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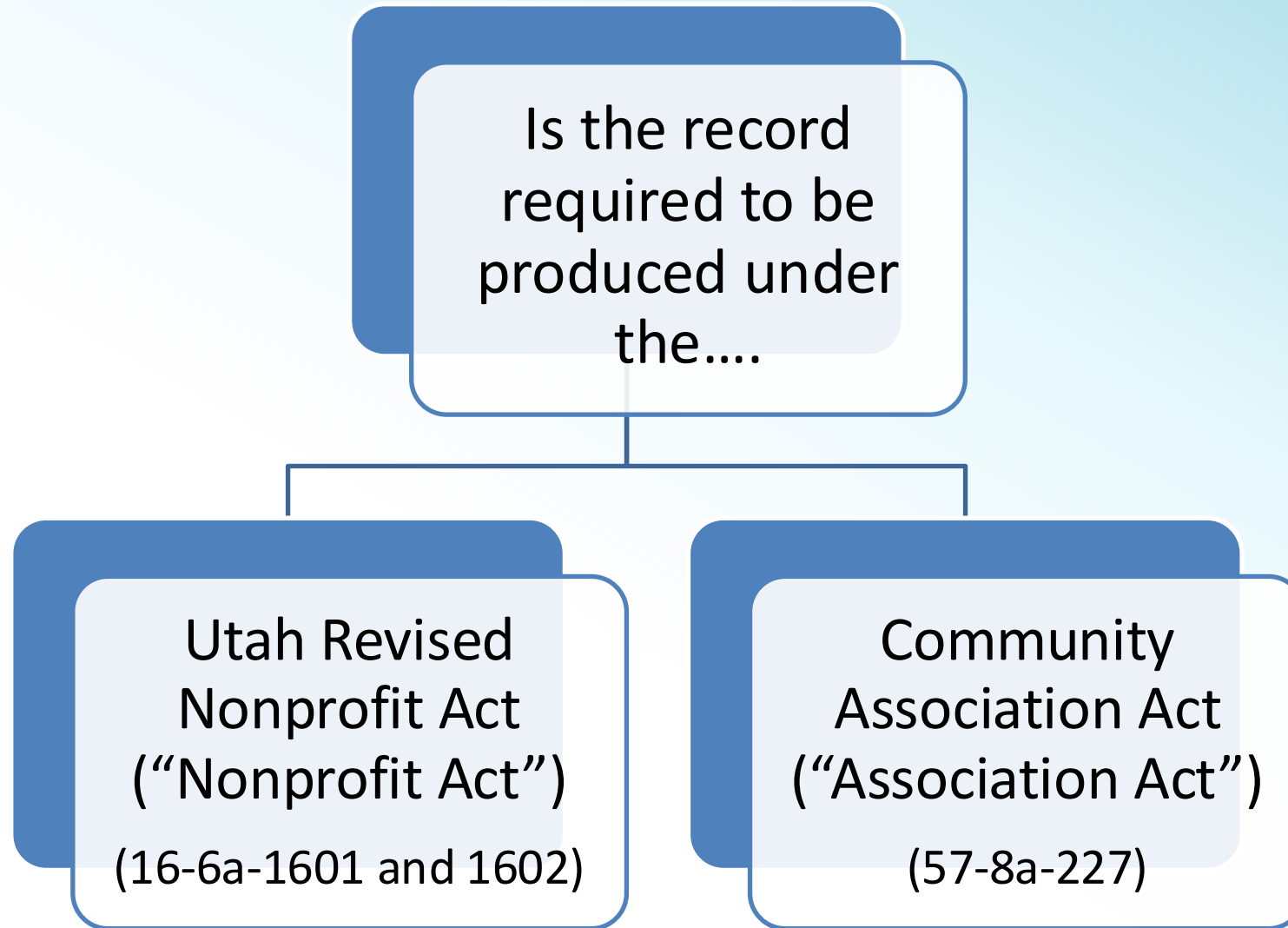
Association Records

What is a “record” of
the Association?



