

CCR Items of Note

- Architectural control
 - Aesthetics
 - Paint / Materials
- Common areas
- Building restrictions
- Parking restrictions
- Pet restrictions
- Garbage cans
- Rental restrictions
- Easements
- Party walls
- Do the CCR's expire?
- Plat Notes

HOA/COA Enforcement Practices

- Notice of violation
- Follow up
- Hearing
 - Loss of Privileges
 - Fines
- Lien
- Lawsuit

Bylaw Items of Note

- Structure of leadership
- Elections
- Term limitations
- Voting and quorum requirements
- Frequency of meetings
- Other duties & responsibilities

HOA/COA Financials

- Balance Sheet
- Income/Expense Statements
- Cash Flow
- Past/Present/Future and/or planned assessments
- Insurance cost/coverage
- Cost of service providers
- Monthly Dues
- Transfer Fees
- Registration of Business Entity
- Bank/Account audit practices
- Registration with Department of Commerce
 - HOA Registry

HOA/COA Tools for Agents

- Utah HOA Registry: <https://secure.utah.gov/hoa/index.html>
- Title Company Prior/Ongoing Files
 - Contact Information & Prior Amounts owed.
- Utah Business Entity Search: <https://secure.utah.gov/bes/index.html>
- Plat Map
 - Property Type, Additional Reservations, Conditions, Covenants & Restrictions, Easements, Common Area, Et
- Overhead Maps: <https://parcels.utah.gov/>
- Prior Deeds, Recorded CCR's

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Provo

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Bountiful

Phone (801) 295-7676

Salt Lake

Phone (801) 433-0506

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Lehi

Phone (385) 336-8390

St. George

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Distinctions between Parcels, Lots & Units

10-9a-103. Definitions.

Parcels: "Parcel" means any real property that is not a lot. *(Including Metes & Bounds or City Survey)*

Lot: "Lot" means a tract of land, regardless of any label, that is created by and shown on a subdivision plat that has been recorded in the office of the county recorder. *Subdivision, Cluster Subdivision, Planned Unit Development (PUD), Planned Residential Unit Development (PRUD)*

Lots are governed by the Community Association (Act 57-8a-102)

57-8-3. Definitions

Units: (40) (a) "Unit" means a separate part of the property intended for any type of independent use, which is created by the recording of a declaration and a condominium plat that describes the unit boundaries. *(Condominiums)*

(11) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit.

Condominium units are governed by 57-8-3 (5) Condominium Association Act

Common Area Definitions

Common Area Definition from Community Association Act (57-8a-102)

(5) "Common areas" means property that the association: (a) owns; (b) maintains; (c) repairs; or (d) administers.

Common area definition from the Condominium Association Act 57-8-3

(5) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:

- (a) the land included within the condominium project, whether leasehold or in fee simple; (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;
- (c) the basements, yards, gardens, parking areas, and storage spaces; (d) the premises for lodging of janitors or persons in charge of the property; (e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating; (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use; (g) such community and commercial facilities as may be provided for in the declaration; and (h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

“Townhome” is a building style, not a property type

Townhomes are considered a type of building and like a twin home, rambler or split entry, townhomes are not a property type. When a development has “townhome” in its name, it was likely created as a subdivision, PUD or Condominium.

Determining the real property type

Discerning a property type can be difficult when the legal description doesn't indicate the property type. Here are a few ways to track down the property type.

1. Read the legal description on the last recorded vesting deed
2. Review & read the dedicated/official plat. Often the title of the development name will reveal the property type. If not, review the narrative section and/or the dedication sections.
3. Often, the property type can be discovered by reading the CCR's and bylaws in the recitals and definitions sections.

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REPC:

4.3 (c) HOA/Other Entity Fees Due Upon Change of Ownership. Some HOA's, special improvement districts and/or other specially planned areas, under their governing documents charge a fee that is due to such entity as a result of the transfer of title to the Property from Seller to Buyer. Such fees are sometimes referred to as transfer fees, community enhancement fees, HOA reinvestment fees, etc. (collectively referred to in this section as "change of ownership fees"). Regardless of how the change of ownership fee is titled in the applicable governing documents, if a change of ownership fee is due upon the transfer of title to the Property from Seller to Buyer, that change of ownership fee shall, at Settlement, be paid for by: Seller Buyer Split Equally Between Buyer and Seller Other (explain) _____.

