

Governing Documents

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Governing documents are an essential part of an owners association. Virtually every decision that an owners association makes is affected by what the governing documents say or do not say.

What Governing Documents Do

But what are governing documents? Essentially, they are documents that explain what requirements an owner must follow¹ and the requirements how the association itself must operate.² According to both the Community Association Act and Condominium Ownership Act, governing documents “means a written instrument by which the association may: (i) exercise powers; or (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.”³ Usually, an owners association’s governing documents do both these things.

All owners associations have some governing documents. The very definition of “association” in the Community Association Act “means a corporation or other legal entity, and member of which: (i) is an owner of residential lot located within the jurisdiction of the association, **as described in the governing documents....**”⁴ Similarly, the term “association” in the Condominium Ownership Act 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.**”⁵ Without these governing documents, an owners association cannot operate as defined in these statutes.

Types of Governing Documents

In Utah, the term governing documents “includes: (i) articles of incorporation; (ii) bylaws; (iii) a plat; (iv) a declaration of covenants conditions and restrictions; and (v) rules of the association.”⁶

Every owners association in Utah is required to have at least a declaration of covenants, conditions, and restrictions (often referred to as just the declaration or as CC&Rs)⁷ and bylaws.⁸

¹ Where an “HOA [is] a valid association operating pursuant to a duly recorded Declaration, those purchasing property [within the association are] contractually bound to its terms.” *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 48, 134 P.3d 1122.

² “[B]oth Utah statutes and case law recognize that ... associations are controlled by their governing documents....” *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 44, 134 P.3d 1122.

³ Utah Code Ann. 57-8a-102(11)(a) and Utah Code Ann. 57-8-3(20)(a).

⁴ Utah Code Ann. 57-8-3(2)(emphasis added).

⁵ Utah Code Ann. 57-8-3(2)(emphasis added).

⁶ Utah Code Ann. 57-8a-102(11)(b) and Utah Code Ann. 57-8-3(20)(b).

⁷ UCA 57-8a-102(2) references CC&Rs as an essential part of the definition of an Association

⁸ UCA 57-8a-216(1) requires an association to record its bylaws in the office of the county recorder, which necessarily implies that the association have bylaws.

Most owners associations also have the following governing documents, but are not always required to have them: plat,⁹ articles of incorporation; and rules.¹⁰

There are even other documents, that are not included in Utah's statutory list of governing documents that may still affect governance of an owners associations, such as board policies and resolutions. Arguably, even the signs of an owners association can fall into this category or the category of rules of the association.

Governing Document Hierarchy

Sometimes one governing document will say something different than another governing document or a governing document will say something different than a statute. In the event of such conflicts, the following order of precedence must be followed:¹¹

1. The Community Association Act or Condominium Ownership Act (depending on which act the association is submitted to);
2. The nonprofit corporation act, if the association is organized as a nonprofit;
3. The plat and declaration, which control equally;
4. An organizational document (like articles of incorporation);
5. The bylaws; and
6. A rule or policy of the association.

In other words, if there is a conflict between the declaration and the bylaws, for example, then the declaration controls since it comes earlier (or higher) in the order of precedence listed.

It is possible for one governing document to subordinate part of that governing document or all of that governing document to another governing document in the hierarchy. For example, a declaration could say that “notwithstanding anything to the contrary in this Declaration, the Bylaws shall control the manner of voting for Board Members.” With this language, if the bylaws had a provision saying that owners could use cumulative voting¹² for board members, that bylaw provision would control even if there was a provision in the declaration saying that cumulative voting is not permitted because the declaration promoted the bylaw provision in the hierarchy.

It is important to note that a governing document that falls lower in the order of hierarchy could not subordinate a document that falls higher on the hierarchy. So, if the bylaws included similar language about cumulative voting for Board Members (“notwithstanding anything to the

⁹ It is very rare for an owners association not to have a plat as is explained later in this chapter.

¹⁰ Rules can go by a number of different names, which include: rules and regulations, general rules, architectural guidelines, design guidelines, and community standards.

¹¹ Utah Code Ann. 57-8a-228(5) and Utah Code Ann. 57-8-40(5).