Record
Requests

(2) Statutory Requirements

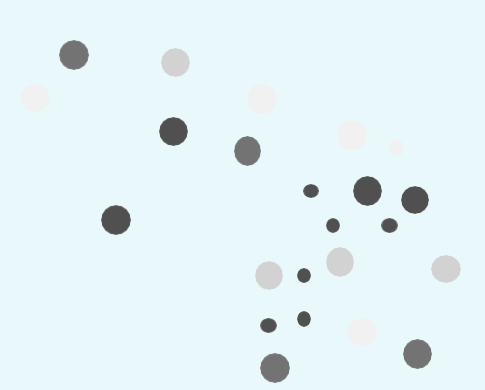


Additional requirement...

57-8-17; 57-8a-227. Records -- Availability for examination (continued):

(2) (a) In addition to the requirements described in Subsection (1), an association shall:

- (i) **make documents available to lot owners in accordance with the association's governing documents; and**



Governing Documents

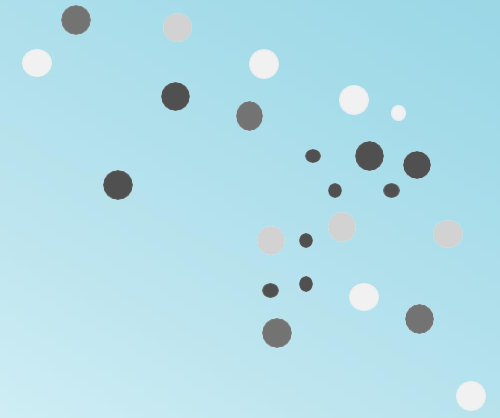
What is a “governing document”
of the Association?

Governing Documents

57-8-3(20); 57-8a-102(11) Definitions

- (11) (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.

Records Availability Under Association's Governing Documents



- Can the Association's governing documents be more restrictive than the statute regarding availability of corporate/association records?
- Can Association's governing documents be more expansive than the statute regarding availability of corporate/association records?

Websites

What records are required to be kept on an association's website?

Records Available on Website

57-8-17; 57-8a-227. Records -- Availability for examination (continued):

(2) (a) In addition to the requirements described in Subsection (1), an association shall...

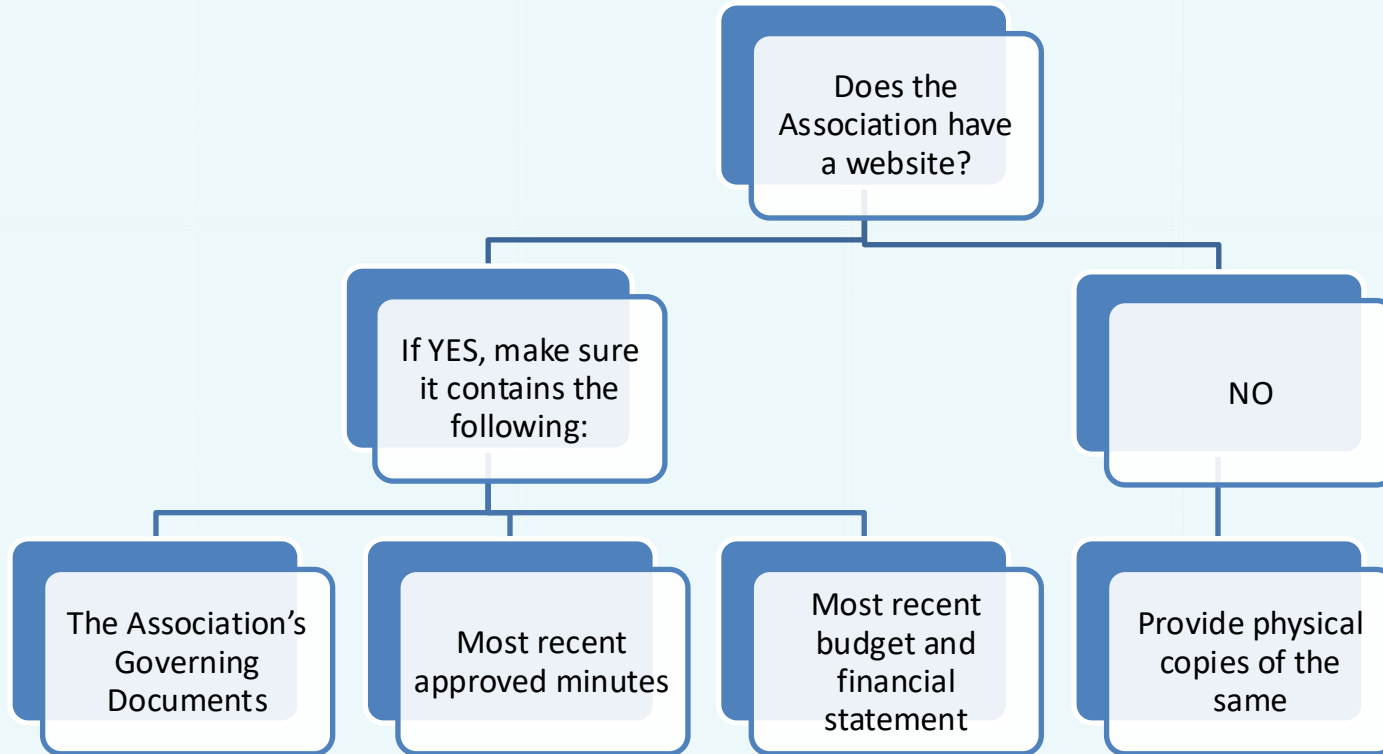
(ii) (A) **if** the association has an active website, make the documents described in Subsections (1)(a)(ii)(A) through (C) available to lot owners, free of charge, through the website; or

