

**CONDOMINIUM AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Litvack**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies and enacts provisions relating to condominiums.

**Highlighted Provisions:**

This bill:

▶ authorizes the Office of the Property Rights Ombudsman to advise condominium owners and conduct or arrange for mediation or arbitration of disputes between condominium owners and condominium associations;

▶ modifies Office of the Property Rights Ombudsman provisions to reflect the duties related to condominium issues;

▶ provides for mediation or arbitration of disputes between condominium owners and condominium associations;

▶ requires condominium associations to register and pay a fee annually;

▶ creates a Condominium Fund to pay costs associated with the Office of the Property Rights Ombudsman duties relating to condominiums; and

▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **13-43-102**, as enacted by Laws of Utah 2006, Chapter 258

30 **13-43-201**, as enacted by Laws of Utah 2006, Chapter 258

31 **13-43-203**, as last amended by Laws of Utah 2008, Chapters 3, 84, and 382

32 **13-43-204**, as last amended by Laws of Utah 2008, Chapters 3 and 382

33 ENACTS:

34 **57-8-42**, Utah Code Annotated 1953

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36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **13-43-102** is amended to read:

38 **13-43-102. Definitions.**

39 As used in this chapter:

40 (1) "Condominium":

41 (a) has the same meaning as defined in Section 57-8-3, subject to Subsection (1)(b);

42 and

43 (b) includes a planned unit development.

44 (2) "Condominium association" has the same meaning as "association of unit owners"

45 as defined in Section 57-8-3.

46 (3) "Condominium unit":

47 (a) has the same meaning as defined in Section 57-8-3, subject to Subsection (3)(b);

48 and

49 (b) includes a unit in a planned unit development.

50 ~~[(1)]~~ (4) "Constitutional taking" or "taking" means a governmental action resulting in a  
51 taking of real property that requires compensation to the owner of the property under:

52 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

53 (b) Utah Constitution Article I, Section 22.

54 ~~[(2)]~~ (5) "Takings and eminent domain law" means the provisions of the federal and  
55 state constitutions, the case law interpreting those provisions, and any relevant statutory  
56 provisions that:

57 (a) involve constitutional issues arising from the use or ownership of real property;

58 (b) require a governmental unit to compensate a real property owner for a

59 constitutional taking; or

60 (c) provide for relocation assistance to those persons who are displaced by the use of  
61 eminent domain.

62 Section 2. Section **13-43-201** is amended to read:

63 **13-43-201. Office of the Property Rights Ombudsman.**

64 (1) There is created an Office of the Property Rights Ombudsman in the Department of  
65 Commerce.

66 (2) The executive director of the Department of Commerce, with the concurrence of  
67 the Land Use and Eminent Domain Advisory Board created in Section 13-43-202, shall appoint  
68 attorneys with background or expertise in takings, eminent domain, ~~and~~ land use, and  
69 condominium law to fill legal positions within the Office of the Property Rights Ombudsman.

70 (3) A person appointed under this section is an exempt employee.

71 (4) An attorney appointed under this section is an at-will employee who may be  
72 terminated without cause by:

73 (a) the executive director of the Department of Commerce; or

74 (b) an action of the land Use and Eminent Domain Advisory Board.

75 Section 3. Section **13-43-203** is amended to read:

76 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

77 (1) The Office of the Property Rights Ombudsman shall:

78 (a) develop and maintain expertise in and understanding of takings, eminent domain,  
79 ~~and~~ land use, and condominium law;

80 (b) assist state agencies and local governments in developing the guidelines required by  
81 Title 63L, Chapter 4, Constitutional ~~Taking~~ Takings Issues Act;

82 (c) at the request of a state agency or local government, assist the state agency or local  
83 government, in analyzing actions with potential takings implications or other land use issues;

84 (d) advise a real property ~~owners~~ owner who:

85 (i) ~~have~~ has a legitimate potential or actual takings claim against a state or local  
86 government entity or ~~have~~ has questions about takings, eminent domain, and land use law; or

87 (ii) ~~own~~ owns a parcel of property that is landlocked, as to the owner's rights and  
88 options with respect to obtaining access to a public street;

89 (e) identify state or local government actions that have potential takings implications

90 and, if appropriate, advise those state or local government entities about those implications;  
91 [and]

92 (f) provide information to private citizens, civic groups, government entities, and other  
93 interested parties about takings, eminent domain, [and] land use, or condominium law and their  
94 rights and responsibilities under the takings, eminent domain, [or] land use, or condominium  
95 laws through seminars and publications, and by other appropriate means[-]; and

96 (g) advise a condominium owner who has a legitimate potential or actual dispute with  
97 the owner's condominium association involving the owner's condominium unit.

