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What is an HOA?

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This is a complex
and
multi-faceted question



Parts of HOAs



1. Community
2. Contract
3. Non-Profit/Corporate
4. Land Development
5. Collections
6. FHA
7. Insurance

Condominium Association or Community Association

Community Association Act

Utah Code Annotated 57-8a-101 et seq

Condominium Ownership Act

Utah Code Annotate 57-8-1 et seq

Utah Code Ann. 57-8a-102(2)

(a) Except as provided in Subsection (2)(b), “association” means a corporation or other legal entity, any member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) “Association” or “homeowner association” does not include an association created under Chapter 8, Condominium Ownership Act.

Utah Code Ann. 57-8-3(2)

“Association of unit owners” or “association” means all of the unit owners:

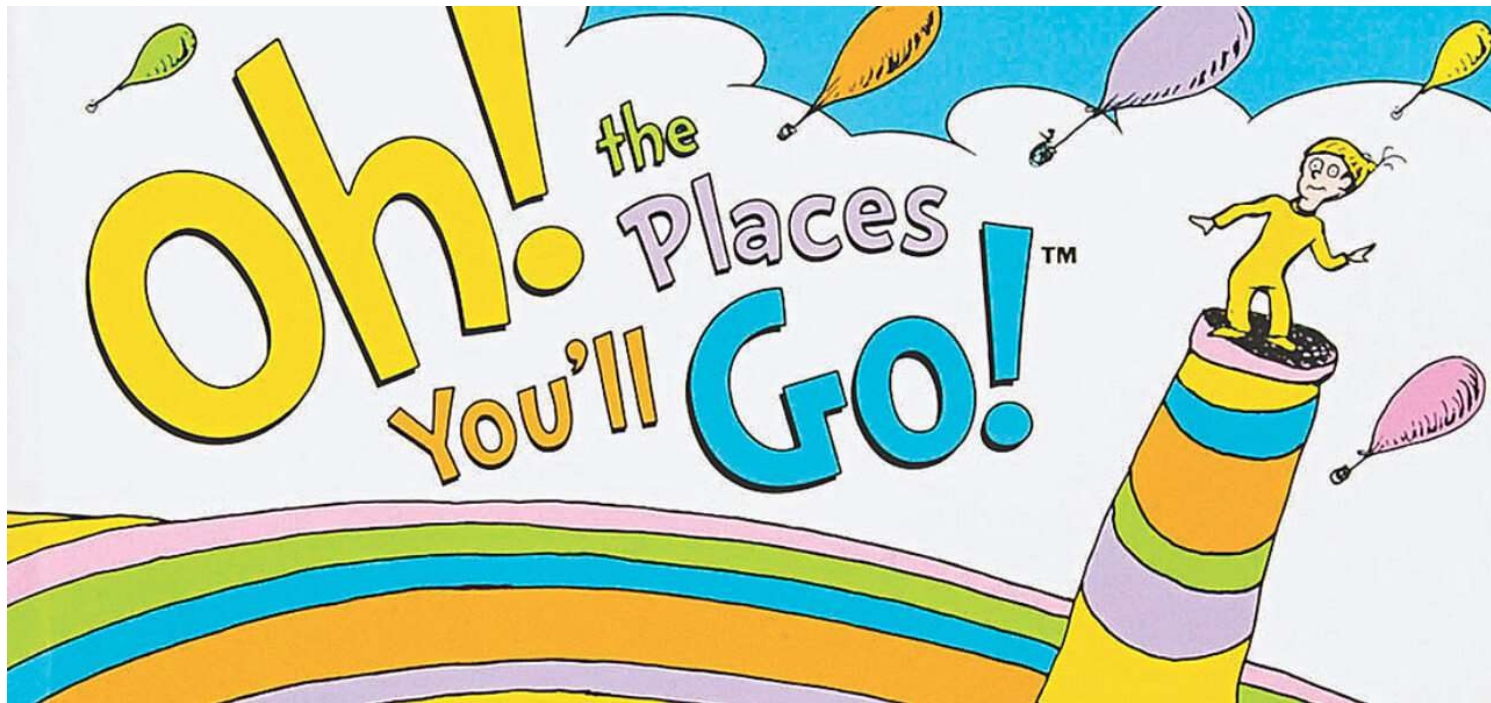
- (a) acting as a group in accordance with the declaration and bylaws; or
- (b) organized as a legal entity in accordance with the declaration.

HOAs are Creatures of Contract

“The governing documents of a homeowners association, including the recorded CC&Rs and bylaws, ‘constitute a contract between the association and the property owners.’”

Kelly v. Timber Lakes Prop. Owners Ass'n, 2022 UT App 23, ¶ 58 507 P.3d 357
(citing *Swan Creek Homeowners Ass'n v. Warne*, 2006 UT 22, ¶ 44 134 P.3d 1122)

Contract Theory Takes HOAs in Interesting Directions



Can an HOA Tow Cars on a Public Street?



HOAs are also a creature nonprofit law


Associations usually can (and should) become Nonprofit Corporations

Utah Code Ann. 57-8-40(2) expressly provides that:

If permitted, required, or acknowledged by the declaration, the **management committee** may organize an **association of unit owners** as: (a) nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or (b) any other entity organized under other law.

Utah Code Ann. 57-8a-228(2) expressly provides that:

If permitted, required, or acknowledged by the declaration, the **board** may organize an **association** as: (a) nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or (b) any other entity organized under other law.