(B) if the association does not have an active website, make physical copies of the documents described in Subsections (1)(a)(ii)(A) through (C) available to lot owners during regular business hours at the association's address registered with the Department of Commerce under Section 57-8a-105.



Records Available on Website

57-8-17; 57-8a-227. Records -- Availability for examination (continued):



Providing Records

Redactions

57-8-17; 57-8a-227

(1)(b) An association of unit owners may **redact** the following information from any document the association of unit owners produces for inspection or copying:

- (i) a **Social Security number**;
- (ii) a **bank account number**; or
- (iii) any communication subject to **attorney-client privilege**.

Requirements for Record Request

What is required for a member to obtain records from an association?

Records Request - Required Elements

Utah Code § § 57-8-17(3); 57-8a-227(3)

In a written request to inspect or copy documents:

(a) a lot owner shall include:

(i) the association's name;

(ii) the lot owner's name;

(iii) the lot owner's property address;

(iv) the lot owner's email address;

(v) a description of the documents requested; and

(vi) any election or request to inspect or to receive copies described in Subsection 3(b)

*Can opt to inspect, copy, or request that the documents be emailed.

*Must be allowed to bring necessary imaging equipment.

Records Request - Required Elements

Utah Code § 16-6a-1602

(3) A director or member may inspect and copy the records described in [1601 of the Nonprofit Act] (1) and (2) **only if**:

(a) the demand is made:

(i) in **good faith**; and

(ii) for a **proper purpose**;

(b) the director or member **describes with reasonable particularity the purpose and the records** the director or member desires to inspect; and

(c) the records are **directly connected** with the described purpose.

**[“Proper purpose” means a purpose reasonably related to the demanding member’s interest as a member.]*

Costs to Requesting Member

Records Request – Cost to Owner

Utah Code § § 57-8-17(4); 57-8a-227(4)

- (a) An association shall comply with a request described in Subsection (3).
- (b) If an association produces the copies or electronic scans:
 - (i) the copies or electronic scans shall be legible and accurate; and
 - (ii) the lot owner shall pay the association the reasonable cost of the copies or electronic scans and for time spent meeting with the lot owner, which may not exceed:
 - (A) the actual cost that the association paid to a recognized third party duplicating service to make the copies or electronic scans; or
 - (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's time.
- (c) If a lot owner requests a recognized third party duplicating service make the copies or electronic scans:
 - (i) the association shall arrange for the delivery and pick up of the original documents; and
 - (ii) the lot owner shall pay the duplicating service directly.
- (d) If a lot owner requests to bring imaging equipment to the inspection, the association shall provide the necessary space, light, and power for the imaging equipment.

Consequences for Failure to Produce

Records Request – Failure to Comply

Utah Code § § 57-8-17(5); 57-8a-227(5)

[I]f, in response to a lot owner’s request to inspect or copy documents, an association fails to comply with a provision of this section, the association shall pay:

- (a) the reasonable costs of inspecting and copying the requested documents;
- (b) for items described in **Subsections (1)(a)(ii)(A) through (C)**, \$25 to the lot owner who made the request for **each day** the request continues unfulfilled, beginning the sixth day after the day on which the lot owner made the request; and
- (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the inspection and copies of the requested documents.

