

Walt Brooks proposes the following substitute bill:

Homeowners' Association Requirements

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill amends provisions relating to homeowners' associations.

Highlighted Provisions:

This bill:

- increases the monetary amount a unit or lot owner may request if an association fails to properly make records available for examination;
- prohibits a declarant from using association funds in a legal action brought by a homeowner before the end of the period of administrative control;
- amends provisions relating to the period of administrative control for associations of lot owners;
- provides that a declarant may not count undeveloped land toward the total number of lots when determining the end of the period of administrative control;
- prohibits the declarant from making a change to the declaration during the period of administrative control after the declarant conveys at least one lot to a lot owner; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-17, as last amended by Laws of Utah 2022, Chapter 439

57-8-58, as enacted by Laws of Utah 2017, Chapter 284

57-8a-227, as last amended by Laws of Utah 2022, Chapter 439

57-8a-229, as enacted by Laws of Utah 2017, Chapter 284

29 **57-8a-502**, as last amended by Laws of Utah 2016, Chapter 210

30

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

32 Section 1. Section **57-8-17** is amended to read:

33 **57-8-17 . Records -- Availability for examination.**

34 (1)(a) Subject to Subsection (1)(b) and regardless of whether the association of unit
35 owners is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit
36 Corporation Act, an association of unit owners shall keep and make available to unit
37 owners:

38 (i) each record identified in Subsections 16-6a-1601(1) through (5), [~~in accordance~~
39 ~~with]~~ in the manner described in Sections 16-6a-1601, 16-6a-1602, 16-6a-1603,
40 16-6a-1605, 16-6a-1606, and 16-6a-1610; and

41 (ii) a copy of the association's:

42 (A) governing documents;

43 (B) most recent approved minutes;

44 (C) most recent budget and financial statement;

45 (D) most recent reserve analysis; and

46 (E) certificate of insurance for each insurance policy the association of unit
47 owners holds.

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

50 (i) a Social Security number;

51 (ii) a bank account number; or

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

53 (2)(a) In addition to the requirements described in Subsection (1), an association of unit
54 owners shall:

55 (i) make documents available to unit owners in accordance with the association of
56 unit owners' governing documents; and

57 (ii)(A) if the association of unit owners has an active website, make the documents
58 described in Subsections (1)(a)(ii)(A) through (C) available to unit owners, free
59 of charge, through the website; or

60 (B) if the association of unit owners does not have an active website, make
61 physical copies of the documents described in Subsections (1)(a)(ii)(A)
62 through (C) available to unit owners during regular business hours at the

- 63 association of unit owners' address registered with the Department of
64 Commerce under Section 57-8-13.1.
- 65 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.
- 66 (c) If a provision of an association of unit owners' governing documents conflicts with a
67 provision of this section, the provision of this section governs.
- 68 (3) In a written request to inspect or copy documents:
- 69 (a) a unit owner shall include:
- 70 (i) the association of unit owners' name;
- 71 (ii) the unit owner's name;
- 72 (iii) the unit owner's property address;
- 73 (iv) the unit owner's email address;
- 74 (v) a description of the documents requested; and
- 75 (vi) any election or request described in Subsection (3)(b); and
- 76 (b) a unit owner may:
- 77 (i) elect whether to inspect or copy the documents;
- 78 (ii) if the unit owner elects to copy the documents, request hard copies or electronic
79 scans of the documents; or
- 80 (iii) subject to Subsection (4), request that:
- 81 (A) the association of unit owners make the copies or electronic scans of the
82 requested documents;
- 83 (B) a recognized third party duplicating service make the copies or electronic
84 scans of the requested documents;
- 85 (C) the unit owner be allowed to bring any necessary imaging equipment to the
86 place of inspection and make copies or electronic scans of the documents while
87 inspecting the documents; or
- 88 (D) the association of unit owners email the requested documents to an email
89 address provided in the request.
- 90 (4)(a) An association of unit owners shall comply with a request described in Subsection
91 (3).
- 92 (b) If an association of unit owners produces the copies or electronic scans:
- 93 (i) the copies or electronic scans shall be legible and accurate; and
- 94 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
95 copies or electronic scans and for time spent meeting with the unit owner, which
96 may not exceed:

- 97 (A) the actual cost that the association of unit owners paid to a recognized third
98 party duplicating service to make the copies or electronic scans; or
99 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other
100 agent's time making the copies or electronic scans.
- 101 (c) If a unit owner requests a recognized third party duplicating service make the copies
102 or electronic scans:
- 103 (i) the association of unit owners shall arrange for the delivery and pick up of the
104 original documents; and
105 (ii) the unit owner shall pay the duplicating service directly.
- 106 (d) Subject to Subsection (9), if a unit owner requests to bring imaging equipment to the
107 inspection, the association of unit owners shall provide the necessary space, light, and
108 power for the imaging equipment.
- 109 (5) If, in response to a unit owner's request to inspect or copy documents, an association of
110 unit owners fails to comply with a provision of this section, the association of unit
111 owners shall pay:
- 112 (a) the reasonable costs of inspecting and copying the requested documents;
113 (b) for items described in Subsections (1)(a)(ii)(A) through (C), \$25 to the unit owner
114 who made the request for each day the request continues unfulfilled, beginning the
115 sixth day after the day on which the unit owner made the request; and
116 (c) reasonable attorney fees and costs incurred by the unit owner in obtaining the
117 inspection and copies of the requested documents.
- 118 (6)(a) In addition to any remedy in the association of unit owners' governing documents
119 or as otherwise provided by law, a unit owner may file an action in court under this
120 section if:
- 121 (i) subject to Subsection (9), an association of unit owners fails to make documents
122 available to the unit owner in accordance with this section, the association of unit
123 owners' governing documents, or as otherwise provided by law; and
124 (ii) the association of unit owners fails to timely comply with a notice described in
125 Subsection (6)(d).
- 126 (b) In an action described in Subsection (6)(a):
- 127 (i) the unit owner may request:
- 128 (A) injunctive relief requiring the association of unit owners to comply with the
129 provisions of this section;
- 130 (B) [~~\$500~~] \$1,000 or actual damage, whichever is greater; or

- 131 (C) any other relief provided by law; and
- 132 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,
- 133 including any reasonable attorney fees incurred before the action was filed that
- 134 relate to the request that is the subject of the action.
- 135 (c)(i) In an action described in Subsection (6)(a), upon motion by the unit owner
- 136 made in accordance with Subsection (6)(b), notice to the association of unit
- 137 owners, and a hearing in which the court finds a likelihood that the association of
- 138 unit owners failed to comply with a provision of this section, the court shall order
- 139 the association of unit owners to immediately comply with the provision.
- 140 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days
- 141 after the day on which the unit owner files the motion.
- 142 (d) At least 10 days before the day on which a unit owner files an action described in
- 143 Subsection (6)(a), the unit owner shall deliver a written notice to the association of
- 144 unit owners that states:
- 145 (i) the unit owner's name, address, telephone number, and email address;
- 146 (ii) each requirement of this section with which the association of unit owners has
- 147 failed to comply;
- 148 (iii) a demand that the association of unit owners comply with each requirement with
- 149 which the association of unit owners has failed to comply; and
- 150 (iv) a date by which the association of unit owners shall remedy the association of
- 151 unit owners' noncompliance that is at least 10 days after the day on which the unit
- 152 owner delivers the notice to the association of unit owners.
- 153 (7)(a) The provisions of Section 16-6a-1604 do not apply to an association of unit
- 154 owners.
- 155 (b) The provisions of this section apply regardless of any conflicting provision in Title
- 156 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 157 (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right that
- 158 the unit owner has under this section.
- 159 (9) An association of unit owners is not liable for identifying or providing a document in
- 160 error, if the association of unit owners identified or provided the erroneous document in
- 161 good faith.
- 162 Section 2. Section **57-8-58** is amended to read:
- 163 **57-8-58 . Liability of declarant or management committee -- Period of declarant**
- 164 **control.**

- 165 (1) An association may not, after the period of declarant control, bring a legal action against
166 a declarant, a management committee, or an employee, an independent contractor, or an
167 agent of the declarant or the management committee related to the period of declarant
168 control unless:
- 169 (a) the legal action is approved in advance at a meeting where owners of at least 51% in
170 aggregate in interest of the undivided ownership of the common areas and facilities
171 are:
 - 172 (i) present; or
 - 173 (ii) represented by a proxy specifically assigned for the purpose of voting to approve
174 or deny the legal action at the meeting;
 - 175 (b) the legal action is approved by vote in person or by proxy of owners of the lesser of:
 - 176 (i) more than 75% in aggregate in interest of the total aggregate interest of the
177 undivided ownership of the common areas and facilities represented by those
178 owners present at the meeting or represented by a proxy as described in
179 Subsection (1)(a); or
 - 180 (ii) more than 51% in aggregate in interest of the undivided ownership of the
181 common areas and facilities;
 - 182 (c) the association provides each unit owner with the items described in Subsection (2);
 - 183 (d) the association establishes the trust described in Subsection (3); and
 - 184 (e) the association first:
 - 185 (i) notifies the person subject to the proposed action of the action and the basis of the
186 association's claim; and
 - 187 (ii) gives the person subject to the proposed action a reasonable opportunity to
188 resolve the dispute that is the basis of the action.
- 189 (2) Before unit owners in an association may vote to approve an action described in
190 Subsection (1), the association shall provide each unit owner:
- 191 (a) a written notice that the association is contemplating legal action; and
 - 192 (b) after the association consults with an attorney licensed to practice in the state, a
193 written assessment of:
 - 194 (i) the likelihood that the legal action will succeed;
 - 195 (ii) the likely amount in controversy in the legal action;
 - 196 (iii) the likely cost of resolving the legal action to the association's satisfaction; and
 - 197 (iv) the likely effect the legal action will have on a unit owner's or prospective unit
198 buyer's ability to obtain financing for a unit while the legal action is pending.