¹² Cumulative voting is a system of voting in an election in which each voter is allowed as many votes as there are candidates and may give all of those votes to one candidate or varying numbers to several. So if there were 3 candidates, a voter would get 3 votes and could distribute those votes however they wanted amongst the candidates – they could give all three votes to one candidate; two votes to one candidate and one vote to another candidate; or even 1 vote to each candidate.

contrary in the Declaration, the Bylaws shall control the manner of voting for Board Members.”), it would not have any effect on the hierarchy (except maybe to confuse people). The declaration would still control. This is because a lower document in the hierarchy cannot alter the authority of a higher document, but a higher document can alter the authority of a lower document or itself, depending on the circumstances.

Governing Documents Are a Contract

In Utah, governing documents constitute a contract between the association and the property owners.¹³ Many states merely *construe* governing documents as a contract. The distinction may be significant in some situations. For example, a common defense to a breach of contract claim is the first-to-breach rule. This rule states that if there is a prior breach of contract by the first party, the second party does not have to comply with the contract either. If you could apply this argument in the owner association context based on contract theory, and such claims have already been made in Utah,¹⁴ then an owner may be able to defeat fines for violating the governing documents if they can show that the owners association already breach the governing documents by failing to materially follow their obligations under the governing documents.

How do Owners Enter Into and Become Bound by the Governing Document Contracts?

Homeowners are often surprised to learn that an owners association is a contractual relationship. Some of these owners object to the idea that they have entered into a contract with their association. They point out that they never signed the declaration or any contract agreeing to be a part of the owners association or to follow association rules. This does not matter. When an owner acquires a lot, they bind themselves to the terms of the declaration and other governing documents.¹⁵

Another objection often raised by owners to the idea that they have entered into a contract with their owners association is that they did not actually know there was an association or that acquiring their home bound them to the governing documents as a contract with the association. They ask, “how can I unknowingly enter into a contract, especially when I did not even know about the association or its rules?”

It usually does not matter whether an owner actually knew about the association or its rules when they bought their property. Utah’s Supreme Court has held that if the governing documents are recorded, then those recorded documents impart notice to the owner as a matter of law even if the owner does not actually know of the governing documents.¹⁶ If an owner does know there is an association when they buy their property, there is also an implied-in-fact contract with the association.¹⁷

¹³ *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 44, 134 P.3d 1122; *Turner v. Hi-Country Homeowners Ass’n*, 910 P.2d 1223, 1225 (Utah 1996);

¹⁴ *Kelly v. Timber Lakes Prop. Owners Ass’n*, 2022 UT App. 23, ¶ 1

¹⁵ *Swan Creek Village Homeowners v. Warne*, 2006 UT 22 ¶ 48, 134 P.3d 1122 (“When [the owner] acquired her lots, she bound herself to the terms of the Declaration.”).

¹⁶ *Hi-Country estates v. Frank*, 2023 UT 7, ¶ 69.

¹⁷ *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 36 and 37.

Enforcement of Governing Documents

Since the governing documents constitute a contract, they govern the obligations of the owners¹⁸ and those purchasing property in an owners association are contractually bound to the governing documents' terms.¹⁹ The binding nature of these governing documents is a matter well settled under Utah law²⁰ and this contractual authority of an association to require owners to comply with the governing documents is broad.²¹ An owners obligation to comply with governing documents is also a statutory requirement in addition to a contractual obligation.²²

If a homeowner fails to comply with the governing documents, the owners association may fine owners for violations²³ and bring law suits for damages or for injunctive relief which includes forcing compliance.²⁴ The owners association may also seek any other remedy included in the governing documents. Sometimes, the governing documents include provisions permitting the association to fix the violation and charge any cost related to the fix to the owner who has violated the governing documents.

Of course, the owners association must also reasonably comply with the governing documents²⁵ and owners can sue the association and other owners to comply with the governing documents.²⁶ Governing documents typically include express language that an owner or the association may bring a law suit to enforce provisions of the governing documents that are not being followed, but even if this power to bring a law suit for enforcement was not explicitly set forth in an association's governing documents, either party would likely be able to bring such a suit anyway. As mentioned earlier, in Utah, an association's governing documents constitute a contract between the association and its members (who are nearly always owners).²⁷ Thus, an owner/member or the association could file a suit to enforce the provisions of the governing documents that are not being followed as a breach of contract.

