

Senator Stephen H. Urquhart proposes the following substitute bill:

HOMEOWNERS ASSOCIATION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill clarifies an association's right to attach and enforce liens following a period of noncompliance with the registration requirements described in this bill.

Highlighted Provisions:

This bill:

- ▶ specifies how an association ends a period of noncompliance with the registration requirements described in this bill;
- ▶ clarifies that, under certain circumstances, after an association ends a period of noncompliance with the registration requirements described in this bill:
 - a lien may arise for the nonpayment of any assessment that occurred during the period of noncompliance; and
 - the association may enforce any lien that arose before the period of noncompliance; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **57-8-3**, as last amended by Laws of Utah 2012, Chapter 166

29 **57-8-13.1**, as last amended by Laws of Utah 2012, Chapter 63

30 **57-8-44**, as enacted by Laws of Utah 2011, Chapter 355

31 **57-8-45**, as enacted by Laws of Utah 2011, Chapter 355

32 **57-8a-102**, as last amended by Laws of Utah 2011, Chapter 355

33 **57-8a-105**, as last amended by Laws of Utah 2012, Chapter 63

34 **57-8a-301**, as enacted by Laws of Utah 2011, Chapter 355

35 **57-8a-302**, as enacted by Laws of Utah 2011, Chapter 355

36

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

38 Section 1. Section **57-8-3** is amended to read:

39 **57-8-3. Definitions.**

40 As used in this chapter:

41 (1) "Assessment" means any charge imposed by the association, including:

42 (a) common expenses on or against a unit owner pursuant to the provisions of the
43 declaration, bylaws, or this chapter; and

44 (b) an amount that an association of unit owners assesses to a unit owner under
45 Subsection 57-8-43(9)(h).

46 (2) "Association of unit owners" means all of the unit owners:

47 (a) acting as a group in accordance with the declaration and bylaws; or

48 (b) organized as a legal entity in accordance with the declaration.

49 (3) "Building" means a building, containing units, and comprising a part of the
50 property.

51 (4) "Common areas and facilities" unless otherwise provided in the declaration or
52 lawful amendments to the declaration means:

53 (a) the land included within the condominium project, whether leasehold or in fee
54 simple;

55 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
56 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

- 57 (c) the basements, yards, gardens, parking areas, and storage spaces;
- 58 (d) the premises for lodging of janitors or persons in charge of the property;
- 59 (e) installations of central services such as power, light, gas, hot and cold water,
60 heating, refrigeration, air conditioning, and incinerating;
- 61 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
62 apparatus and installations existing for common use;
- 63 (g) such community and commercial facilities as may be provided for in the
64 declaration; and
- 65 (h) all other parts of the property necessary or convenient to its existence, maintenance,
66 and safety, or normally in common use.
- 67 (5) "Common expenses" means:
- 68 (a) all sums lawfully assessed against the unit owners;
- 69 (b) expenses of administration, maintenance, repair, or replacement of the common
70 areas and facilities;
- 71 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 72 (d) expenses declared common expenses by this chapter, or by the declaration or the
73 bylaws.
- 74 (6) "Common profits," unless otherwise provided in the declaration or lawful
75 amendments to the declaration, means the balance of all income, rents, profits, and revenues
76 from the common areas and facilities remaining after the deduction of the common expenses.
- 77 (7) "Condominium" means the ownership of a single unit in a multiunit project
78 together with an undivided interest in common in the common areas and facilities of the
79 property.
- 80 (8) "Condominium plat" means a plat or plats of survey of land and units prepared in
81 accordance with Section 57-8-13.
- 82 (9) "Condominium project" means a real estate condominium project; a plan or project
83 whereby two or more units, whether contained in existing or proposed apartments, commercial
84 or industrial buildings or structures, or otherwise, are separately offered or proposed to be
85 offered for sale. Condominium project also means the property when the context so requires.
- 86 (10) "Condominium unit" means a unit together with the undivided interest in the
87 common areas and facilities appertaining to that unit. Any reference in this chapter to a

88 condominium unit includes both a physical unit together with its appurtenant undivided interest
89 in the common areas and facilities and a time period unit together with its appurtenant
90 undivided interest, unless the reference is specifically limited to a time period unit.

