

Representative John Knotwell proposes the following substitute bill:

HOMEOWNERS ASSOCIATION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Knotwell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to condominium and community associations.

Highlighted Provisions:

This bill:

- ▶ provides that a condominium or community association shall comply with certain requirements before bringing a legal action against a declarant, a management committee or board of directors, or an employee, an independent contractor, or an agent of the declarant or the management committee or board of directors, related to a period of declarant control or period of administrative control; and

- ▶ provides that certain provisions regarding open community association board meetings apply during the period of administrative control.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8a-226, as enacted by Laws of Utah 2015, Chapter 387



26 ENACTS:

27 57-8-58, Utah Code Annotated 1953

28 57-8a-228, Utah Code Annotated 1953

29

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

31 Section 1. Section **57-8-58** is enacted to read:

32 **57-8-58. Liability of declarant -- Period of declarant control.**

33 (1) An association may not, after the period of declarant control, bring a legal action
34 against a declarant, a management committee, or an employee, an independent contractor, or an
35 agent of the declarant or the management committee related to the period of declarant control
36 unless:

37 (a) the legal action is approved, by written vote, by owners of more than 51% in
38 aggregate in interest of the undivided ownership of the common areas and facilities;

39 (b) the association provides each unit owner with the items described in Subsection
40 (2);

41 (c) the association establishes the trust described in Subsection (3); and

42 (d) the association first:

43 (i) notifies the person subject to the proposed action of the action and the basis of the
44 association's claim; and

45 (ii) gives the person subject to the proposed action a reasonable opportunity to resolve
46 the dispute that is the basis of the action.

47 (2) Before unit owners in an association may vote to approve an action described in
48 Subsection (1), the association shall provide each unit owner:

49 (a) written notice that the association is contemplating legal action against a declarant
50 or a declarant's agent;

51 (b) a written copy of a legal opinion, signed by an attorney licensed to practice in the
52 state, that assesses:

53 (i) the likelihood that the legal action will succeed; and

54 (ii) the likely cost of resolving the legal action to the association's satisfaction; and

55 (c) a written assessment of the likely effect any legal action will have on a unit owner's
56 or prospective unit buyer's ability to obtain financing for a unit while the legal action is

57 pending.

58 (3) Before the association commences a legal action described in Subsection (1), the
59 association shall:

60 (a) allocate an amount equal to 10% of the cost estimated by the attorney described in
61 Subsection (2)(b)(ii), not including attorney fees; and

62 (b) place the amount described in Subsection (3)(a) in a trust that the association may
63 only use to pay the costs to resolve the legal action.

64 Section 2. Section **57-8a-226** is amended to read:

65 **57-8a-226. Board meetings -- Open meetings.**

66 (1) (a) At least 48 hours before a meeting, the association shall give written notice of
67 the meeting via email to each lot owner who requests notice of a meeting, unless:

68 (i) notice of the meeting is included in a meeting schedule that was previously provided
69 to the lot owner; or

70 (ii) (A) the meeting is to address an emergency; and

71 (B) each board member receives notice of the meeting less than 48 hours before the
72 meeting.

73 (b) A notice described in Subsection (1)(a) shall:

74 (i) be delivered to the lot owner by email, to the email address that the lot owner
75 provides to the board or the association;

76 (ii) state the time and date of the meeting;

77 (iii) state the location of the meeting; and

78 (iv) if a board member may participate by means of electronic communication, provide
79 the information necessary to allow the lot owner to participate by the available means of
80 electronic communication.

81 (2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot
82 owner or the lot owner's representative if the representative is designated in writing.

83 (b) A board may close a meeting to:

84 (i) consult with an attorney for the purpose of obtaining legal advice;

85 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
86 proceedings;

87 (iii) discuss a personnel matter;

88 (iv) discuss a matter relating to contract negotiations, including review of a bid or
89 proposal;

90 (v) discuss a matter that involves an individual if the discussion is likely to cause the
91 individual undue embarrassment or violate the individual's reasonable expectation of privacy;
92 or

93 (vi) discuss a delinquent assessment or fine.

