

Representative David Litvack proposes the following substitute bill:

CONDOMINIUM AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Litvack

Senate Sponsor: _____

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 if a request is made before a specified date;
- ▶ requires condominium associations to register and pay a fee annually until a specified date;
- ▶ authorizes the Office of the Property Rights Ombudsman to establish a fee for making a mediation or arbitration request;
- ▶ creates a Condominium Fund to pay mediation and arbitration costs; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **13-43-102**, as enacted by Laws of Utah 2006, Chapter 258

32 **13-43-201**, as enacted by Laws of Utah 2006, Chapter 258

33 **13-43-203**, as last amended by Laws of Utah 2008, Chapters 3, 84, and 382

34 **13-43-204**, as last amended by Laws of Utah 2011, Chapter 385

35 **57-8-13.1**, as enacted by Laws of Utah 2011, Chapter 255

36 **57-8a-105**, as enacted by Laws of Utah 2011, Chapter 255

37

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

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

40 **13-43-102. Definitions.**

41 As used in this chapter:

42 (1) "Condominium" means:

43 (a) condominium, as defined in Section 57-8-3; or

44 (b) the ownership of a single lot in a multi-lot project, together with an undivided

45 interest in common areas or limited common areas, as provided in Title 57, Chapter 8a,

46 Community Association Act.

47 (2) "Condominium association" means:

48 (a) an association of unit owners, as defined in Section 57-8-3; or

49 (b) an association, as defined in Section 57-8a-102.

50 (3) "Condominium unit" means:

51 (a) a condominium unit, as defined in Section 57-8-3; or

52 (b) a lot, as defined in Section 57-8a-102.

53 [+] (4) "Constitutional taking" or "taking" means a governmental action resulting in a
54 taking of real property that requires compensation to the owner of the property under:

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

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

57 [~~(2)~~] (5) "Takings and eminent domain law" means the provisions of the federal and
58 state constitutions, the case law interpreting those provisions, and any relevant statutory
59 provisions that:

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

61 (b) require a governmental unit to compensate a real property owner for a
62 constitutional taking; or

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

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

66 **13-43-201. Office of the Property Rights Ombudsman.**

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

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

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

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

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

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

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

79 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

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

81 (a) develop and maintain expertise in and understanding of takings, eminent domain,
82 [~~and~~] land use, and condominium law;

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

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

87 (d) advise a real property [~~owners~~] owner who:

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

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

92 (e) identify state or local government actions that have potential takings implications
93 and, if appropriate, advise those state or local government entities about those implications;

94 [~~and~~]

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

99 (g) until June 30, 2017, advise a condominium owner who has a legitimate potential or
100 actual dispute with the owner's condominium association involving the owner's condominium
101 unit.

102 (2) The Office of the Property Rights Ombudsman may not represent private property
103 owners, state agencies, or local governments in court or in adjudicative proceedings under Title
104 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

120 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
121 **of disputes.**

122 (1) (a) If requested by the private property owner and if otherwise appropriate, the
123 Office of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for,
124 a dispute between the owner and a government entity:

125 [~~(a)~~] (i) involving taking or eminent domain issues;

126 [~~(b)~~] (ii) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,
127 Eminent Domain; or

128 [~~(c)~~] (iii) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
129 Assistance Act.

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

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

132 (B) arising from allegations that, if true, would show that a condominium owner or
133 condominium association has taken or is taking action that is contrary to state law or to the
134 declaration, bylaws, or other documents governing the association.

135 (ii) If requested by an owner of a condominium unit or a condominium association
136 before July 1, 2017 and otherwise appropriate, the Office of the Property Rights Ombudsman
137 shall, with respect to a dispute that the Office of the Property Rights Ombudsman determines,
138 after appropriate investigation, to be a legitimate dispute between the owner and the owner's
139 condominium association, mediate the dispute or arbitrate or arrange arbitration for the dispute.

140 (iii) The Office of the Property Rights Ombudsman shall, as provided in Title 63G,
141 Chapter 4, Administrative Procedures Act, adopt a rule establishing a fee for the filing of a
142 request under Subsection (1)(b)(ii) that in the aggregate covers the administrative costs
143 incurred by the Office of the Property Rights Ombudsman in connection with the filing and
144 processing of a request.