The provisions of this Section 4.3(c) shall survive Closing.

7. (d) a copy of any restrictive covenants (CC&R's), rules and regulations affecting the Property;

(e) a copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;

Seller Disclosures Form 10

22. HOMEOWNER'S ASSOCIATION

A is the property part of a condominium or other homeowner's association (HOA)?

i. If "Yes", to your knowledge, is the Property part of multiple HOAs?

B. Please describe the HOA payment amount, frequency, and what utilities and/or services are included: _____

C. Does the HOA(s) levy dues or assessments for maintenance of common areas and/or other common expenses?

D. Some HOAs, special improvement districts and/or other specially planned areas, under their governing documents, charge a fee that is due to such entity as a result of the transfer of title to the Property from _____ Seller to Buyer. Such change of ownership fees are sometimes referred to as transfer fees, community enhancement fees, HOA reinvestment fees, etc. Regardless of what the change of ownership fee is titled, to your knowledge, does the HOA charge such a fee?

i. If "Yes", please describe, to your knowledge, the HOA change of ownership amount: _____

E. For questions regarding the HOA(s), including past, present or future dues or assessments, or regarding financial statements, bylaws, HOA meetings and minutes, information may be obtained from the following: (Name, Phone, Website, Email)

F. Are you aware if the HOA(s) has been involved any past or ongoing lawsuits or litigation?

i. If "Yes", please describe, to your knowledge, any information regarding the timing and nature of the lawsuit(s): _____

24. UNPAID ASSESSMENTS

A. Are you aware of any HOA, municipal, special improvement district, PID or other assessments that are presently owing against the Property?

i. If "Yes", please describe, to your knowledge, the nature and amount owed: _____

B. Are you aware of any potential HOA, municipal, special improvement district or PID assessments that may be pending approval?

i. If "Yes", please describe, to your knowledge, the pending special assessments that have not yet been approved:

C. Are you aware of any HOA, municipal, special improvement district or PID assessments that have been approved but not yet levied against the Property?

i. If "Yes", please describe, to your knowledge, the nature and amount of any such approved, but not yet levied, assessments: _____

25. INSURANCE

B. If the Property is part of a condominium or other homeowner's association, do you know if the HOA has filed any insurance claims for loss or damage to any portion of the development?

i. If "Yes", please describe, to your knowledge, the nature of any such claims:

Buyer Due Diligence Checklist (Form 12)

9. TITLE ISSUES/HOMEOWNERS ASSOCIATION: Buyer is advised that title insurance companies offer a variety of title insurance policies that provide different levels of coverage. Buyer is advised to carefully review with legal counsel and with the title insurer: (a) the available title insurance coverage; (b) the contents of any Commitment for Title Insurance on a property; and (c) the contents of all documents affecting a property that are a matter of public record, including, but not limited to, any restrictive covenants (CC&R's). If a property is part of a Condominium or other Homeowners Association ("HOA"), Buyer is advised to consult directly with the HOA regarding all HOA matters that may affect the property, including, but not limited to, existing and proposed budgets, financial statements, present and proposed assessments, dues, fees, reserve accounts, rules, and meeting minutes.

What Information is Required before a Sale to an Independent Third Party?

from <https://secure.utah.gov/hoa/overview/sale.html>

(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.

Link to required educational materials (PDF): <https://secure.utah.gov/hoa/docs/coa-hoa-information.pdf>

Homeowner's rights in an HOA or COA

Summary from <https://secure.utah.gov/hoa/overview/rights.html>

- 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.

An Overview of Homeowner Associations in Utah

(Summary from <https://secure.utah.gov/hoa/overview/index.html>)

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.

HOA Registration with Department of Commerce - 57-8a-105 & 57-8-13.1

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department. (Department of Commerce)

(2) (b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

What are HOA & COA Governing Documents? 57-8a-102 (10) & 57-8-3 (20)

(a) "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.

(b) "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.

