

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 in advance at a meeting where owners of at least 51%
38 in aggregate in interest of the undivided ownership of the common areas and facilities are:

39 (i) present; or

40 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or
41 deny the legal action at the meeting;

42 (b) the legal action is approved by vote in person or by proxy of owners of the lesser
43 of:

44 (i) more than 75% in aggregate in interest of the total aggregate interest of the
45 undivided ownership of the common areas and facilities represented by those owners present at
46 the meeting or represented by a proxy as described in Subsection (1)(a)(i); or

47 (ii) more than 51% in aggregate in interest of the undivided ownership of the common
48 areas and facilities;

49 (c) the association provides each unit owner with the items described in Subsection (2);

50 (d) the association establishes the trust described in Subsection (3); and

51 (e) the association first:

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

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

56 (2) Before unit owners in an association may vote to approve an action described in

57 Subsection (1), the association shall provide each unit owner:

58 (a) a written notice that the association is contemplating legal action; and

59 (b) after the association consults with an attorney licensed to practice in the state, a
60 written assessment of:

61 (i) the likelihood that the legal action will succeed;

62 (ii) the likely amount in controversy in the legal action;

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

64 (iv) the likely effect the legal action will have on a unit owner's or prospective unit

65 buyer's ability to obtain financing for a unit while the legal action is pending.

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

68 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,
69 not including attorney fees; and

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

72 (4) This section does not apply to an association that brings a legal action that has an
73 amount in controversy of less than \$75,000.

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

75 **57-8a-226. Board meetings -- Open meetings.**

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

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

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

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

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

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

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

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

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

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

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

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

95 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
96 proceedings;

97 (iii) discuss a personnel matter;

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

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

103 (vi) discuss a delinquent assessment or fine.

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

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

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

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

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

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

115 (i) at least once each year; and

116 (ii) each time the association:

117 (A) increases a fee; or

118 (B) raises an assessment.

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

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

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

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

127 (iii) any other relief provided by law.

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

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

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

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

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

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

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

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

144 **57-8a-228. Liability of declarant -- Period of administrative control.**

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

149 (a) the legal action is approved in advance at a meeting where owners of at least 51%

150 of the allocated voting interests of the lot owners in the association are:

151 (i) present; or

152 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or
153 deny the legal action at the meeting;

154 (b) the legal action is approved by vote in person or by proxy of owners of the lesser
155 of:

156 (i) more than 75% of the allocated voting interests of the lot owners present at the
157 meeting or represented by a proxy as described in Subsection (1)(a)(i); or

158 (ii) more than 51% of the allocated voting interests of the lot owners in the association;

159 (c) the association provides each lot owner with the items described in Subsection (2);

160 (d) the association establishes the trust described in Subsection (3); and

161 (e) the association first:

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

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

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

168 (a) a written notice that the association is contemplating legal action; and

169 (b) after the association consults with an attorney licensed to practice in the state, a
170 written assessment of:

171 (i) the likelihood that the legal action will succeed;

172 (ii) the likely amount in controversy in the legal action;

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

174 (iv) the likely effect the legal action will have on a lot owner's or prospective lot
175 buyer's ability to obtain financing for a lot while the legal action is pending.

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

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

180 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,

181 not including attorney fees; and

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

184 (4) This section does not apply to an association that brings a legal action that has an
185 amount in controversy of less than \$75,000.