- *Governing documents, most recent approved minutes, and most recent budget and financial statement.*

Records Request – Failure to Comply

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- (b) for items described in **Subsections (1)(a)(ii)(A) through (C)**, \$25 to the lot owner who made the request for **each day** the request continues unfulfilled, beginning the sixth day after the day on which the lot owner made the request; and
- (c) **reasonable attorney fees and costs** incurred by the lot owner in obtaining the inspection and copies of the requested documents.

- *Governing documents, most recent approved minutes, and most recent budget and financial statement.*

Records Request – Failure to Comply

Utah Code § § 57-8-17(6); 57-8a-227(6)

(a) In addition to any remedy in the association's governing documents or otherwise provided by law, a lot owner may file an action in court under this section if:

- (i) subject to Subsection (9), an association fails to make documents available to the lot owner in accordance with this section, the association's governing documents, or as otherwise provided by law; and
- (ii) the association fails to timely comply with a notice described in Subsection (6)(d).

(b) In an action described in Subsection (6)(a):

(i) the lot owner may request:

- (A) **injunctive** relief requiring the association to comply with the provisions of this section;
- (B) **\$500 or actual damage, whichever is greater; or**
- (C) **any other relief provided by law; and**

(ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.

Records Request – Demand for Compliance

Utah Code § § 57-8-17(6)(d); 57-8a-227(6)(d)

At least 10 days before the day on which a lot owner files an action described in Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

- (i) the lot owner's name, address, telephone number, and email address;
- (ii) each requirement of this section with which the association has failed to comply;
- (iii) a demand that the association comply with each requirement with which the association has failed to comply; and
- (iv) a date by which the association shall remedy the association's noncompliance that is at least 10 days after the day on which the lot owner delivers the notice to the association.

Requests That Exceed Scope of
Nonprofit Act and Association Act

Walker I Investments, LLC v. Sunpeak Association, Inc.

Utah Appellate Court Case (2015)

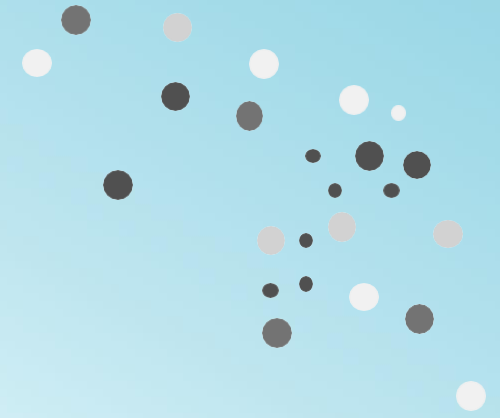
- Owner requested documents from association
- Documents requested included membership list, including emails addresses and phone numbers
- Court determined that compliance with 16-6a-1603(4) was sufficient information for membership list
- Utah Code § 16-6a-1603(4) reads: “The nonprofit corporation may comply with a director’s or member’s demand to inspect the record of members under Subsection 16-6a-1601(3) by furnishing to the director or member a list of directors or members that: (a) complies with Subsection 16-6a-1601(3); and (b) is compiled no earlier than the date of the director’s or member’s demand.”
- Dissenting opinion states that “any of the other records” should include emails and phone numbers of members



Nonprofit
Act

**What is a “corporate record” under
the Nonprofit Act?**

What is a corporate record?



Utah Code § 16-6a-102(13) (Corporate Records Defined):

(a) “Corporate records” means the records in Section 16-6a-1601.

(b) “Corporate records” **does not include** correspondence, communications, notes, or other similar information, regardless of format or method of storage that are not an official decision, published document, or record of the corporation.

The Nonprofit Act

Utah Code § 16-6a-1602 (Inspection of records by directors and members)

(1) A director or member is entitled to inspect and copy any of the records of the nonprofit corporation described in **Subsection 16-6a-1601(5)**:

- (a) during regular business hours;
- (b) at the nonprofit corporation's principal office; and
- (c) if the director or member gives the nonprofit corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records.

(2) In addition to the rights set forth in Subsection (1), a director or member is entitled to inspect and copy any of the other records described in **16-6a-1601(1) through (5)** of the nonprofit corporation:

- (a) during regular business hours;
- (b) at a reasonable location specified by the nonprofit corporation; and
- (c) at least five business days before the date on which the member wishes to inspect and copy the records, if the director or member:
 - (i) meets the requirements of Subsection (3); and
 - (ii) gives the nonprofit corporation written demand.

