

Representative Carol Spackman Moss proposes the following substitute bill:

HOMEOWNER AND CONDOMINIUM

ASSOCIATION MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill modifies provisions relating to a homeowner association's governing documents.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the procedures, requirements, limitations, and enforcement mechanisms that apply ~~H~~ to ~~H~~ a request to inspect or copy association records;
- ▶ addresses the requirements for an association to amend the association's governing documents;
- ▶ prohibits certain restrictions on the time at which an association may amend the association's governing documents;
- ▶ provides that the provisions of this bill apply regardless of when the association is created; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

2nd Sub. S.B. 118



274 of the association of unit owners.

275 (c) This Subsection (9) may not be construed to limit a management committee from
276 prudently investing money in a reserve fund, subject to any investment constraints imposed by
277 the declaration.

278 (10) Subsections (2) through (9) do not apply to an association of unit owners during
279 the period of [~~declarant~~] administrative control [~~described in Subsection 57-8-16.5(1)~~].

280 (11) This section applies to each association of unit owners, regardless of when the
281 association of unit owners was created.

282 Section 3. Section 57-8-17 is repealed and reenacted to read:

283 **57-8-17. Records -- Availability for examination.**

284 (1) (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make
285 documents available to unit owners in accordance with Sections 16-6a-1601 through 1603,
286 16-6a-1605, 16-6a-1606, and 16-6a-1610, regardless of whether the association of unit owners
287 is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

288 (b) An association of unit owners may redact the following information from any
289 document the association of unit owners produces for inspection or copying:

290 (i) a Social Security number;

291 (ii) a bank account number; ~~and~~ [and] or ~~or~~

292 (iii) any communication subject to attorney-client privilege.

293 (2) (a) In addition to the requirements described in Subsection (1), an association of
294 unit owners shall make documents available to unit owners in accordance with the association
295 of unit owners' governing documents.

296 (b) If a provision of an association of unit owners' governing documents conflicts with
297 a provision of this section, the provision of this section governs.

298 (3) In a request to inspect or copy documents, a unit owner may:

299 (a) elect whether to inspect or copy the documents;

300 (b) if the unit owner elects to copy the documents, request hard copies or electronic
301 scans of the documents; or

302 (c) subject to Subsection (4), request that:

303 (i) the association of unit owners make the copies or electronic scans of the requested
304 documents;

305 (ii) a recognized third party duplicating service make the copies or electronic scans of
306 the requested documents; or

307 (iii) the unit owner ~~H~~→ **be allowed to** ←~~H~~ bring any necessary imaging equipment to the
307a place of inspection

308 and make copies or electronic scans of the documents while inspecting the documents.

309 (4) (a) An association of unit owners shall comply with a request described in
310 Subsection (3).

311 (b) If an association of unit owners produces the copies or electronic scans:

312 (i) the copies or electronic scans shall be legible and accurate; and

313 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
314 copies or electronic scans, which may not exceed:

315 (A) the actual cost that the association of unit owners paid to a recognized third party
316 duplicating service to make the copies or electronic scans; or

317 (B) if an employee, manager, or other agent of the association of unit owners makes the
318 copies or electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or
319 other agent's time making the copies or electronic scans.

320 (c) If a unit owner requests a recognized third party duplicating service make the copies
321 or electronic scans:

322 (i) the association of unit owners shall arrange for the delivery and pick up of the
323 original documents; and

324 (ii) the unit owner shall pay the duplicating service directly.

325 (d) If a unit owner requests to bring imaging equipment to the inspection, the
326 association of unit owners shall provide the necessary space, light, and power for the imaging
327 equipment.

328 (5) If, in response to a unit owner's request to inspect or copy documents, an
329 association of unit owners fails to comply with a provision of this section, the association of
330 unit owners shall pay:

331 (a) the reasonable costs of inspecting and copying the requested documents; and

332 (b) reasonable attorney fees and costs incurred by the unit owner in obtaining the
333 inspection and copies of the requested documents.

334 (6) (a) In addition to any remedy in the association of unit owners' governing
335 documents or as otherwise provided by law, a unit owner may file an action in court under this

367 the notice to the association of unit owners.

368 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association of unit
 369 owners.

370 (b) The provisions of this section apply regardless of any conflicting provision in Title
 371 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

371a **H→ (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right**
 371b **that the unit owner has under this section. ←H**

372 Section 4. Section **57-8-39** is amended to read:

373 **57-8-39. Limitation on requirements for amending governing documents --**
 374 **Limitation on contracts.**

375 [~~(1) When the period of control described in Section 57-8-16.5 ends, neither the~~
 376 ~~declaration nor bylaws may require that an amendment to the declaration or bylaws be~~
 377 ~~approved by more than 67% of the voting interests;]~~

378 [~~(2) Voting interests under Subsection (1) are calculated in the manner required by the~~
 379 ~~declaration or bylaws;]~~

380 [~~(3) Nothing in this section affects any other rights reserved by a declarant.]~~

381 (1) (a) (i) To amend the governing documents, the governing documents may not
 382 require:

383 (A) for an amendment adopted after the period of administrative control, the vote or
 384 approval of unit owners with more than 67% of the voting interests;

385 (B) the approval of any specific unit owner; or

386 (C) the vote or approval of lien holders holding more than 67% of the first position
 387 security interests secured by a mortgage or trust deed in the association of unit owners.