98 (2) The Office of the Property Rights Ombudsman may not represent private property  
99 owners, state agencies, or local governments in court or in adjudicative proceedings under Title  
100 63G, Chapter 4, Administrative Procedures Act.

101 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third  
102 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled  
103 to testify in a civil action filed concerning the subject matter of any review, mediation, or  
104 arbitration by, or arranged through, the office.

105 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of  
106 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the  
107 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

108 (b) Subsection (4)(a) does not apply to:

109 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

110 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,  
111 Chapter 11, Utah Uniform Arbitration Act;

112 (iii) actions for de novo review of an arbitration award or issue brought under the  
113 authority of Subsection 13-43-204(3)(a)(i); or

114 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

115 Section 4. Section **13-43-204** is amended to read:

116 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**  
117 **of takings or eminent domain disputes.**

118 (1) (a) If requested by the private property owner and otherwise appropriate, the Office  
119 of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for,  
120 disputes between private property owners and government entities that involve:

121           ~~[(a)]~~ (i) takings or eminent domain issues;

122           ~~[(b)]~~ (ii) actions for eminent domain under Title 78B, Chapter 6, Part 5, Eminent

123 Domain; or

124           ~~[(c)]~~ (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah

125 Relocation Assistance Act.

126           (b) (i) As used in this Subsection (1)(b), "legitimate dispute" means a dispute:

127           (A) concerning a matter of greater than trivial significance; and

128           (B) arising from allegations that, if true, would show that the condominium association

129 has taken or is taking action that is contrary to state law or to the declaration, bylaws, or other

130 documents governing the association.

131           (ii) If requested by an owner of a condominium unit and otherwise appropriate, the

132 Office of the Property Rights Ombudsman shall, with respect to a dispute that the Office of the

133 Property Rights Ombudsman determines, after appropriate investigation, to be a legitimate

134 dispute between the owner and the owner's condominium association, mediate the dispute or

135 arbitrate or arrange arbitration for the dispute.

136           (2) If arbitration or mediation is requested by a private property owner or owner of a

137 condominium unit under this section, Section 57-12-14 or 78B-6-522, and arranged by the

138 Office of the Property Rights Ombudsman, the government entity ~~[or]~~, condemning entity, or

139 condominium association shall participate in the mediation or arbitration as if the matter were

140 ordered to mediation or arbitration by a court.

141           (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of

142 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B,

143 Chapter 11, Utah Uniform Arbitration Act.

144           (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and

145 parties shall treat the matter as if:

146           (A) it were ordered to arbitration by a court; and

147           (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as

148 provided for in this section was appointed as arbitrator by the court.

149           (iii) For the purpose of an arbitration conducted under this section, if the dispute to be

150 arbitrated is not already the subject of legal action, the district court having jurisdiction over

151 the county where the private property involved in the dispute is located is the court referred to

152 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

153 (iv) An arbitration award under this chapter may not be vacated under the provisions of  
154 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the  
155 parties.

156 (b) The Office of the Property Rights Ombudsman shall issue a written statement  
157 declining to arbitrate or to appoint an arbitrator when, in the opinion of the Office of the  
158 Property Rights Ombudsman:

159 (i) the issues are not ripe for review;

160 (ii) assuming the alleged facts are true[?];

161 (A) no cause of action exists under United States or Utah law; or

162 (B) for a dispute between the owner of a condominium unit and the owner's  
163 condominium association under Subsection (1)(b), the Office of the Property Rights  
164 Ombudsman determines that the dispute is not a legitimate dispute, as defined in Subsection  
165 (1)(b);

166 (iii) all issues raised are beyond the scope of the Office of the Property Rights  
167 Ombudsman's statutory duty to review; or

168 (iv) the arbitration is otherwise not appropriate.

169 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to  
170 arbitrate a dispute when:

171 (A) either party objects to the Office of the Property Rights Ombudsman serving as the  
172 arbitrator and agrees to pay for the services of another arbitrator;

173 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a  
174 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for  
175 the services of another arbitrator; or

176 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to  
177 appoint another person to arbitrate the dispute with no charge to the parties for the services of  
178 the appointed arbitrator.

179 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights  
180 Ombudsman shall appoint an arbitrator who is agreeable to:

181 (A) both parties; or

182 (B) the Office of the Property Rights Ombudsman and the party paying for the

183 arbitrator.

184 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon  
185 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

186 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse  
187 expenses incurred in the performance of the arbitrator's duties at the rates established by the  
188 Division of Finance under Sections 63A-3-106 and 63A-3-107.

189 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,  
190 regulations, and rules of Utah and the United States in conducting the arbitration and in  
191 determining the award.

192 (e) (i) The property owner and government entity may agree in advance of arbitration  
193 that the arbitration is binding and that no de novo review may occur.