The Nonprofit Act



Utah Code § 16-6a-1601 (Corporate Records):

- (1) A nonprofit corporation shall keep as permanent records:
 - (a) **minutes** of all meetings of its members and board of directors;
 - (b) a record of all **actions taken by the members or board of directors without a meeting**;
 - (c) a record of all **actions taken by a committee** of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and
 - (d) a record of all **waivers of notices of meetings** of members and of the board of directors or any committee of the board of directors.
- (2) A nonprofit corporation shall maintain appropriate **accounting records**.
- (3) A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a **list of the name and address of all members**:
 - (a) in alphabetical order, by class; and
 - (b) showing the number of votes each member is entitled to vote.
- (4) A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:
 - (a) its **articles of incorporation**;
 - (b) its **bylaws**;
 - (c) **resolutions adopted by its board of directors** relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
 - (d) the **minutes of all members' meetings for a period of three years**;
 - (e) **records of all action taken by members without a meeting**, for a period of **three years**;
 - (f) all **written communications to members** generally as members for a period of **three years**;
 - (g) a **list of the names** and business or home addresses of its current **directors and officers**;
 - (h) a copy of its most recent **annual report** delivered to the division under Section 16-6a-1607; and
 - (i) all **financial statements** prepared for periods ending during the **last three years** that a member could have requested under Section 16-6a-1606.

The Nonprofit Act



Utah Code § 16-6a-1601 (Corporate Records):

- (1) A nonprofit corporation shall keep as permanent records:
 - (a) **minutes** of all meetings of its members and board of directors;
 - (b) a record of all **actions taken by the members or board of directors without a meeting**;
 - (c) a record of all **actions taken by a committee** of the board of directors in place of the board of directors on behalf of the nonprofit corporation; and
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 - (a) in alphabetical order, by class; and
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 - (c) **resolutions adopted by its board of directors** relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
 - (a) the **minutes of all members' meetings for a period of three years**;
 - (b) **records of all action taken by members without a meeting**, for a period of **three years**;
 - (c) all **written communications to members** generally as members for a period of **three years**;
 - (d) a **list of the names** and business or home addresses of its current **directors and officers**;
 - (e) a copy of its most recent **annual report** delivered to the division under Section 16-6a-1607; and
 - (i) all **financial statements** prepared for periods ending during the **last three years** that a member could have requested under Section 16-6a-1606.

The Nonprofit Corporation Act

Utah Code § 16-6a-1601(1)

Keep as permanent records:

- **minutes** of all meetings of its members and board of directors;
- a record of all **actions taken by the members or board of directors without a meeting**;
- a record of all **actions taken by a committee** of the board of directors in place of the board of directors on behalf of the corporation
- A record of all **waiver of notice of meetings** of members and of the board of directors or any committee of the board of directors

The Nonprofit Act

Utah Code § 16-6a-1601(2)

- Maintain appropriate **accounting records**

The Nonprofit Act

Utah Code § 16-6a-1601(3)-(4)

- A nonprofit corporation or its agent shall maintain a record of its members in a form that permits preparation of a **list of the name and address of all members**:
 - (a) in alphabetical order, by class; and
 - (b) showing the number of votes each member is entitled to vote.
- A nonprofit corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

The Nonprofit Act

Utah Code § 16-6a-1601(5)

(5) A nonprofit corporation shall keep a copy of each of the following records at its principal office:

(a) its **articles of incorporation**;

(b) its **bylaws**;

(c) **resolutions adopted by its board of directors** relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(a) the **minutes of all members' meetings for a period of three years**;

(b) **records of all action taken by members without a meeting, for a period of three years**;

(c) all **written communications to members** generally as members for a period of **three years**;

(d) a **list of the names** and business or home addresses of its current **directors and officers**;

(e) a copy of its most recent **annual report** delivered to the division under Section 16-6a-1607; and

(i) all **financial statements** prepared for periods ending during the **last three years** that a member could have requested under Section 16-6a-1606.