- 199 (3) Before the association commences a legal action described in Subsection (1), the
 200 association shall:
- 201 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not
 202 including attorney fees; and
- 203 (b) place the amount described in Subsection (3)(a) in a trust that the association may
 204 only use to pay the costs to resolve the legal action.
- 205 (4) This section does not apply to an association that brings a legal action that has an
 206 amount in controversy of less than \$75,000.

207 (5) In a legal action brought by one or more unit owners before the end of the period of
 208 declarant control, a declarant may not use any funds paid by a unit owner to the
 209 declarant to pay for costs of the legal action.

210 Section 3. Section **57-8a-227** is amended to read:

211 **57-8a-227 . Records -- Availability for examination.**

- 212 (1)(a) Subject to Subsection (1)(b) and regardless of whether the association is
 213 incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an
 214 association shall keep and make available to lot owners:
- 215 (i) each record identified in Subsections 16-6a-1601(1) through (5), [~~in accordance~~
 216 ~~with]~~ in the manner described in Sections 16-6a-1601, 16-6a-1602, 16-6a-1603,
 217 16-6a-1605, 16-6a-1606, and 16-6a-1610; and
- 218 (ii) a copy of the association's:
- 219 (A) governing documents;
- 220 (B) most recent approved minutes;
- 221 (C) most recent budget and financial statement;
- 222 (D) most recent reserve analysis; and
- 223 (E) certificate of insurance for each insurance policy the association holds.
- 224 (b) An association may redact the following information from any document the
 225 association produces for inspection or copying:
- 226 (i) a Social Security number;
- 227 (ii) a bank account number; or
- 228 (iii) any communication subject to attorney-client privilege.
- 229 (2)(a) In addition to the requirements described in Subsection (1), an association shall:
- 230 (i) make documents available to lot owners in accordance with the association's
 231 governing documents; and
- 232 (ii)(A) if the association has an active website, make the documents described in

- 233 Subsections (1)(a)(ii)(A) through (C) available to lot owners, free of charge,
234 through the website; or
- 235 (B) if the association does not have an active website, make physical copies of the
236 documents described in Subsections (1)(a)(ii)(A) through (C) available to lot
237 owners during regular business hours at the association's address registered
238 with the Department of Commerce under Section 57-8a-105.
- 239 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.
- 240 (c) If a provision of an association's governing documents conflicts with a provision of
241 this section, the provision of this section governs.
- 242 (3) In a written request to inspect or copy documents:
- 243 (a) a lot owner shall include:
- 244 (i) the association's name;
- 245 (ii) the lot owner's name;
- 246 (iii) the lot owner's property address;
- 247 (iv) the lot owner's email address;
- 248 (v) a description of the documents requested; and
- 249 (vi) any election or request described in Subsection (3)(b); and
- 250 (b) a lot owner may:
- 251 (i) elect whether to inspect or copy the documents;
- 252 (ii) if the lot owner elects to copy the documents, request hard copies or electronic
253 scans of the documents; or
- 254 (iii) subject to Subsection (4), request that:
- 255 (A) the association make the copies or electronic scans of the requested
256 documents;
- 257 (B) a recognized third party duplicating service make the copies or electronic
258 scans of the requested documents;
- 259 (C) the lot owner be allowed to bring any necessary imaging equipment to the
260 place of inspection and make copies or electronic scans of the documents while
261 inspecting the documents; or
- 262 (D) the association email the requested documents to an email address provided in
263 the request.
- 264 (4)(a) An association shall comply with a request described in Subsection (3).
- 265 (b) If an association produces the copies or electronic scans:
- 266 (i) the copies or electronic scans shall be legible and accurate; and