91 (11) "Contractible condominium" means a condominium project from which one or
92 more portions of the land within the project may be withdrawn in accordance with provisions
93 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
94 termination of one or more leases, then the condominium project is not a contractible
95 condominium within the meaning of this chapter.

96 (12) "Convertible land" means a building site which is a portion of the common areas
97 and facilities, described by metes and bounds, within which additional units or limited common
98 areas and facilities may be created in accordance with this chapter.

99 (13) "Convertible space" means a portion of the structure within the condominium
100 project, which portion may be converted into one or more units or common areas and facilities,
101 including limited common areas and facilities in accordance with this chapter.

102 (14) "Declarant" means all persons who execute the declaration or on whose behalf the
103 declaration is executed. From the time of the recordation of any amendment to the declaration
104 expanding an expandable condominium, all persons who execute that amendment or on whose
105 behalf that amendment is executed shall also come within this definition. Any successors of
106 the persons referred to in this subsection who come to stand in the same relation to the
107 condominium project as their predecessors also come within this definition.

108 (15) "Declaration" means the instrument by which the property is submitted to the
109 provisions of this act, as it from time to time may be lawfully amended.

110 (16) "Expandable condominium" means a condominium project to which additional
111 land or an interest in it may be added in accordance with the declaration and this chapter.

112 (17) "Independent third party" means a person that:

113 (a) is not related to the unit owner;

114 (b) shares no pecuniary interests with the unit owner; and

115 (c) purchases the unit in good faith and without the intent to defraud a current or future
116 lienholder.

117 [~~17~~] (18) "Leasehold condominium" means a condominium project in all or any
118 portion of which each unit owner owns an estate for years in his unit, or in the land upon which

119 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
120 time. A condominium project including leased land, or an interest in the land, upon which no
121 units are situated or to be situated is not a leasehold condominium within the meaning of this
122 chapter.

123 ~~[(18)]~~ (19) "Limited common areas and facilities" means those common areas and
124 facilities designated in the declaration as reserved for use of a certain unit or units to the
125 exclusion of the other units.

126 ~~[(19)]~~ (20) "Majority" or "majority of the unit owners," unless otherwise provided in
127 the declaration or lawful amendments to the declaration, means the owners of more than 50%
128 in the aggregate in interest of the undivided ownership of the common areas and facilities.

129 ~~[(20)]~~ (21) "Management committee" means the committee as provided in the
130 declaration charged with and having the responsibility and authority to make and to enforce all
131 of the reasonable rules covering the operation and maintenance of the property.

132 ~~[(21)]~~ (22) "Par value" means a number of dollars or points assigned to each unit by the
133 declaration. Substantially identical units shall be assigned the same par value, but units located
134 at substantially different heights above the ground, or having substantially different views, or
135 having substantially different amenities or other characteristics that might result in differences
136 in market value, may be considered substantially identical within the meaning of this
137 subsection. If par value is stated in terms of dollars, that statement may not be considered to
138 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
139 fair market transaction at a different figure may affect the par value of any unit, or any
140 undivided interest in the common areas and facilities, voting rights in the unit owners'
141 association, liability for common expenses, or right to common profits, assigned on the basis
142 thereof.

143 ~~[(22)]~~ (23) "Person" means an individual, corporation, partnership, association, trustee,
144 or other legal entity.

145 ~~[(23)]~~ (24) "Property" means the land, whether leasehold or in fee simple, the building,
146 if any, all improvements and structures thereon, all easements, rights, and appurtenances
147 belonging thereto, and all articles of personal property intended for use in connection
148 therewith.

149 ~~[(24)]~~ (25) "Record," "recording," "recorded," and "recorder" have the meaning stated

150 in Title 57, Chapter 3, Recording of Documents.