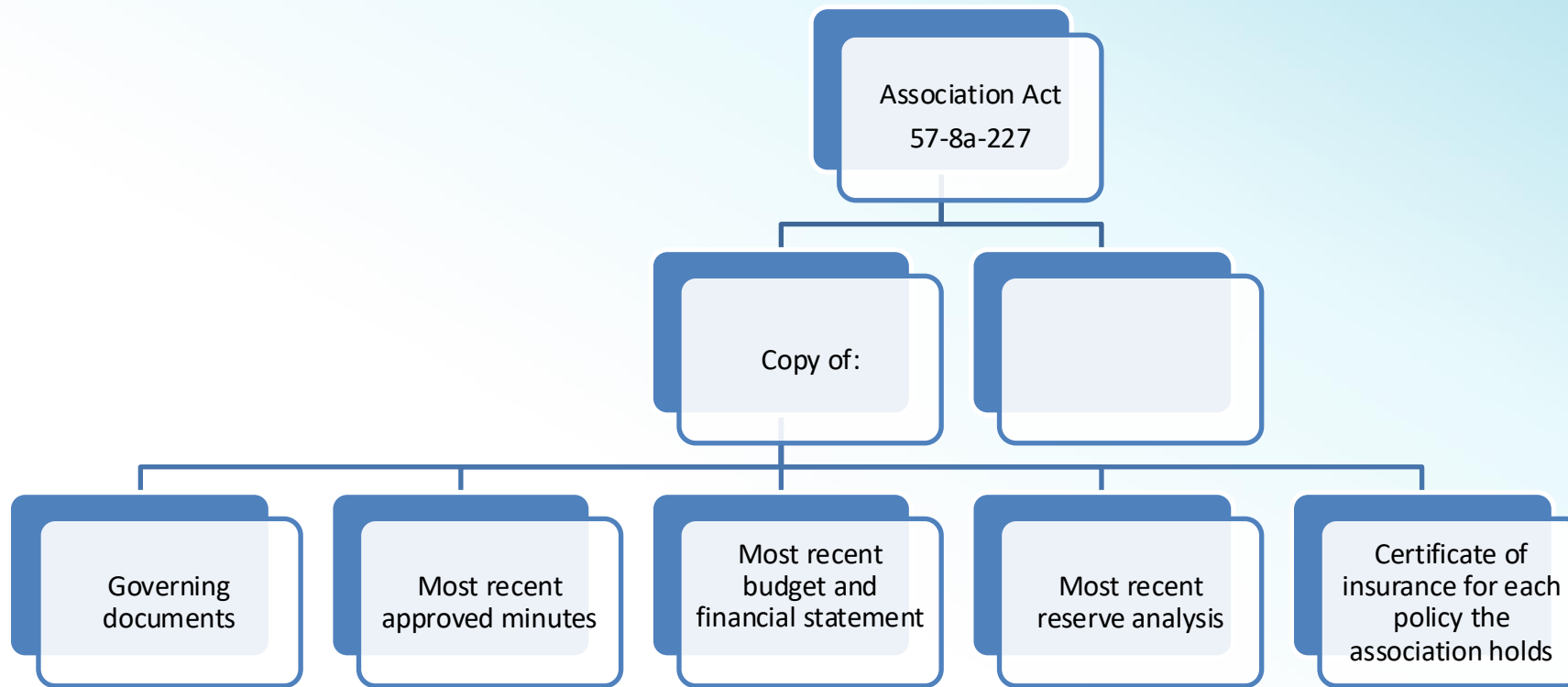
What are “Accounting Records”?

Section 16-6a-1601(2):

“A nonprofit corporation shall maintain appropriate accounting records.”

- Lack of Utah statutory definition or case law interpretation.
- Nebraska case of *Dunbar v. Twin Towers Condo. Ass’n*, 26 Neb. App. 354, 366 (Neb. Ct. App. 2018) (interpreting statute similar to Utah’s)
 - the term “financial statements” includes “a balance sheet as of the end of the fiscal year and a statement of operations for that year.”
- Wisconsin case of *Dewey v. Bechthold*, 387 F. Supp. 3d 919, 928 (E.D. Wisc. 2019)
 - “accounting documents are more comprehensive than, and inclusive of, recent financial statements.” *Id.* at 928.
- Texas case of *Gaughan v. Nat’l Cutting Horse Ass’n*, 351 S.W.3d 408, 416 (Tex. Ct. App. 2011)
 - “amounts received from or paid to vendors, sponsors, or employees may constitute financial records [but] the underlying contracts themselves (or the employees’ addresses and social security numbers) are not financial records that the [members are] entitled to inspect.”

Association Act Flowchart



Nonprofit Act Flowchart