145 (2) (a) If arbitration or mediation is requested by a private property owner or owner of
146 a condominium unit under this section, Section 57-12-14 or 78B-6-522, and arranged by the
147 Office of the Property Rights Ombudsman, the government entity [~~or~~], condemning entity, or
148 condominium association, as applicable, shall participate in the mediation or arbitration as if
149 the matter were ordered to mediation or arbitration by a court.

150 **(b) If a condominium association requests arbitration or mediation under this section,**
151 **the owner of the condominium unit who is the subject of the arbitration or mediation request**
152 **shall participate in the mediation or arbitration as if the matter were ordered to mediation or**
153 **arbitration by a court.**

154 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
155 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B,
156 Chapter 11, Utah Uniform Arbitration Act.

157 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
158 parties shall treat the matter as if:

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

160 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
161 provided for in this section was appointed as arbitrator by the court.

162 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
163 arbitrated is not already the subject of legal action, the district court having jurisdiction over
164 the county where the private property involved in the dispute is located is the court referred to
165 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

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

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

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

173 (ii) assuming the alleged facts are true[;]:

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

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

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

- 181 (iv) the arbitration is otherwise not appropriate.
- 182 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
183 arbitrate a dispute when:
- 184 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
185 arbitrator and agrees to pay for the services of another arbitrator;
- 186 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
187 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
188 the services of another arbitrator; or
- 189 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
190 appoint another person to arbitrate the dispute with no charge to the parties for the services of
191 the appointed arbitrator.
- 192 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
193 Ombudsman shall appoint an arbitrator who is agreeable to:
- 194 (A) both parties; or
- 195 (B) the Office of the Property Rights Ombudsman and the party paying for the
196 arbitrator.
- 197 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
198 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.
- 199 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
200 expenses incurred in the performance of the arbitrator's duties at the rates established by the
201 Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 202 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
203 regulations, and rules of Utah and the United States in conducting the arbitration and in
204 determining the award.
- 205 (e) (i) The property owner and government entity may agree in advance of arbitration
206 that the arbitration is binding and that no de novo review may occur.
- 207 (ii) An owner of a condominium unit and a condominium association may agree before
208 arbitration that the arbitration is binding or that no de novo review may occur.
- 209 (f) [~~Arbitration~~] Mediation or arbitration by or through the Office of the Property
210 Rights Ombudsman is not necessary before bringing legal action to adjudicate any claim.
- 211 (g) The lack of mediation or arbitration by or through the Office of the Property Rights

212 Ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust
213 available administrative remedies or as a bar to bringing legal action.

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

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

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

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

225 Section 5. Section **57-8-13.1** is amended to read:

226 **57-8-13.1. Registration with Department of Commerce.**

227 (1) As used in this section[~~-, "department"~~]:

228 (a) "Department" means the Department of Commerce created in Section 13-1-2.

229 (b) "Fund" means the Condominium Fund created in Subsection (7).

230 (2) (a) No later than 90 days after the recording of a declaration, an association of unit
231 owners shall register with the department in the manner established by the department.

232 (b) An association of unit owners existing under a declaration recorded before May 10,
233 2011, shall, no later than July 1, 2011, register with the department in the manner established
234 by the department.

235 (3) The department shall require an association of unit owners registering as required
236 in this section to provide with each registration:

237 (a) the name and address of the association of unit owners;

238 (b) the name, address, telephone number, and, if applicable, email address of the
239 president of the association of unit owners;

240 (c) the name and address of each management committee member;

241 (d) the name, address, telephone number, and, if the contact person wishes to use email
242 or facsimile transmission for communicating payoff information, the email address or facsimile

243 number, as applicable, of a primary contact person who has association payoff information that
244 a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or
245 sale of the owner's unit; and

246 (e) a registration fee not to exceed \$37.

247 (4) An association of unit owners that has registered under Subsection (2) shall submit
248 to the department an updated registration, in the manner established by the department, within
249 90 days after a change in any of the information provided under Subsection (3).

250 (5) (a) Following its initial registration under Subsection (2) and until June 30, 2017,
251 an association of unit owners shall annually:

252 (i) register with the department in the manner and on the schedule established by the
253 Department, subject to Subsection (5)(b); and

254 (ii) pay a registration fee equal to \$2 for each condominium unit within the association
255 of unit owners.

256 (b) (i) An association of unit owners organized as a nonprofit corporation under Title
257 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, fulfills the annual registration
258 requirement under Subsection (5)(a) by:

259 (A) complying with the annual report requirement imposed on a nonprofit corporation
260 under Section 16-6a-1607; and

261 (B) submitting to the department a copy of the annual report.