151 ~~[(25)]~~ (26) "Size" means the number of cubic feet, or the number of square feet of
152 ground or floor space, within each unit as computed by reference to the record of survey map
153 and rounded off to a whole number. Certain spaces within the units including attic, basement,
154 or garage space may be omitted from the calculation or be partially discounted by the use of a
155 ratio, if the same basis of calculation is employed for all units in the condominium project and
156 if that basis is described in the declaration.

157 ~~[(26)]~~ (27) "Time period unit" means an annually recurring part or parts of a year
158 specified in the declaration as a period for which a unit is separately owned and includes a
159 timeshare estate as defined in Subsection 57-19-2(19).

160 ~~[(27)]~~ (28) "Unit" means either a separate physical part of the property intended for any
161 type of independent use, including one or more rooms or spaces located in one or more floors
162 or part or parts of floors in a building or a time period unit, as the context may require. A
163 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
164 proposed condominium unit under an expandable condominium project, not constructed, is a
165 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

166 ~~[(28)]~~ (29) "Unit number" means the number, letter, or combination of numbers and
167 letters designating the unit in the declaration and in the record of survey map.

168 ~~[(29)]~~ (30) "Unit owner" means the person or persons owning a unit in fee simple and
169 an undivided interest in the fee simple estate of the common areas and facilities in the
170 percentage specified and established in the declaration or, in the case of a leasehold
171 condominium project, the person or persons whose leasehold interest or interests in the
172 condominium unit extend for the entire balance of the unexpired term or terms.

173 Section 2. Section **57-8-13.1** is amended to read:

174 **57-8-13.1. Registration with Department of Commerce.**

175 (1) As used in this section, "department" means the Department of Commerce created
176 in Section 13-1-2.

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

179 (b) An association of unit owners existing under a declaration recorded before May 10,
180 2011, shall, no later than July 1, 2011, register with the department in the manner established

181 by the department.

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

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

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

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

188 (d) the name, address, telephone number, and, if the contact person wishes to use email
189 or facsimile transmission for communicating payoff information, the email address or facsimile
190 number, as applicable, of a primary contact person who has association payoff information that
191 a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or
192 sale of the owner's unit; and

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

194 (4) An association of unit owners that has registered under Subsection (2) shall submit
195 to the department an updated registration, in the manner established by the department, within
196 90 days after a change in any of the information provided under Subsection (3).

197 (5) (a) During any period of noncompliance with the registration requirement ~~[of]~~
198 described in Subsection (2) or the requirement for an updated registration ~~[under]~~ described in
199 Subsection (4):

200 (i) a lien ~~[for the nonpayment of common expenses]~~ may not arise under Section
201 ~~[57-8-20 against any condominium unit]~~ 57-8-44; and

202 (ii) an association of unit owners may not enforce ~~[a previous]~~ an existing lien that
203 arose under Section ~~[57-8-20 against any condominium unit]~~ 57-8-44.

204 (b) A period of noncompliance with the registration requirement of Subsection (2) or
205 with the updated registration requirement of Subsection (4) does not begin until after the
206 expiration of the 90-day period specified in Subsection (2) or (4), respectively.

207 (c) An association of unit owners that is not in compliance with the registration
208 requirement described in Subsection (2) may end the period of noncompliance by registering
209 with the department in the manner established by the department under Subsection (2).

210 (d) An association of unit owners that is not in compliance with the updated
211 registration requirement described in Subsection (4) may end the period of noncompliance by

212 submitting to the department an updated registration in the manner established by the
213 department under Subsection (4).

214 (e) Except as described in Subsection (5)(f), beginning on the date an association of
215 unit owners ends a period of noncompliance:

216 (i) a lien may arise under Section 57-8-44 for any event that:

217 (A) occurred during the period of noncompliance; and

218 (B) would have given rise to a lien under Section 57-8-44 had the association of unit
219 owners been in compliance with the registration requirements described in this section; and

220 (ii) an association of unit owners may enforce a lien described in Subsection (5)(e) or a
221 lien that existed before the period of noncompliance.