94 (3) (a) At each meeting, the board shall provide each lot owner a reasonable
95 opportunity to offer comments.

96 (b) The board may limit the comments described in Subsection (3)(a) to one specific
97 time period during the meeting.

98 (4) A board member may not avoid or obstruct the requirements of this section.

99 (5) Nothing in this section shall affect the validity or enforceability of an action of a
100 board.

101 (6) (a) ~~[The]~~ Except as provided in Subsection (6)(b), the provisions of this section do
102 not apply during the period of administrative control.

103 (b) During the period of administrative control, the association shall hold a meeting
104 that complies with Subsections (1) through (3):

105 (i) at least once each year; and

106 (ii) each time the association:

107 (A) increases a fee; or

108 (B) raises an assessment.

109 (7) The provisions of this section apply regardless of when the association's first
110 governing document was recorded.

111 (8) (a) Subject to Subsection (8)(d), if an association fails to comply with a provision of
112 Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period
113 described in Subsection (8)(d), a lot owner may file an action in court for:

114 (i) injunctive relief requiring the association to comply with the provisions of
115 Subsections (1) through (4);

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

117 (iii) any other relief provided by law.

118 (b) In an action described in Subsection (8)(a), the court may award costs and

119 reasonable attorney fees to the prevailing party.

120 (c) Upon motion from the lot owner, notice to the association, and a hearing in which
121 the court finds a likelihood that the association has failed to comply with a provision of
122 Subsections (1) through (4), the court may order the association to immediately comply with
123 the provisions of Subsections (1) through (4).

124 (d) At least 90 days before the day on which a lot owner files an action described in
125 Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:

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

127 (ii) each requirement of Subsections (1) through (4) with which the association has
128 failed to comply;

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

131 (iv) a date by which the association shall remedy the association's noncompliance that
132 is at least 90 days after the day on which the lot owner delivers the notice to the association.

133 Section 3. Section **57-8a-228** is enacted to read:

134 **57-8a-228. Liability of declarant -- Period of administrative control.**

135 (1) An association may not, after the period of administrative control, bring a legal
136 action against a declarant, a board of directors, or an employee, an independent contractor, or
137 the agent of the declarant or the previous board of directors, the related to the period of
138 administrative control unless:

139 (a) the legal action is approved, by written vote, by more than 51% of the allocated
140 voting interests of the lot owners in the association;

141 (b) the association provides each lot owner with the items described in Subsection (2);

142 (c) the association establishes the trust described in Subsection (3); and

143 (d) the association first:

144 (i) notifies the person subject to the proposed legal action of the legal action and basis
145 of the association's claim; and

146 (ii) gives the person subject to the claim a reasonable opportunity to resolve the dispute
147 that is the basis of the proposed legal action.

148 (2) Before lot owners in an association may vote to approve an action described in
149 Subsection (1), the association shall provide each unit owner:

150 (a) written notice that the association is contemplating legal action against a declarant
151 or a declarant's agent;

152 (b) a written copy of a legal opinion, signed by an attorney licensed to practice in the
153 state, that assesses:

154 (i) the likelihood that the legal action will succeed; and

155 (ii) the likely cost of resolving the legal action to the association's satisfaction; and

156 (c) a written assessment of the likely effect any legal action will have on a lot owner's
157 or prospective lot buyer's ability to obtain financing for a unit while the legal action is pending.

158 (3) Before the association commences a legal action described in Subsection (1), the
159 association shall:

160 (a) allocate an amount equal to 10% of the cost estimated by the attorney described in
161 Subsection (2)(b)(ii), not including attorney fees; and

162 (b) place the amount described in Subsection (3)(a) in a trust that the association may
163 only use to pay the costs to resolve the legal action.