HOA & COA Communication Requirements

Summary from: <https://secure.utah.gov/hoa/docs/coa-hoa-information.pdf>

1. 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
2. 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.
3. 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
4. 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

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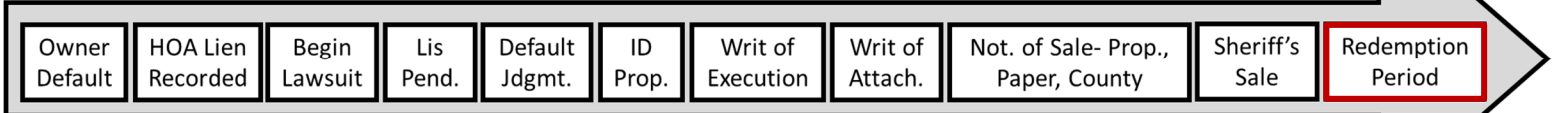
St. George

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HOA Lien Foreclosure - 2 Tracks – Judicial (Sheriff Sale), Non-Judicial (Trustee’s Sale)

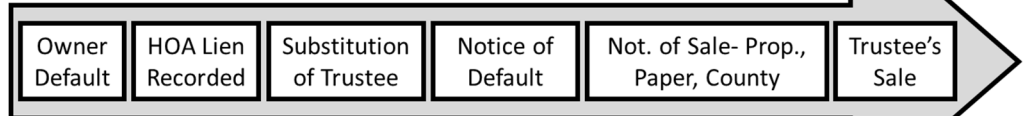
Following an owner’s default & HOA Lien recording, an association has 2 options for foreclosure

Judicial foreclosure is how a creditor forecloses on a mortgages, construction service lien, & judgment through the district court. HOA liens & deeds of trust can be foreclosed judicially. Sometimes Judicial foreclosure is used to remove clouds on title. Judicial foreclosure concludes with a sheriff’s sale & a 6-month redemption period.



Foreclosure includes a requirement for a 6-month redemption period after the Sheriff’s Sale.

Trustee sales are traditionally used for foreclosing deeds of trust and are favored by lenders because of a shorter timeline, simpler notice requirements and the advantages of the 3rd party (trustee). A trustee sale option is available if an association appoints a trustee with power of sale and satisfies notice requirement outlined in the Utah Code. In general, when proper notice is given, the process from recording a notice of default and conducting a trustee sale takes less time and is less expensive.



120 Days from NOD to Trustee Sale (no redemption period)

Race Restrictions – Illegal, wrong, & cancellable (From Utah Code 57-21-6.1)

“(2) Any provision in a previously recorded written instrument relating to real property that expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity is void.”

(3) It is a discriminatory housing practice to enforce a provision described in Subsection (2).

(4) Except as provided in Subsection (5), **a person with a fee simple interest in the real property** that is subject to the recorded written instrument described in Subsection (2) **may record with the county recorder a modification document** on the real property in the following form: "Any provision in a previously recorded written instrument that expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity is void under Utah Code Section 57-21-6.1."

(5) (a) If a written instrument described in Subsection (2) is a governing document, an association may, in accordance with this section, amend the association's governing documents to remove a provision described in Subsection (2).

(b) (i) If an owner believes an association's governing documents include a provision described in Subsection (2), the owner may submit a written request to remove the provision. (ii) Within 90 days after the day on which the board receives a written request, the board:

(A) shall investigate a claim that the association's governing documents include a provision described in Subsection (2); and (B) if the board determines the association's governing documents include a provision described in Subsection (2), may remove the provision from the governing documents by amending the association's governing documents through a majority vote of the board, regardless of any contrary provision in the association's governing documents. (c) Any association officer may execute the amendment to remove the provision described in Subsection (2) from the governing documents. (d) Notwithstanding any contrary provision in the association's governing documents, an amendment under this subsection does not require approval of the association's members.

(6) A provision in a recorded written instrument that is void under this section does not affect the validity of the remainder of the previously recorded written instrument.

(7) An owner who records or causes to be recorded a modification document under Subsection (4) that contains modifications not authorized by this section is solely liable for the recordation.

(8) A county recorder may not charge a fee for recording a modification document under this section.

Summary from Condominium Ownership Act 57-8-16 - Contents of Bylaws.

The bylaws may provide for 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 therefore;
- (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.

Summary from Community Association 57-8a-216 - Bylaws

- (1) (a) No later than the date of the first lot sale, an association shall file its bylaws for recording in the office of the recorder of each county in which any part of the real estate included within the association is located. (b) If an association fails to file bylaws for recording within the time specified in Subsection (1)(a), the board may file the bylaws for recording as provided in Subsection (1)(a).
- (2) Unless otherwise provided in the declaration, an association's bylaws shall state: (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 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.
- (3) An association shall file any amended bylaws for recording in the same manner as the association is required to file the initial bylaws for recording under Subsection (1).