388 (ii) Any provision in the governing documents that prohibits a vote or approval to
 389 amend any part of the governing documents during a particular time period is invalid.

390 [~~(4) (b) Subsection (1)(a) does not apply to an amendment affecting only:~~

391 [~~(a) (i) the undivided interest of each unit owner in the common areas and facilities, as~~
 392 ~~expressed in the declaration;~~

393 [~~(b) (ii) unit boundaries; or~~

394 [~~(c) members'] (iii) unit owners' voting rights.~~

395 [~~(5) (2) (a) A contract for services such as garbage collection, maintenance, lawn care,~~
 396 ~~or snow removal executed on behalf of the association of unit owners during a period of~~
 397 ~~administrative control is binding beyond the period of administrative control unless terminated~~

615 16-6a-1606, and 16-6a-1610, regardless of whether the association is incorporated under Title
 616 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

617 (b) An association may redact the following information from any document the
 618 association produces for inspection or copying:

619 (i) a Social Security number;

620 (ii) a bank account number; ~~and~~ or ~~or~~

621 (iii) any communication subject to attorney-client privilege.

622 (2) (a) In addition to the requirements described in Subsection (1), an association shall
 623 make documents available to lot owners in accordance with the association's governing
 624 documents.

625 (b) If a provision of an association's governing documents conflicts with a provision of
 626 this section, the provision of this section governs.

627 (3) In a request to inspect or copy documents, a lot owner may:

628 (a) elect whether to inspect or copy the documents;

629 (b) if the lot owner elects to copy the documents, request hard copies or electronic
 630 scans of the documents; or

631 (c) subject to Subsection (4), request that:

632 (i) the association make the copies or electronic scans of the requested documents;

633 (ii) a recognized third party duplicating service make the copies or electronic scans of
 634 the requested documents; or

635 (iii) the lot owner ~~be allowed to~~ bring any necessary imaging equipment to the
 635a place of inspection

636 and make copies or electronic scans of the documents while inspecting the documents.

637 (4) (a) An association shall comply with a request described in Subsection (3).

638 (b) If an association produces the copies or electronic scans:

639 (i) the copies or electronic scans shall be legible and accurate; and

640 (ii) the lot owner shall pay the association the reasonable cost of the copies or
 641 electronic scans, which may not exceed:

642 (A) the actual cost that the association paid to a recognized third party duplicating
 643 service to make the copies or electronic scans; or

644 (B) if an employee, manager, or other agent of the association makes the copies or
 645 electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or other

677 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
 678 the day on which the lot owner files the motion.

679 (d) At least 10 days before the day on which a lot owner files an action described in
 680 Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

681 (i) the lot owner's name, address, telephone number, and email address;

682 (ii) each requirement of this section with which the association has failed to comply;

683 (iii) a demand that the association comply with each requirement with which the
 684 association has failed to comply; and

685 (iv) a date by which the association shall remedy the association's noncompliance that
 686 is at least 10 days after the day on which the lot owner delivers the notice to the association.

687 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association.

688 (b) The provisions of this section apply regardless of any conflicting provision in Title
 689 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

689a **H→ (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right**
 689b **that the lot owner has under this section. ←H**

690 Section 10. **Coordinating S.B. 118 with H.B. 99 -- Substantive amendment.**

691 If this S.B. 118 and H.B. 99, Association Open Meeting Amendments, both pass and
 692 become law, the Legislature intends that the Office of Legislative Research and General
 693 Counsel, in preparing the Utah Code database for publication, on July 1, 2015:

694 (1) enact a new Subsection 57-8-56(8) to read:

695 "(8) (a) Subject to Subsection (8)(d), if an association of unit owners fails to comply
 696 with a provision of Subsections (1) through (4) and fails to remedy the noncompliance during
 697 the 90-day period described in Subsection (8)(d), a unit owner may file an action in court for:

698 (i) injunctive relief requiring the association of unit owners to comply with the
 699 provisions of Subsections (1) through (4);

700 (ii) \$500 or actual damages, whichever is greater; or

701 (iii) any other relief provided by law.

702 (b) In an action described in Subsection (8)(a), the court may award costs and
 703 reasonable attorney fees to the prevailing party.

704 (c) Upon motion from the unit owner, notice to the association of unit owners, and a
 705 hearing in which the court finds a likelihood that the association of unit owners has failed to
 706 comply with a provision of Subsections (1) through (4), the court may order the association of
 707 unit owners to immediately comply with the provisions of Subsections (1) through (4).