222 (f) If an owner's unit is conveyed to an independent third party during a period of
223 noncompliance described in this Subsection (5):

224 (i) a lien that arose under Section 57-8-44 before the conveyance of the unit became
225 final is extinguished when the conveyance of the unit becomes final; and

226 (ii) an event that occurred before the conveyance of the unit became final, and that
227 would have given rise to a lien under Section 57-8-44 had the association of unit owners been
228 in compliance with the registration requirements of this section, may not give rise to a lien
229 under Section 57-8-44 if the conveyance of the unit becomes final before the association of unit
230 owners ends the period of noncompliance.

231 Section 3. Section **57-8-44** is amended to read:

232 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
233 **collection.**

234 (1) (a) ~~[An]~~ Except as provided in Section 57-8-13.1, an association of unit owners has
235 a lien on a unit for:

236 (i) an assessment;

237 (ii) except as provided in the declaration, fees, charges, and costs associated with
238 collecting an unpaid assessment, including:

239 (A) court costs and reasonable attorney fees;

240 (B) late charges;

241 (C) interest; and

242 (D) any other amount that the association of unit owners is entitled to recover under the

243 declaration, this chapter, or an administrative or judicial decision; and

244 (iii) a fine that the association of unit owners imposes against the owner of the unit.

245 (b) The recording of a declaration constitutes record notice and perfection of a lien
246 described in Subsection (1)(a).

247 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
248 is for the full amount of the assessment from the time the first installment is due, unless the
249 association of unit owners otherwise provides in a notice of assessment.

250 (3) An unpaid assessment or fine accrues interest at the rate provided:

251 (a) in Subsection 15-1-1(2); or

252 (b) in the governing documents, if the governing documents provide for a different
253 interest rate.

254 (4) A lien under this section has priority over each other lien and encumbrance on a
255 unit except:

256 (a) a lien or encumbrance recorded before the declaration is recorded;

257 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
258 that is recorded before a recorded notice of lien by or on behalf of the association of unit
259 owners; or

260 (c) a lien for real estate taxes or other governmental assessments or charges against the
261 unit.

262 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
263 Exemptions Act.

264 (6) Unless the declaration provides otherwise, if two or more associations of unit
265 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
266 when the liens are created.

267 Section 4. Section **57-8-45** is amended to read:

268 **57-8-45. Enforcement of a lien.**

269 (1) (a) ~~[To]~~ Except as provided in Section 57-8-13.1, to enforce a lien established
270 under Section 57-8-44, an association of unit owners may:

271 (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a
272 deed of trust, in the manner provided by:

273 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

274 (B) this chapter; or
275 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
276 (A) law for the foreclosure of a mortgage; and
277 (B) this chapter.
278 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection
279 (1)(a):
280 (i) the association of unit owners is considered to be the beneficiary under a trust deed;
281 and
282 (ii) the unit owner is considered to be the trustor under a trust deed.
283 (2) A unit owner's acceptance of the owner's interest in a unit constitutes a
284 simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as
285 provided in this section for the purpose of securing payment of all amounts due under the
286 declaration and this chapter.
287 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
288 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a
289 qualified trustee.
290 (b) An association of unit owners' execution of a substitution of trustee form
291 authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
292 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
293 under Subsection 57-1-21(1)(a)(i) or (iv).
294 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
295 57-1-19 through 57-1-34.
296 (4) This chapter does not prohibit an association of unit owners from bringing an
297 action against a unit owner to recover an amount for which a lien is created under Section
298 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken
299 before the sale or foreclosure of the unit owner's unit under this chapter.
300 Section 5. Section **57-8a-102** is amended to read:
301 **57-8a-102. Definitions.**
302 As used in this chapter:
303 (1) (a) "Assessment" means a charge imposed or levied:
304 (i) by the association;

