

## HB0026S01 compared with HB0026

~~{deleted text}~~ shows text that was in HB0026 but was deleted in HB0026S01.

inserted text shows text that was not in HB0026 but was inserted into HB0026S01.

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Representative Jon E. Stanard proposes the following substitute bill:

### ASSOCIATION LIEN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jon E. Stanard**

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

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#### LONG TITLE

~~{Committee Note:~~

~~— The Business and Labor Interim Committee recommended this bill.~~

~~{General Description:~~

This bill amends provisions in Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act, which relate to liens against a unit or a lot.

#### Highlighted Provisions:

This bill:

- ▶ clarifies the circumstances under which an association of unit owners or an association has a lien against a unit or a lot for an unpaid fine;
- ▶ provides that if a board assesses a fine against a lot owner, the lot owner may:
  - request an informal hearing to dispute the fine within 30 days after the day on

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which the fine is assessed; and

• initiate a civil action to appeal a decision from an informal hearing; and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**57-8-37**, as enacted by Laws of Utah 2001, Chapter 317

**57-8-44**, as last amended by Laws of Utah 2013, Chapter 95

**57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

**57-8a-301**, as last amended by Laws of Utah 2013, Chapter 95

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

Section 1. Section **57-8-37** is amended to read:

#### **57-8-37. Fines.**

(1) (a) If authorized in the declaration, bylaws, or association rules, the management committee of a residential condominium project may assess a fine against a unit owner after the requirements of Subsection (2) have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws.

(b) The management committee of a nonresidential condominium project may not assess a fine against a unit owner.

(2) Before assessing a fine under Subsection (1), the management committee shall give notice to the unit owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or association rules, which shall be at least 48 hours.

(3) (a) A fine assessed under Subsection (1) shall:

(i) be made only for a violation of a rule or regulation which is specifically listed in the declaration, bylaws, or association rules as an offense which is subject to a fine;

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(ii) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500; and

(iii) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

(b) Cumulative fines for a continuing violation may not exceed \$500 per month.

(4) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(5) A unit owner may appeal a fine issued under Subsection (1) by initiating a civil action within 180 days after:

(a) a hearing has been held and a final decision has been rendered by the management committee under Subsection (4); or

(b) the time to request an informal hearing under Subsection (4) has expired without the unit owner making such a request.

~~[(6) A fine assessed under Subsection (1) which remains unpaid after the time for appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 57-8-20.]~~

Section 2. Section ~~57-8-44~~ is amended to read:

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

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

(i) an assessment;

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

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

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

(iii) a fine that the association of unit owners imposes against ~~[the owner of the unit {}]~~ a unit owner in accordance with Section 57-8-37, if:

(A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit owner did not file an appeal; or

(B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8-37(1).

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

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

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

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

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

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

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

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

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

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

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

Section 3. Section 57-8a-208 is amended to read:

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### 57-8a-208. Fines.

(1) Unless otherwise provided in the association's governing documents, the board of [a homeowner] an association may assess a fine against a lot owner for a violation of the association's governing documents after the requirements [of] described in Subsection (2) are met.

(2) Before assessing a fine under Subsection (1), the board shall:

(a) notify the lot owner of the violation; and

(b) inform the owner that a fine will be imposed if the violation is not remedied within the time provided in the association's governing documents, which shall be at least 48 hours.

(3) (a) A fine assessed under Subsection (1) shall:

(i) be made only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the association's governing documents;

(ii) be in the amount specifically provided for in the association's governing documents for that specific type of violation or in an amount commensurate with the nature of the violation; and

(iii) accrue interest and late fees as provided in the association's governing documents.

(b) Unpaid fines may be collected as an unpaid assessment as set forth in the association's governing documents or in this chapter.

(4) (a) A lot owner who is assessed a fine under Subsection (1) may request an informal hearing to protest or dispute the fine within [14] 30 days [from the date] after the day on which the fine is assessed.

(b) A hearing requested under Subsection (4)(a) shall be conducted in accordance with standards provided in the association's governing documents.

(c) No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(5) A lot owner may appeal a fine issued under Subsection (1) by initiating a civil action:

(a) if the lot owner timely requests an informal hearing under Subsection (4), within 180 days after the day on which a final decision from the informal hearing is issued; or

(b) if the lot owner does not timely request an informal hearing under Subsection (4), within 180 days after the day on which the time to request an informal hearing expires.

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Section ~~3~~4. Section 57-8a-301 is amended to read:

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

(1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:

(i) an assessment;

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

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

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

(iii) a fine that the association imposes against ~~the owner of the lot;~~ a lot owner in accordance with Section 57-8a-208, if:

(A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot owner did not file an appeal; or

(B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).

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

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

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

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

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

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

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

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

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

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lot.

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

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

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### Legislative Review Note

~~as of 11-20-13 3:13 PM~~

~~Office of Legislative Research and General Counsel}~~