194 (ii) An owner of a condominium unit and a condominium association may agree before  
195 arbitration that the arbitration is binding or that no de novo review may occur.

196 (f) ~~[Arbitration]~~ Mediation or arbitration by or through the Office of the Property  
197 Rights Ombudsman is not necessary before bringing legal action to adjudicate any claim.

198 (g) The lack of mediation or arbitration by or through the Office of the Property Rights  
199 Ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust  
200 available administrative remedies or as a bar to bringing legal action.

201 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative  
202 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

203 (i) Within 30 days after an arbitrator issues a final award, and except as provided in  
204 Subsection (3)(e), any party may submit the award, or any issue upon which the award is based,  
205 to the district court for de novo review.

206 (4) The filing with the Office of the Property Rights Ombudsman of a request for  
207 mediation or arbitration of a constitutional taking issue does not stay any county or municipal  
208 land use decision, including the decision of a board of adjustment.

209 (5) Members of the Office of the Property Rights Ombudsman may not be compelled  
210 to testify in a civil action filed concerning the subject matter of any review, mediation, or  
211 arbitration by the Office of the Property Rights Ombudsman.

212 Section 5. Section **57-8-42** is enacted to read:

213 **57-8-42. Annual registration and fees -- Condominium fund.**

214 (1) As used in this section:  
215 (a) "Department" means the Department of Commerce created in Section 13-1-2.  
216 (b) "Fund" means the Condominium Fund created in Subsection (4).  
217 (2) An association of unit owners shall annually:  
218 (a) register with the department in the manner and on the schedule established by the  
219 department, subject to Subsection (3)(b)(i); and  
220 (b) pay a registration fee equal to \$2 for each condominium unit within the association  
221 of unit owners.  
222 (3) (a) The department shall require an association of unit owners registering as  
223 required in this section to provide with each annual registration:  
224 (i) the name and address of the association of unit owners;  
225 (ii) the name, address, telephone number, and, if applicable, email address of the  
226 president of the association of unit owners;  
227 (iii) the number of condominium units within the association of unit owners; and  
228 (iv) contact information for the management committee.  
229 (b) (i) An association of unit owners organized as a nonprofit corporation under Title  
230 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, fulfills the registration requirement  
231 under Subsection (2)(a) by:  
232 (A) complying with the annual report requirement imposed on a nonprofit corporation  
233 under Section 16-6a-1607; and  
234 (B) submitting to the department a copy of the annual report.  
235 (ii) Subsection (3)(b)(i) does not affect the requirement under Subsection (2)(b) to pay  
236 an annual registration fee.  
237 (4) (a) There is created a restricted special revenue fund known as the Condominium  
238 Fund.  
239 (b) The fund consists of:  
240 (i) registration fees and late fees that the department collects under this section; and  
241 (ii) interest and other earnings derived from money in the fund.  
242 (c) The department shall administer the fund.  
243 (d) Money in the fund:  
244 (i) shall be used to pay:

245           (A) expenses that the Office of the Property Rights Ombudsman incurs in  
246 administering its duties under Sections 13-43-203 and 13-43-204 relating to condominium  
247 owners and disputes between condominium owners and associations of unit owners; and  
248           (B) the costs of mediation and arbitration of disputes between condominium owners  
249 and associations of unit owners under Section 13-43-204; and  
250           (ii) may be used to pay the department's costs of administering the fund.  
251           (e) All interest and other earnings derived from money in the fund shall be deposited  
252 into the fund.  
253           (f) The state treasurer shall invest the money in the fund under Title 51, Chapter 7,  
254 State Money Management Act.  
255           (5) The department may impose a late fee on an association of unit owners that fails to  
256 register and pay the applicable registration fee on time.  
257           (6) An association of unit owners that fails to comply with the requirements of  
258 Subsection (2) may not, during the period of noncompliance, enforce any lien under Section  
259 57-8-20 against any condominium unit.

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**Legislative Review Note**  
as of 1-31-11 4:53 PM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 117

SHORT TITLE: Condominium Amendments

SPONSOR: Litvack, D.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation is expected to generate approximately \$150,000 annually in fee revenue to the newly established Condominium Fund. Annual expenditures, including mediation costs, are estimated at \$139,900 from the Condominium Fund.

### STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
<b>Revenue:</b>			
Restricted Funds	\$0	\$150,000	\$150,000
Total Revenue	\$0	\$150,000	\$150,000
<b>Expenditure:</b>			
Restricted Funds	\$0	\$139,900	\$139,900
Total Expenditure	\$0	\$139,900	\$139,900
Net Impact, All Funds (Rev.-Exp.)	\$0	\$10,100	\$10,100
Net Impact, General/Education Funds	\$0	\$0	\$0

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Condominium associations and therefore presumably individual condominium owners would be required to pay \$2.00 per condominium per year.