- 305 (ii) on or against a lot or a lot owner; and
- 306 (iii) pursuant to a governing document recorded with the county recorder.
- 307 (b) "Assessment" includes:
- 308 (i) a common expense; and
- 309 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(8).
- 310 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
- 311 other legal entity, each member of which:
- 312 (i) is an owner of a residential lot located within the jurisdiction of the association, as
- 313 described in the governing documents; and
- 314 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
- 315 (A) real property taxes;
- 316 (B) insurance premiums;
- 317 (C) maintenance costs; or
- 318 (D) for improvement of real property not owned by the member.
- 319 (b) "Association" or "homeowner association" does not include an association created
- 320 under Title 57, Chapter 8, Condominium Ownership Act.
- 321 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 322 authority to manage the affairs of the association.
- 323 (4) "Common areas" means property that the association:
- 324 (a) owns;
- 325 (b) maintains;
- 326 (c) repairs; or
- 327 (d) administers.
- 328 (5) "Common expense" means costs incurred by the association to exercise any of the
- 329 powers provided for in the association's governing documents.
- 330 (6) "Declarant":
- 331 (a) means the person who executes a declaration and submits it for recording in the
- 332 office of the recorder of the county in which the property described in the declaration is
- 333 located; and
- 334 (b) includes the person's successor and assign.
- 335 (7) (a) "Governing documents" means a written instrument by which the association

336 may:

337 (i) exercise powers; or
338 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
339 association.

340 (b) "Governing documents" includes:

341 (i) articles of incorporation;
342 (ii) bylaws;
343 (iii) a plat;
344 (iv) a declaration of covenants, conditions, and restrictions; and
345 (v) rules of the association.

346 (8) "Independent third party" means a person that:

347 (a) is not related to the owner of the residential lot;
348 (b) shares no pecuniary interests with the owner of the residential lot; and
349 (c) purchases the residential lot in good faith and without the intent to defraud a current
350 or future lienholder.

351 [~~8~~] (9) "Judicial foreclosure" means a foreclosure of a lot:

352 (a) for the nonpayment of an assessment; and
353 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
354 property; and
355 (ii) as provided in Part 3, Collection of Assessments.

356 [~~9~~] (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

357 (a) by a person or persons other than the owner; and
358 (b) for which the owner receives a consideration or benefit, including a fee, service,
359 gratuity, or emolument.

360 [~~10~~] (11) "Limited common areas" means common areas described in the declaration
361 and allocated for the exclusive use of one or more lot owners.

362 [~~11~~] (12) "Lot" means:

363 (a) a lot, parcel, plot, or other division of land:
364 (i) designated for separate ownership or occupancy; and
365 (ii) (A) shown on a recorded subdivision plat; or
366 (B) the boundaries of which are described in a recorded governing document; or

367 (b) (i) a unit in a condominium association if the condominium association is a part of
368 a development; or

369 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
370 development.

371 [~~(12)~~] (13) "Nonjudicial foreclosure" means the sale of a lot:

372 (a) for the nonpayment of an assessment; and

373 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
374 57-1-34; and

375 (ii) as provided in Part 3, Collection of Assessments.

376 [~~(13)~~] (14) "Residential lot" means a lot, the use of which is limited by law, covenant,
377 or otherwise to primarily residential or recreational purposes.

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

379 **57-8a-105. Registration with Department of Commerce.**

380 (1) As used in this section, "department" means the Department of Commerce created
381 in Section 13-1-2.

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

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

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

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

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

393 (c) contact information for the manager;

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

398 sale of the owner's lot; and

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

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

403 (5) (a) During any period of noncompliance with the registration requirement [~~of~~]
404 described in Subsection (2) or the requirement for an updated registration [~~under~~] described in
405 Subsection (4):

406 (i) a lien [~~for the nonpayment of an assessment~~] may not arise under Section
407 [~~57-8a-203 against any lot~~] 57-8a-301; and

408 (ii) an association may not enforce [~~a previous~~] an existing lien that arose under
409 Section [~~57-8a-203 against any lot~~] 57-8a-301.

410 (b) A period of noncompliance with the registration requirement of Subsection (2) or
411 with the updated registration requirement of Subsection (4) does not begin until after the
412 expiration of the 90-day period specified in Subsection (2) or (4), respectively.

413 (c) An association that is not in compliance with the registration requirement described
414 in Subsection (2) may end the period of noncompliance by registering with the department in
415 the manner established by the department under Subsection (2).

