

CASE STUDY

SB 167

HOAs Benefit from UCIOA Light

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Introduction Senate Bill 167 is the result of a four year effort by the Utah CAI Legislative Action Committee (the LAC) to work with industry leaders from the HOA community, title industry, developers, contractors, realtors, county recorders, bankers and more. The original intent was to adopt a Utah Common Interest Ownership Act (UCIOA) that would, under a single act, govern all condominiums, cooperatives and planned communities. However, as part of the “give and take” of the legislative process the all encompassing nature of UCIOA was, for the present, pared down to amendments to the current Condominium and Community Association Acts. The pared down version of UCIOA was affectionately dubbed UCIOA LIGHT. Even pared down, UCIOA LIGHT was the most comprehensive amendment to the Condominium and Community Association Acts undertaken and adopted by the Legislature – a real victory and milestone for the HOA community.

Condominiums and Planned Developments

The following are highlights from SB 167 which apply to both condominiums and planned developments and, except as stated otherwise, apply to associations formed after May 10, 2011 unless opted into by existing associations:

- **Notice:** Fair and reasonable notice has been expanded to include certain electronic communications, provided such are permitted under the association’s declaration, bylaws or rules. Though a unit owner may require notice be via mail only.
- **Lien Priority:** Lien priority is established by the date the declaration is recorded, rather than by a later filing of a lien; except liens for first and second mortgages and taxes have priority.
- **Non-judicial foreclosure:** The association must give owners 30 days advance notice before commencing a non-judicial foreclosure. The owners then have 15 days to “opt in” to a judicial foreclosure. Additionally, to resolve title insurers’ concerns related to non-judicial foreclosures, declarations must now designate the unit or lot as security for the assessment obligation and appointment of a qualifying trustee with power to sell the property if the assessment is not paid.

Planned Developments (non-condos) The following are highlights from SB 167 which apply to planned developments and, except as stated otherwise, apply to associations formed after May 10, 2011 unless opted into by an existing association:

- **Board Enforcement Actions:** A Board can now apply good

business judgment to determine whether to exercise the association’s powers to impose sanctions or pursue legal action for certain violations of governing documents. Any such action, or non-action, must be undertaken in good faith and without a conflict of interest.

- **Budget:** At least annually the Board must adopt and present a budget. A budget may be disapproved within 45 days by the vote of at least 51% of the members at a special meeting called by the members. However, members have no right to disapprove a budget from a developer-controlled Board.
- **Bylaws:** Bylaws, including amendments, must be recorded. This will end the problem of locating Bylaws or determining which of several sets of Bylaws are applicable. Certain requirements for Bylaws are also set forth.
- **Association Rules:** To adopt or amend rules and design criteria, the Board must give at least 15 days notice to members and provide an open forum at the board meeting to discuss the proposal.



Like a budget, the rule or design criterion may be disapproved, but the period is 60 rather than 45 days. During the period of developer control, a developer may also disapprove a rule.

- **Equal Treatment:** Though it makes common sense, it is now clear that a rule may not treat those similarly situated differently. Rules may, however, regulate the time, place and manner of certain activities of the members. Of particular benefit, a rule may prohibit smoking in attached dwellings where there is potential for smoke to enter another owner’s dwelling or the common areas.
- **Lender Approval:** *This section applies to all associations created before, on or after May 10, 2011.* If a declaration requires lender consent, such consent is presumed if a response is not received within 60 days after the association sends certified written notice.

• **Reincorporation:** An association whose corporate status is terminated or dissolved without the possibility of reinstatement may be reincorporated by the acting directors re-filing articles of incorporation that are substantially similar to the original articles.

As to the future, work on the more comprehensive UCIOA is still ongoing and the LAC is, for the first time, a participant with the Utah League of Cities, the Property Rights Coalition, the Utah Association of Realtors, the Utah Home Builders Association and others in a legislation “task force,” which task force collaborates on *all* legislation involving development of property within the State.