Protection: The Business Judgment Rule



Utah Code Ann. 16-6a-822


(6) A director or officer is not liable to the nonprofit corporation, its members, or any conservator or receiver, or any assignee or successor-in-interest of the nonprofit corporation or member, for any action taken, or any failure to take any action, as an officer or director, as the case may be, unless:

(a) the director or officer has breached or failed to perform the duties of the office as set forth in this section: and

(b) the breach or failure to perform constitutes: (i) willful misconduct; or (ii) intentional infliction of harm on: (A) the nonprofit corporation; or (B) the members of the nonprofit corporation; or

(c) gross negligence.

Duties: good faith, care of an ordinarily prudent person in a like position under similar circumstances, act in the best interests of the corporation. Utah Code Ann. 16-6a-822(2).



There are significant connections between condo association law and nonprofit corporation law.

The condominium ownership act incorporates the non-profit corporation act as follows:

1. UCA 57-8-8.1(5)(d) permits application of the Nonprofit act indemnification provisions. (Automatic application).
2. UCA 57-8-17(1) incorporates UCA 16-6a-1601(1) through (5). (Automatic application).
3. UCA 57-8-17(1) incorporates UCA 16-6a-1601. (Automatic application).
4. UCA 57-8-17(1) incorporates UCA 16-6a-1602. (Automatic application).
5. UCA 57-8-17(1) incorporates UCA 16-6a-1603. (Automatic application).
6. UCA 57-8-17(1) incorporates UCA 16-6a-1605. (Automatic application).
7. UCA 57-8-17(1) incorporates UCA 16-6a-1606. (Automatic application).
8. UCA 57-8-17(1) incorporates UCA 16-6a-1610. (Automatic application).
9. 57-8-40(2) expressly authorizes a condo association to organize as a nonprofit corporation in accordance with the nonprofit act.
10. UCA 57-8-40(5)(b) gives precedence to the nonprofit act over subsections 5(c) through 5(f). (Must incorporate)
11. UCA 57-8-40(5)(d) gives precedence to any organizational documents over subsections 5(e) through 5(f). (Must incorporate or organize).
12. UCA 57-8-42(1) incorporates the Nonprofit act notice methods as fair and reasonable. (Automatic Incorporation).
13. UCA 57-8-55(1) incorporates Part 11 of the Nonprofit act to merge multiple associations. (Must incorporate).
14. UCA 57-8-57(1) incorporates UCA 16-6a-813 to permit action without a meeting. (Must Incorporate).

The condominium ownership act expressly excludes parts of the Nonprofit Act as follows:

1. 57-8-17(7)(a) excludes 16-6a-1604. (Automatic application).
2. 57-8-17(7)(b) gives 57-8-17 precedence over the Nonprofit Act. (Automatic Application).

There are significant connections between community association law and nonprofit corporation law.

The Community Association Act incorporates the Revised Nonprofit Corporation Act as follows:

1. UCA 57-8a-218(14)(d) permits application of the Nonprofit act indemnification provisions. (Automatic Application).
2. **UCA 57-8a-221 permits reincorporation of dissolved associations as nonprofit corporations. (Automatic Application).**
3. UCA 57-8a-227(1) incorporates UCA 16-6a-1601(1) through (5). (Automatic Application).
4. UCA 57-8a-227(1) incorporates UCA 16-6a-1601. (Automatic Application).
5. UCA 57-8a-227(1) incorporates UCA 16-6a-1602. (Automatic Application).
6. UCA 57-8a-227(1) incorporates UCA 16-6a-1603. (Automatic Application).
7. UCA 57-8a-227(1) incorporates UCA 16-6a-1605. (Automatic Application).
8. UCA 57-8a-227(1) incorporates UCA 16-6a-1606. (Automatic Application).
9. UCA 57-8a-227(1) incorporates UCA 16-6a-1610. (Automatic Application).
10. UCA 57-8a-228(2) expressly authorizes a condo association to organize as a nonprofit corporation in accordance with the nonprofit act. (Must incorporate).
11. UCA 57-8a-228(5)(b) gives precedence to the nonprofit act over subsections 5(c) through 5(f) of the a nonprofit act. (Must incorporate).
12. UCA 57-8a-228(5)(d) gives precedence to any organizational documents over subsections 5(e) through 5(f) of the nonprofit act. (Must incorporate).
13. UCA 57-8a-214 incorporates the Nonprofit act notice methods as fair and reasonable. (Automatic Application).
14. UCA 57-8a-601(1) incorporates Part 11 of the Nonprofit act to merge multiple associations. (Must incorporate).
15. UCA 57-8a-226(1) incorporates UCA 16-6a-813 to permit action without a meeting. (Must incorporate).

The Community Association Act expressly excludes parts of the Revised Nonprofit Act

1. UCA 57-8a-227(7)(a) excludes 16-6a-1604. (Automatic Application).
2. UCA 57-8a-227(7)(b) gives 57-8a-227 precedence over the Nonprofit Act. (Automatic Application).

Most Importantly Associations are Communities



Three white toy houses with blue windows and brown doors are placed on top of three light-colored wooden blocks. The blocks are arranged in a row and spell out the letters 'H', 'O', and 'A' in a large, grey, serif font. The background is a soft, out-of-focus orange-brown gradient.

QUESTIONS?