



2021 Legislative Summary

By Michael Miller, Attorney, Miller Harrison LLC
LAC Subcommittee Member

Many hours were spent tracking, drafting, supporting, and opposing legislation. It was a busy session. Ultimately, there were four (4) legislative bills that were adopted that affect the community association industry. Each is discussed below. You will also see some information on the new towing regulations that went into effect in January 2021.

As a reminder, Utah condominium projects are subject to the Utah Condominium Ownership Act located at U.C.A. §57-8-1 et seq (“Condo Act”). All other non-condominium projects that are governed by an HOA are subject to the Utah Community Association Act located at U.C.A. §57-8a-101 et seq (“PUD Act”). In addition, any type of HOA that is incorporated as a nonprofit corporation is also subject to the Utah Revised Nonprofit Corporation Act located at U.C.A. §16-6a-101 et seq.

SB 75 – Emergency Use of Reserve Funds

This bill impacts both condominium and non-condominium associations. The full text of this bill can be found at the following link: <https://le.utah.gov/~2021/bills/static/SB0075.html>

The past year has been unlike any other as we have all lived through a global pandemic. The pandemic certainly played a role in the creation and adoption of SB 75, which allows an HOA to utilize reserve funds for budget shortfalls during a state of emergency.

Prior to SB 75, both the Condo Act and PUD Act prohibited an HOA from using reserve funds for daily operating expenses or for any other purpose other than the maintenance, repair, and replacement of common areas UNLESS at least 51% of the HOA’s voting interests approved the matter. Under SB 75, an HOA can now use reserve funds for shortfalls in the general budget IF the shortfall occurs during a declared “state of emergency” that “extends to the entire state” of Utah AND more than 10% of the HOA’s members that are not board members are delinquent in the payment of assessments *as a result of the events giving rise to the state of emergency*.

Thankfully, it seems that most HOAs have been able to weather the storm of the pandemic. However, for those HOAs whose members have been more severely impacted and for any future state of an emergency that impacts a particular HOA, SB 75 will give that HOA more financial flexibility.

HB 82 – Single Family Housing Modifications and Accessory Dwelling Units

HB 82 only applies to PUD associations with detached homes. Therefore, condominium and townhome projects are not impacted by HB 82. Here is a link to the full version of the bill: <https://le.utah.gov/~2021/bills/static/HB0082.html>

This is the most controversial bill among the four that will be discussed herein. HB 82 is the legislature's attempt to deal with Utah's soaring housing prices that are being driven in large part due to a housing supply shortage and high demand for housing.

In summation, HB 82 prohibits a municipality and an HOA from restricting a detached homeowner from renting a portion of the home's existing footprint to a tenant(s). HB 82 refers to this available leasing area as an "internal accessory dwelling unit". An internal accessory dwelling unit (referred to herein as an "ADU") is an accessory dwelling unit created within the footprint of a primary dwelling for the purpose of offering a long term rental of at least 30 consecutive days or longer. The most typical ADU will be a basement apartment. However, it could apply as well to a garage that is converted to livable space.

Any homeowner that desires to create and lease an ADU from within his/her primary dwelling must comply with five (5) requirements. First, the dwelling must be a detached home. Second, the proposed ADU must be within the existing footprint of the home. Third, the owner of the home must use the home as his/her primary residence. Fourth, the ADU rental may only be rented for a term of at least 30 days or more. Fifth, the ADU cannot violate local land use ordinance, building code, health code, or fire code. If the following 5 conditions are met, then the HOA will be required to allow the rental of an ADU even if the HOA has a rental restriction that would otherwise prohibit it.

The statute authorizes municipalities to adopt and impose conditions that would need to be met before the municipality would be required to approve the ADU. Some of these conditions include requiring additional parking spaces to be added to the lot; prohibiting the ADU on lots that are 6,000 square feet or less; and requiring a permit to use the ADU. However, HOAs were not afforded the same authority to impose restrictions and regulations. As a result, it will be important for your HOA to work with your local municipality in having the municipality adopt restrictions and regulations that would help relieve your HOA's concerns. You also need to ensure that any municipal regulations would then apply to your community.

Notwithstanding the foregoing, the HOA can continue to enforce other use restrictions that could impact ADUs. These include, parking regulations, architectural controls, noise and nuisance policies, and so forth.

Architectural controls will serve an important role for an HOA. HB 82 specifically states that an HOA cannot by rule prohibit an owner from "constructing" an ADU. Implied is the HOA's ability to restrict the "construction" of the ADU through architectural controls within the CC&Rs. Therefore, while an HOA cannot prohibit the rental of an ADU if the above-mentioned 5 factors are met; the HOA may be able to prohibit the construction of some ADU types if the construction activity would

violate architectural controls that are specifically provided in the CC&Rs. For example, if the HOA's CC&Rs state that no modifications can be made to a garage that would allow it to be used as living space or that would prevent it from being used as a garage, then such provision may be enforceable. You should speak with your HOA's legal counsel for further discussion on this issue.