Enforcement Exceptions

Not all provisions of governing documents can be enforced. The Community Association Act, Condominium Ownership Act, and Utah Revised Nonprofit Corporation Act all take precedence

¹⁸ See *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 47, 134 P.3d 1122 (citing *Fairbourn Commercial, Inc. v. Am. Hous. Partners, Inc.*, 2004 UT 54, ¶ 10, 94 P.3d 292).

¹⁹ *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 48, 134 P.3d 1122. This contractual authority of an association is broad. *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 46, 134 P.3d 1122. See also UCA 57-8-8 and UCA 57-8a-212.5.

²⁰ *Workman v. Brighton Props., Inc.* 1999 UT 30, ¶ 10, 976 P.2d 1209.

²¹ *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 46, 134 P.3d 1122.

²² Utah Code Ann. 57-8a-212.5 and Utah Code Ann. 57-8-8.

²³ Utah Code Ann. 57-8a-208 and Utah Code Ann. 57-8-37.

²⁴ Utah Code Ann. 57-8a-212.5 and Utah Code Ann. 57-8-8.

²⁵ Utah Code Ann. 57-8a-212.5 and Utah Code Ann. 57-8-8.

²⁶ Utah Code Ann. 57-8a-212.5 and Utah Code Ann. 57-8-8.

²⁷ *Swan Creek Village Homeowners Association v. Warne*, 2006 UT 22, ¶ 44, 134 P.3d 1122. See also *Kelly v. Timber Lakes Prop. Owners Ass'n*, 2022 UT App 23, ¶ 58 507 P.3d 357 (“The governing documents of a homeowners association, including the recorded CC&Rs and bylaws, ‘constitute a contract between the association and the property owners.’”).

over any governing documents²⁸ and so any governing document provision that conflicts with a provision of these acts will not be enforceable. There are a number of provisions in Community Association Act and Condominium Ownership Act that expressly limit governing documents.

Interestingly, Utah law also provides owners associations some latitude to not enforce the governing documents in certain situations. An “association may not be required to take enforcement action if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:²⁹

- (i) the association’s legal position does not justify taking any or further action;
- (ii) the covenant, restriction, or rule in the governing documents is likely to be construed as inconsistent with current law;
- (iii) (A) a technical violation has or may have occurred; and
(B) the violation is not material as to a reasonable person or does not justify expending the association’s resources; or
- (iv) it is not in the association’s best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

Declaration of Covenants, Conditions, and Restrictions

The declaration of covenants, conditions, and restrictions, often referred to simply as the “declaration” or “CC&Rs,” is the most essential governing document of an owners association. Owners associations are created by the declaration.³⁰ The declaration .

Amending a Declaration

Declarations can usually be changed by amendment. The declaration itself provides for the manner of amendment, but it usually requires a certain number (or percentage) of members of the association voting to approve the amendment. Once owners control the association, Utah statute prohibits the number of owners required to amend the declaration from exceeding 67% of the voting interests.³¹

Note that typically these amendment thresholds are based on a percentage of the voting interests of *all* owners or members. Thus, if someone does not vote, their failure to vote operates as a vote against the proposed amendment. This makes amending the declaration especially difficult in larger communities where it is often more challenging to track down owners to vote.

Contents of the Declaration for a Community Association

²⁸ Utah Code Ann. 57-8a-228(5)(a) and Utah Code Ann. 57-8-40(5)(a).

²⁹ Utah Code Ann. 57-8a-213(1)(b) and Utah Code Ann. 57-8-10.7(1)(b).

³⁰ *Dover Elevator Co. v. Hill Mangum Investments*, 766 P.2d 424, 427 (Utah App. 1988); *Lodges at Bear Hollow Condo. Homeowners Ass'n, Inc. v. Bear Hollow Restoration, LLC*, 2015 UT App 6, ¶ 3, 344 P.3d 145 (Utah App. 2015); *Johannessen v. Canyon Road Towers Owners*, 2002 UT App 332, ¶ 3, 57 P.3d 1119.

³¹ Utah Code Ann. 57-8a-104(1)(a)(i)(C).