416 (d) An association that is not in compliance with the updated registration requirement
417 described in Subsection (4) may end the period of noncompliance by submitting to the
418 department an updated registration in the manner established by the department under
419 Subsection (4).

420 (e) Except as described in Subsection (5)(f), beginning on the date an association ends
421 a period of noncompliance:

422 (i) a lien may arise under Section 57-8a-301 for any event that:

423 (A) occurred during the period of noncompliance; and

424 (B) would have given rise to a lien under Section 57-8a-301 had the association been in
425 compliance with the registration requirements described in this section; and

426 (ii) an association may enforce a lien described in Subsection (5)(e) or a lien that
427 existed before the period of noncompliance.

428 (f) If an owner's residential lot is conveyed to an independent third party during a

429 period of noncompliance described in this Subsection (5):

430 (i) a lien that arose under Section 57-8a-301 before the conveyance of the residential
431 lot became final is extinguished when the conveyance of the residential lot becomes final; and

432 (ii) an event that occurred before the conveyance of the residential lot became final,
433 and that would have given rise to a lien under Section 57-8a-301 had the association been in
434 compliance with the registration requirements of this section, may not give rise to a lien under
435 Section 57-8a-301 if the conveyance of the residential lot becomes final before the association
436 ends the period of noncompliance.

437 Section 7. Section **57-8a-301** is amended to read:

438 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

439 (1) (a) [~~Am~~] Except as provided in Section 57-8a-105, an association has a lien on a lot
440 for:

441 (i) an assessment;

442 (ii) except as provided in the declaration, fees, charges, and costs associated with
443 collecting an unpaid assessment, including:

444 (A) court costs and reasonable attorney fees;

445 (B) late charges;

446 (C) interest; and

447 (D) any other amount that the association is entitled to recover under the declaration,
448 this chapter, or an administrative or judicial decision; and

449 (iii) a fine that the association imposes against the owner of the lot.

450 (b) The recording of a declaration constitutes record notice and perfection of a lien
451 described in Subsection (1)(a).

452 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
453 is for the full amount of the assessment from the time the first installment is due, unless the
454 association otherwise provides in a notice of assessment.

455 (3) An unpaid assessment or fine accrues interest at the rate provided:

456 (a) in Subsection 15-1-1(2); or

457 (b) in the declaration, if the declaration provides for a different interest rate.

458 (4) A lien under this section has priority over each other lien and encumbrance on a lot
459 except:

- 460 (a) a lien or encumbrance recorded before the declaration is recorded;
- 461 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
- 462 is recorded before a recorded notice of lien by or on behalf of the association; or
- 463 (c) a lien for real estate taxes or other governmental assessments or charges against the
- 464 lot.

465 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah

466 Exemptions Act.

467 (6) Unless the declaration provides otherwise, if two or more associations have liens

468 for assessments on the same lot, the liens have equal priority, regardless of when the liens are

469 created.

470 Section 8. Section **57-8a-302** is amended to read:

471 **57-8a-302. Enforcement of a lien.**

472 (1) (a) ~~[To]~~ Except as provided in Section 57-8a-105, to enforce a lien established

473 under Section 57-8a-301, an association may:

474 (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed

475 of trust, in the manner provided by:

476 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

477 (B) this part; or

478 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

479 (A) law for the foreclosure of a mortgage; and

480 (B) this part.

481 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

482 (1)(a):

483 (i) the association is considered to be the beneficiary under a trust deed; and

484 (ii) the lot owner is considered to be the trustor under a trust deed.

485 (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous

486 conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this

487 section for the purpose of securing payment of all amounts due under the declaration and this

488 chapter.

489 (3) (a) A power of sale and other powers of a trustee under this part and under Sections

490 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified

491 trustee.

492 (b) An association's execution of a substitution of trustee form authorized in Section
493 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

494 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
495 under Subsection 57-1-21(1)(a)(i) or (iv).

496 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
497 57-1-19 through 57-1-34.

498 (4) This part does not prohibit an association from bringing an action against a lot
499 owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking
500 a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure
501 of the lot owner's lot under this part.