262 (ii) Subsection (5)(b)(i) does not affect the requirement under Subsection (5)(a)(ii) to
263 pay an annual registration fee.

264 (c) The department may impose a late fee on an association of unit owners that fails to
265 register and to pay the applicable registration fee under Subsection (5)(a) on time.

266 [~~5~~] (6) During any period of noncompliance with the registration requirements of
267 Subsection (2) [or], the requirement for an updated registration under Subsection (4), or the
268 requirement for an annual registration under Subsection (5):

269 (a) a lien for the nonpayment of common expenses may not arise under Section
270 57-8-20 against any condominium unit within an association of unit owners that is in
271 noncompliance; and

272 (b) an association of unit owners that is not in compliance may not enforce a previous
273 lien under Section 57-8-20 against any condominium unit.

274 (7) (a) There is created a restricted special revenue fund known as the Condominium
275 Fund.

276 (b) The fund consists of:

277 (i) registration fees and late fees that the department collects under this Subsection (7)
278 and Subsection 57-8a-105(5); and

279 (ii) interest and other earnings derived from money in the fund.

280 (c) The department shall administer the fund.

281 (d) Money in the fund:

282 (i) shall be used to pay the costs of mediation and arbitration of disputes between
283 condominium owners and associations of unit owners under Section 13-43-204; and

284 (ii) may be used to pay the department's costs of administering the fund.

285 (e) All interest and other earnings derived from money in the fund shall be deposited
286 into the fund.

287 (f) The state treasurer shall invest the money in the fund under Title 51, Chapter 7,
288 State Money Management Act.

289 Section 6. Section **57-8a-105** is amended to read:

290 **57-8a-105. Registration with Department of Commerce.**

291 (1) As used in this section[, "department"]:

292 (a) "Department" means the Department of Commerce created in Section 13-1-2.

293 (b) "Fund" means the Condominium Fund created in Subsection 57-8-13.1(7).

294 (2) (a) No later than 90 days after the recording of a declaration of covenants,
295 conditions, and restrictions establishing an association, the association shall register with the
296 department in the manner established by the department.

297 (b) An association existing under a declaration of covenants, conditions, and
298 restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the
299 department in the manner established by the department.

300 (3) The department shall require an association registering as required in this section to
301 provide with each registration:

302 (a) the name and address of the association;

303 (b) the name, address, telephone number, and, if applicable, email address of the chair
304 of the association board;

305 (c) contact information for the manager;

306 (d) the name, address, telephone number, and, if the contact person wishes to use email
307 or facsimile transmission for communicating payoff information, the email address or facsimile
308 number, as applicable, of a primary contact person who has association payoff information that
309 a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or
310 sale of the owner's lot; and

311 (e) a registration fee not to exceed \$37.

312 (4) An association that has registered under Subsection (2) shall submit to the
313 department an updated registration, in the manner established by the department, within 90
314 days after a change in any of the information provided under Subsection (3).

315 (5) (a) Following its initial registration under Subsection (2) and until June 30, 2017,
316 an association shall annually:

317 (i) register with the department in the manner and on the schedule established by the
318 Department, subject to Subsection (5)(b); and

319 (ii) pay a registration fee equal to \$2 for each lot within the association.

320 (b) (i) An association organized as a nonprofit corporation under Title 16, Chapter 6a,
321 Utah Revised Nonprofit Corporation Act, fulfills the annual registration requirement under
322 Subsection (5)(a) by:

323 (A) complying with the annual report requirement imposed on a nonprofit corporation
324 under Section 16-6a-1607; and

325 (B) submitting to the department a copy of the annual report.

326 (ii) Subsection (5)(b)(i) does not affect the requirement under Subsection (5)(a)(ii) to
327 pay an annual registration fee.

328 (c) The department may impose a late fee on an association that fails to register and to
329 pay the applicable registration fee under Subsection (5)(a) on time.

330 ~~[(5)]~~ (6) During any period of noncompliance with the registration requirements of
331 Subsection (2) [or], the requirement for an updated registration under Subsection (4), or the
332 requirement for an annual registration under Subsection (5):

333 (a) a lien for the nonpayment of an assessment may not arise under Section 57-8a-203
334 against any lot within an association that is in noncompliance; and

335 (b) an association that is in noncompliance may not enforce a previous lien under

336 Section 57-8a-203 against any lot.