Declarations for community associations in Utah must include certain content. Utah Code Ann. 57-8a-212 requires, the following content for a community association declaration:

- (1) An initial declaration recorded on or after May 10, 2011 shall contain:
 - (a) the name of the project;
 - (b) the name of the association;
 - (c) a statement that the project is not a cooperative; Utah Code Page 15
 - (d) a statement indicating any portions of the project that contain condominiums governed by Chapter 8, Condominium Ownership Act;
 - (e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;
 - (f) the name of each county in which any part of the project is located;
 - (g) a legally sufficient description of the real estate included in the project;
 - (h) a description of any limited common areas and any real estate that is or is required to become common areas;
 - (i) any restriction on the alienation of a lot, including a restriction on leasing; and
 - (j)
 - (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
 - (ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to (name of trustee), with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."
- (2) A declaration may contain any other information the declarant considers appropriate, including any restriction on the use of a lot, the number of persons who may occupy a lot, or other qualifications of a person who may occupy a lot.
- (3) The location of a limited common area or real estate described in Subsection (1)(g) may be shown on a subdivision plat.

Contents of Declaration for a Condominium Association

Declarations for condominium associations in Utah must also include certain content. Utah Code Ann. 57-8-10 requires, the following content for a condominium association declaration:

- (2)
 - (a) For every condominium project, the declaration shall:
 - (i) include a description of the land or interests in real property included within the project;
 - (ii) contain a description of any buildings that states the number of storeys and basements, the number of units, the principal materials of which the building is or is to be constructed, and a description of all other significant improvements contained or to be contained in the project;
 - (iii) contain the unit number of each unit, the square footage of each unit, and any other description or information necessary to properly identify each unit;

- (iv) describe the common areas and facilities of the project; and
- (v) describe any limited common areas and facilities and state to which units the use of the common areas and facilities is reserved.
- (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall constitute a limited common area and facility appertaining to that unit exclusively, whether or not the declaration makes such a provision.
- (c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (2)(a) and (b).
- (d)
 - (i) The declaration shall include the percentage or fraction of undivided interest in the common areas and facilities appurtenant to each unit and the unit owner for all purposes, including voting, derived and allocated in accordance with Subsection 57-8-7(2).
 - (ii) If any use restrictions are to apply, the declaration shall state the purposes for which the units are intended and the use restrictions that apply.
 - (iii)
 - (A) The declaration shall include the name and address of a person to receive service of process on behalf of the project, in the cases provided by this chapter.
 - (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall maintain a place of business within, this state.
 - (iv) The declaration shall describe the method by which the declaration may be amended consistent with this chapter.
 - (v) Any further matters in connection with the property may be included in the declaration, which the person or persons executing the declaration may consider desirable, consistent with this chapter.
 - (vi) The declaration shall contain a statement of intention that this chapter applies to the property.
- (e) The initial recorded declaration shall include:
 - (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
 - (ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8-45 to (name of trustee), with power of sale, the unit and all improvements to the unit for the purpose of securing payment of assessments under the terms of the declaration."

Additional Contents of a Declaration for Condominium Association

A condominium association declaration must also include additional information if the condominium association contains convertible land, is an expandable project, is a contractible condominium, is a leasehold condominium, or if the project contains time period units.³²

General Contents of a Declaration for Owners Associations

³² These additional requirements for content are provided in Utah Code Ann. 57-8-10(3)-(7).

Some association requirements that are not statutorily required to be included in the declaration generally should be included in the declaration anyway. For example, every declaration should include: a definition for what constitutes common area, limited common area, and private property; owners' rights; the general authority and explanation of the association itself; general voting rights; maintenance and repair obligations; major use restrictions; covenants for assessments and remedies for failure to pay them (though not the specific amount of assessments, penalties, or late fees); general architectural control governance; damage and condemnation provisions; mortgagee protections; any declarant rights (including turning over control from the declarant to the owners) (though not the specific amount of an assessment), and any other important general provisions that are not likely to change very often.

Some association standards should not be in the declaration. Amending a declaration is difficult so typically the provisions of the declaration should be items that will remain relatively constant over time. Whereas details that are more likely to change should not be put in the declaration.

For example, specific monetary amounts should not usually be put in the declaration due to inflation and other factors. An owners association in 1972 might view a \$5.00 fine as a solid deterrent, but if they put that amount for fines in their declaration and could not get enough votes to amend it later, then they might have a problem in 2024 because a \$5.00 fine is hardly going to deter someone now who is making \$300.00 a night by violating the nightly rental provision.

Similarly, standards that may be subject to fads should not usually be put in the declaration. One association had a prohibition against white houses in their declaration which was drafted in 1980s. In the early 2020s white houses became very popular and there was a lot of clamor to allow white houses. The association had over 700 members and could not get enough votes to amend the provision even though 90% of the people who actually voted approved the change. Their declaration required 67% of all owners approve the amendment and too many people just did not vote.

