

**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: Deidre M. Henderson

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**LONG TITLE**

**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 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:**



26 AMENDS:

27 **57-8-37**, as enacted by Laws of Utah 2001, Chapter 317

28 **57-8-44**, as last amended by Laws of Utah 2013, Chapter 95

29 **57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

30 **57-8a-301**, as last amended by Laws of Utah 2013, Chapter 95

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

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

34 **57-8-37. Fines.**

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

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

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

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

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

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

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

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

54 (4) A unit owner who is assessed a fine under Subsection (1) may request an informal  
55 hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The  
56 hearing shall be conducted in accordance with the standards provided in the declaration,

57 bylaws, or association rules. No interest or late fees may accrue until after the hearing has been  
58 conducted and a final decision has been rendered.

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

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

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

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

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

70 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**  
71 **collection.**

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

74 (i) an assessment;

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

77 (A) court costs and reasonable attorney fees;

78 (B) late charges;

79 (C) interest; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 **57-8a-208. Fines.**

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

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

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

118 (b) inform the owner that a fine will be imposed if the violation is not remedied within

119 the time provided in the association's governing documents, which shall be at least 48 hours.

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

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

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

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

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

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

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

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

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

138 (a) if the lot owner timely requests an informal hearing under Subsection (4), within  
139 180 days after the day on which a final decision from the informal hearing is issued; or

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

142 Section 4. Section **57-8a-301** is amended to read:

143 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

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

145 (i) an assessment;

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

148 (A) court costs and reasonable attorney fees;

149 (B) late charges;

- 150 (C) interest; and
- 151 (D) any other amount that the association is entitled to recover under the declaration,  
152 this chapter, or an administrative or judicial decision; and
- 153 (iii) a fine that the association imposes against ~~[the owner of the lot.]~~ a lot owner in  
154 accordance with Section 57-8a-208, if:
- 155 (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot  
156 owner did not file an appeal; or
- 157 (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district  
158 court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).
- 159 (b) The recording of a declaration constitutes record notice and perfection of a lien  
160 described in Subsection (1)(a).
- 161 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)  
162 is for the full amount of the assessment from the time the first installment is due, unless the  
163 association otherwise provides in a notice of assessment.
- 164 (3) An unpaid assessment or fine accrues interest at the rate provided:
- 165 (a) in Subsection 15-1-1(2); or
- 166 (b) in the declaration, if the declaration provides for a different interest rate.
- 167 (4) A lien under this section has priority over each other lien and encumbrance on a lot  
168 except:
- 169 (a) a lien or encumbrance recorded before the declaration is recorded;
- 170 (b) a first or second security interest on the lot secured by a mortgage or trust deed that  
171 is recorded before a recorded notice of lien by or on behalf of the association; or
- 172 (c) a lien for real estate taxes or other governmental assessments or charges against the  
173 lot.
- 174 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah  
175 Exemptions Act.
- 176 (6) Unless the declaration provides otherwise, if two or more associations have liens  
177 for assessments on the same lot, the liens have equal priority, regardless of when the liens are  
178 created.