senate bill 218

Changes to the Utah Revised Nonprofit Corporation Act

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Utah associations frequently refer to the Condominium Ownership Act and the Community Association Act for legislative guidance. Often forgotten by associations is the Utah Revised Nonprofit Corporation Act, which applies to all associations that are nonprofit corporations under State law. Senate Bill 218 revises many sections within the Utah Revised Nonprofit Corporation Act, but the changes are subtle. This article will briefly highlight the more major revisions. Each association should speak with its legal counsel for more specific information pertaining to SB 218.

The general purpose of SB 218 was to facilitate electronic communications – particularly communications via text message and email which are used so frequently in today's society. Under SB 218, association notices and submissions by text message and email are acceptable under more scenarios. However, deference continues to be given to an association's bylaws and/or articles of incorporation so if these documents require notices to be mailed or personally delivered then an association should comply unless those requirements are duly amended to allow notices to be sent via text message and/or email.

SB 218 also clarifies that a substitute or replacement proxy may be sent by text message or email to the association. The association is required to accept any substitute proxy received by text message or email unless it can reasonably question its validity.

Many association boards conduct business through email and text message. The reality is that most of this business is not being done properly, which subjects the association to liability. SB 218 includes some procedural changes for boards conducting business by text message or email. The bill is designed to make this process easier, but associations should confer with legal counsel to ensure that they are in compliance.

From the perspective of the Utah LAC, SB 218 will be known more for what it was unable to accomplish. SB218 was originally written to eliminate written ballots in conjunction with association meetings. This would have required drastic changes to how many associations conduct elections and gather votes. The Utah LAC quickly jumped on the bill. Visits were made to the Capitol to speak with the legislative sponsors. The drafting attorney was also contacted, and ultimately an agreement was reached, and an association's ability to use written ballots in conjunction with association meetings was preserved. This is one example of how the Utah LAC serves and protects Utah HOAs.

house bill 98

Rules, Rentals, Fines, and Fine Appeals

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The focus of this article is the fine and warning provisions of House Bill 98. This part of the bill specifically lays out the requirements for boards to properly fine an owner in violation of the governing documents. Associations should consider having their legal counsel review the fine provisions in their governing documents to make sure they comply with the new requirements.

The changes made to the statute offer clarity when it comes to continuing fines verses reoccurring fines. Before a fine can assessed, a board must give the violator written notice describing the violation which must include a citation to the rule or provision that the conduct violates. The warning must also explain that the board has the right to assess fines according to the governing documents. There must be a 48 hour period for the violation to cure, if it is a continuing violation. If, after this time, the violation has not been cured then a fine can be issued. A recurring violation is when an owner commits a violation within a year after receiving a fine or a warning letter for that same type of violation. The total limit for fines in a condominium association is $500 per month for violation of each rule, covenant, or restriction. It is important to note that this $500 cap does not apply for community associations, although fines must be reasonable and otherwise comply with the statute.

Fines must still be imposed under a schedule. The new wording in the Community Association Act does away with the prior provision that fines could be imposed in an amount equal to the seriousness and nature of the violation. It now requires, instead, that associations have a fine schedule in their governing documents detailing the amount of fines. In short, no fine schedule, no fines!

An owner who is assessed a fine can request an informal hearing before the board to dispute the fine within thirty (30) days after they receive notice of the fine. The new statute makes it possible for the owner to attend not only in person, but by other means, including via video or telephone conferencing.

The notice and assessment of fines can be delegated to the association's manager; however, the board may not delegate its rights and responsibilities to a manager if an owner requests an informal hearing before them.