Plat

A plat is an instrument subdividing property into lots as depicted on a map or other graphical representation of lands that a licensed professional land surveyor makes and prepares as required by law.³³ Both types of plats must be recorded.³⁴

A community association will nearly always have a plat and a condominium association will always have a plat because a plat is necessary for the subdivision of and land into lots and condominium units.³⁵

It is theoretically possible that a subdivision could be organized and dwelling units built without an association. Thus, there would be a plat, but not an "association plat" that would describe lots

³³ Utah Code Ann. 10-9a-103(49).

³⁴ Utah Code Ann. 57-8-13.

³⁵ Utah Code Ann. 10-9a-603 and Utah Code Ann. 57-8-13.

as part of that association. Afterwards, the homeowners might voluntarily organize as a community association.

Amending an owners association's plat is the most difficult document to amend because it requires amending the declaration since it would affect the units and/or common area described in the declaration. Additionally, approving a plat requires the approval of the city as well.³⁶

Bylaws

An Association's bylaws typically include the authority, obligations, procedures, and requirements for an owners association's board or management committee, meetings, voting, officers, quorum issues, and other related details. An owners association's Bylaws must be recorded in the office of the recorder of each county in which any part of the real estate included within the association is located.³⁷

If a community association has failed to record bylaws, the board has statutory authority to cure that failing by filing the bylaws as required.³⁸ No such statute authorizes a condominium association's management committee to do so. However, it would be in the best interest of the membership of a condominium association that does not have recorded bylaws to record any bylaws they do have or quickly adopt and record bylaws if they do not have unrecorded bylaws.

Contents of the Bylaws for a Community Association

Unless otherwise provided in the declaration, a community association's bylaws shall state:³⁹

- (a) the number of board members;
- (b) the title of each of the association's officers;
- (c) the manner and method of officer election by the board or, if the declaration requires, by the lot owners;
- (d)
 - (i) the board member's and officer's:
 - (A) qualifications;
 - (B) powers and duties; and
 - (C) terms of office;
 - (ii) the method for removing a board member or officer; and
 - (iii) the method for filling a board member or officer vacancy;
- (e) the powers that the board or officers may delegate to other persons or to a managing agent;
- (f) the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (g) a method for the board or lot owners to amend the bylaws, consistent with Section 16-6a-1010; and (h) subject to the provisions of the declaration

³⁶ Utah Code Ann. 10-9a-608.

³⁷ Utah Code Ann. 57-8a-216(a) and Utah Code Ann. 57-8-15.

³⁸ Utah Code Ann. 57-8a-216(b).

³⁹ Utah Code Ann. 57-8a-216.

and unless the declaration or this chapter requires that a provision appear in a declaration, any other matter that is necessary or appropriate for conducting the affairs of the association, including:

- (i) meetings;
- (ii) voting requirements; and
- (iii) quorum requirements.

Contents of the Bylaws for a Condominium Association

Interestingly, unlike in community associations, there is no required content that must be included in bylaws in a condominium association. Where the community association act states that bylaws *shall* state certain information, the Condominium Ownership Act only states that condominium association bylaws *may* include the following:

- (1) the establishment of a management committee, the number of persons constituting the committee and the method of selecting the members of the committee; the powers and duties of the management committee; and whether or not the management committee may engage the services of a manager;
- (2) the method of calling meetings of the unit owners; what percentage of the unit owners shall constitute a quorum, and be authorized to transact business;
- (3) the maintenance, repair, and replacement of the common areas and facilities and payment therefor;
- (4) the manner of collecting from the unit owners their share of the common expenses;
- (5) the designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities;
- (6) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;
- (7)
 - (a) restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners; and
 - (b) restrictions regarding the use of the units may include other prohibitions on, or allowance of, smoking tobacco products;
- (8) the percentage of votes required to amend the bylaws; and
- (9) other provisions as may be considered necessary for the administration of the property consistent with this act.

