the Utah Department of Commerce, Division of Real Estate's Timeshares page at:  
<https://realestate.utah.gov/timeshares/index.html>

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