Finally, some HOAs have expressed concerns about HB 82 increasing the usage (and thus the operating expenses) of common amenities like pools, clubhouses, and exercise rooms. Under certain circumstances, an HOA can charge an additional fee if common amenities are being used by both an owner of a home and the tenants of the same home. If this additional fee is of interest to your HOA, you should discuss this further with legal counsel.

HB 82 is a 38 page bill so there are other aspects to HB 82 that are not covered above. However, the foregoing summary highlights the most common issues that the community association industry will likely encounter.

SB 31 – Security Cameras

SB 31 applies to both condominiums and PUDs. Here is a link to the full text of the bill: <https://le.utah.gov/~2021/bills/static/SB0031.html>

SB 31 prohibits an HOA from adopting rules that would not allow an owner to install a personal security camera immediately adjacent to the entryway, window, or other outside entry point of the owner's residence. SB 31 does however prohibit an owner from installing a personal security camera in a common area that is not physically connected to the owner's residence.

Here are a few items for your HOA to consider. First, SB 31 seems to only apply to rules. Accordingly, if the HOA has security camera prohibitions within the covenants (CC&Rs), then such are likely to remain enforceable. Secondly, some HOAs that maintain the exterior portions of their residences have expressed concerns that an owner's installation of a security camera could impair the weather-proofing of the building and cause resultant damage and increase maintenance costs.

You should speak with your HOA's legal counsel on options the HOA may have to address these concerns.

HB 374 – Restrictive Covenant Amendments

Under Utah and federal law, covenants cannot discriminate against individuals or provide any preferential treatment to individuals that is based on race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, gender identity, and age (unless the HOA is a legally recognized senior community under the Housing for Older Persons Act). At times, we find old CC&Rs that contain provisions that blatantly discriminate against others based on any of the foregoing criteria. HB 374 was drafted to deal with this issue. Here is a full link to the bill: <https://le.utah.gov/~2021/bills/static/HB0374.html>

Under HB 374, if an owner within an HOA believes that the HOA's CC&Rs contain discriminatory language, they may submit such information to the HOA Board who then has 90 days to investigate the applicable CC&R provision. If the Board determines that the provision is discriminatory then

the Board may unilaterally (without vote of the owners) through a majority vote of the Board prepare and record an amendment to strike the discriminatory language from the CC&Rs.

Thankfully, it is extremely rare in Utah to encounter prohibited discriminatory language in CC&Rs. However, HB 374 now provides an easy tool for an HOA Board to correct and remove such provisions.

New Towing Regulations

In January 2021, the state’s new towing regulations went into effect that pertain to community associations. See U.C.A. §72-9-603 and 604. As you know, parking is a very common “hot button” issue for HOAs as most communities have a shortage of parking spaces. I don’t believe I have ever heard an HOA complain that they have too many parking spaces.

Under the revised towing statute, an HOA that tows vehicles parked in violation of the parking rules is required to use specific signs, with specific sizes, and specific colors and these signs are required to be placed in certain locations in your community. The type of sign(s) your HOA is required to use and post depends on your towing policy and your agreement with the towing company. Most towing companies have worked with their HOA clients in implementing these new laws and providing appropriate signage. If you have any questions or would like more information on the signage, you should contact your HOA’s legal counsel.

For an HOA that is not compliant with signage requirements under the revised statute, the HOA may still request a towing company to remove a vehicle parked in violation of the parking rules from the HOA private property if the HOA affixes a written notice to the vehicle at least 24 hours before requesting the vehicle to be towed. The following is the State’s sample of a notice that complies with the statute’s requirements:



_____ indicate the exact time when the written notice is affixed to the vehicle, vessel, or outboard motor

_____ warn the owner of the vehicle, vessel, or outboard motor that the vehicle, vessel, or outboard motor will be towed from the property if it is not removed within 24 hours

_____ be at least four inches tall and four inches wide

_____ be affixed to the vehicle, vessel, or outboard motor at a conspicuous location on the driver's side window of the vehicle, vessel, or outboard motor

Conclusion

This concludes the legislative summary highlighting the major points of this year's legislative changes for your convenience and understanding. HB 82 officially goes into effect in October so HOAs have a few months to prepare and adapt. The other 3 bills from the 2021 legislative session will likely go into effect sometime in May. The revised towing statute went into effect in January 2021.