Amending the Bylaws

The threshold for amending bylaws is typically much lower than the threshold to amend a declaration. Often, the majority of the board or management committee for an owners association. For example, if the bylaws or articles of incorporation do not provide otherwise, the

bylaws may be amended by a majority of the owners association's board of directors.⁴⁰ If an owners association that is a nonprofit corporation does not have bylaws due to some oversight, the board of directors or management committee may adopt initial bylaws for the owners association.⁴¹

The majority of members of the owners association may also amend the bylaws, unless the bylaws provide otherwise, even when the bylaws may be amended by the board of directors pursuant to the Utah Revised Nonprofit Act.⁴² The declaration may also put restrictions on the amendment threshold for bylaws since the declaration controls over the bylaws pursuant to the and the Condominium Ownership Act and Community Association Act, which control over the Utah Revised Nonprofit Act as they relate to owners associations.

Rules

An owners association's rules are usually its most specific governing documents about the operation and maintenance of the property. They tend to change the most with the changing of board members due both to the fact that rules are usually the easiest governing document to change and because they tend to be specific so people tend to have different opinions about them.

Adopting or Amending Rules

Owners do not vote to amend owners associations rules, unless expressly required in the governing documents. Instead, an owners association's rules are adopted and amended by the board of a community association⁴³ and the management committee of a condominium association.⁴⁴

A community association must follow certain procedural requirements before its board can adopt or amend its rules. That process is as follows:⁴⁵

- (a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is considering a change to a rule or design criterion;
- (b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection (1)(a); and
- (c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board meeting.

⁴⁰ Utah Code Ann. 16-6a-1010(1).

⁴¹ Utah Code Ann. 16-6a-206(1).

⁴² Utah Code Ann. 16-6a-1010(2).

⁴³ Utah Code Ann. 57-8a-217(1)(a).

⁴⁴ Utah Code Ann. 57-8-3(26).

⁴⁵ Utah Code Ann. 57-8a-217(2).

So long as the board follows this process, the majority of the board decides on any change to the rules (including design criteria).

The Condominium Ownership Act does not require a management committee to follow any such procedural requirements and so may simply adopt or amend rules by whatever methods it may normally take action, usually a majority vote. A condominium association does not even have to vote for the rules adoption or amendment in a meeting – it could be done if the management committee follows the required steps to take action outside of a meeting. A community association can only adopt or amend rules in a board meeting.

Content of Rules for an Owners Association

Since it is so much easier to change rules, the rules are the best place to put restrictions that may change over time, like design elements that are subject to fad or monetary amounts that may be affected by inflation. Also, since the rules are the lowest in the governing document hierarchy, rules are usually used to address matters that are not addressed in the declaration or bylaws or to provide specification for matters only addressed generally in the declaration or bylaws.

For example, if the declaration included a requirement that “owners keep their yard well maintained,” the rules might provide clarity on what that means by requiring that “an owner must remove weeds that exceed four inches or that become so numerous as to be unsightly.”

Design Criteria

Design criteria, which are often called design guidelines, design rules, design standards, architectural guidelines, architectural rules, architectural standards, or other similar names, are standards and requirements related to building and sometimes remodeling a dwelling unit in a community association and more rarely in a condominium association. Arguably, design criteria are a type of rule. Sometimes items that would normally be in design criteria are included as part of the rules. The Community Association Act certainly treats design criteria and rules the same in terms of how they may both be adopted and amended.⁴⁶ However, the statutory limitations that are imposed on rules are not all expressly imposed on design criteria so there is some room to argue that there is at least a technical distinction.⁴⁷

Design criteria are less likely to be an issue in condominium associations. Design criteria normally apply to the exterior of a dwelling unit or landscaping that belongs to an owner or that an owner is responsible to maintain. Since condominium unit owners do not usually own the exterior of their units or any other property outside the interior walls of their units, design criteria are less relevant. That said, some condominium associations include design criteria to regulate the remodeling process of the interior of a condominium unit to control the disturbances such activities may cause other residents in the condominium association.

The only two references in the Condominium Ownership Act to design criteria are that a condominium association may not establish design criteria limiting the political signs that are

⁴⁶ Utah Code Ann. 57-8a-217.

⁴⁷ Utah Code Ann. 57-8a-218.

permitted in a condominium association⁴⁸ and that the condominium association may impose reasonable design criteria on electric vehicle charging systems.⁴⁹ Both of these statutes match similar statutes in the Community Association Act.

⁴⁸ Utah Code Ann. 57-8-8.1(8).

⁴⁹ Utah Code Ann. 57-8-8.2(3)(c)(i).