- 267 (ii) the lot owner shall pay the association the reasonable cost of the copies or
268 electronic scans and for time spent meeting with the lot owner, which may not
269 exceed:
- 270 (A) the actual cost that the association paid to a recognized third party duplicating
271 service to make the copies or electronic scans; or
272 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other
273 agent's time.
- 274 (c) If a lot owner requests a recognized third party duplicating service make the copies
275 or electronic scans:
- 276 (i) the association shall arrange for the delivery and pick up of the original
277 documents; and
278 (ii) the lot owner shall pay the duplicating service directly.
- 279 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
280 shall provide the necessary space, light, and power for the imaging equipment.
- 281 (5) Subject to Subsection (9), if, in response to a lot owner's request to inspect or copy
282 documents, an association fails to comply with a provision of this section, the
283 association shall pay:
- 284 (a) the reasonable costs of inspecting and copying the requested documents;
285 (b) for items described in Subsections (1)(a)(ii)(A) through (C), \$25 to the lot owner
286 who made the request for each day the request continues unfulfilled, beginning the
287 sixth day after the day on which the lot owner made the request; and
288 (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the
289 inspection and copies of the requested documents.
- 290 (6)(a) In addition to any remedy in the association's governing documents or otherwise
291 provided by law, a lot owner may file an action in court under this section if:
- 292 (i) subject to Subsection (9), an association fails to make documents available to the
293 lot owner in accordance with this section, the association's governing documents,
294 or as otherwise provided by law; and
295 (ii) the association fails to timely comply with a notice described in Subsection (6)(d).
- 296 (b) In an action described in Subsection (6)(a):
- 297 (i) the lot owner may request:
- 298 (A) injunctive relief requiring the association to comply with the provisions of this
299 section;
300 (B) [~~\$500~~] \$1,000 or actual damage, whichever is greater; or

- 301 (C) any other relief provided by law; and
- 302 (ii) the court [~~shall~~] may award costs and reasonable attorney fees to the prevailing
- 303 party, including any reasonable attorney fees incurred before the action was filed
- 304 that relate to the request that is the subject of the action.
- 305 (c)(i) In an action described in Subsection (6)(a), upon motion by the lot owner made
- 306 in accordance with Subsection (6)(b), notice to the association, and a hearing in
- 307 which the court finds a likelihood that the association failed to comply with a
- 308 provision of this section, the court shall order the association to immediately
- 309 comply with the provision.
- 310 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days
- 311 after the day on which the lot owner files the motion.
- 312 (d) At least 10 days before the day on which a lot owner files an action described in
- 313 Subsection (6)(a), the lot owner shall deliver a written notice to the association that
- 314 states:
- 315 (i) the lot owner's name, address, telephone number, and email address;
- 316 (ii) each requirement of this section with which the association has failed to comply;
- 317 (iii) a demand that the association comply with each requirement with which the
- 318 association has failed to comply; and
- 319 (iv) a date by which the association shall remedy the association's noncompliance
- 320 that is at least 10 days after the day on which the lot owner delivers the notice to
- 321 the association.
- 322 (7)(a) The provisions of Section 16-6a-1604 do not apply to an association.
- 323 (b) The provisions of this section apply regardless of any conflicting provision in Title
- 324 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 325 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that the
- 326 lot owner has under this section.
- 327 (9) An association is not liable for identifying or providing a document in error, if the
- 328 association identified or provided the erroneous document in good faith.

329 Section 4. Section **57-8a-229** is amended to read:

330 **57-8a-229 . Liability of declarant or board of directors -- Period of**
331 **administrative control.**

- 332 (1) An association may not, after the period of administrative control, bring a legal action
- 333 against a declarant, a board of directors, or an employee, an independent contractor, or
- 334 the agent of the declarant or the previous board of directors related to the period of

- 335 administrative control unless:
- 336 (a) the legal action is approved in advance at a meeting where owners of at least 51% of
337 the allocated voting interests of the lot owners in the association are:
- 338 (i) present; or
- 339 (ii) represented by a proxy specifically assigned for the purpose of voting to approve
340 or deny the legal action at the meeting;
- 341 (b) the legal action is approved by vote in person or by proxy of owners of the lesser of:
- 342 (i) more than 75% of the allocated voting interests of the lot owners present at the
343 meeting or represented by a proxy as described in Subsection (1)(a); or
- 344 (ii) more than 51% of the allocated voting interests of the lot owners in the
345 association;
- 346 (c) the association provides each lot owner with the items described in Subsection (2);
- 347 (d) the association establishes the trust described in Subsection (3); and
- 348 (e) the association first:
- 349 (i) notifies the person subject to the proposed legal action of the legal action and basis
350 of the association's claim; and
- 351 (ii) gives the person subject to the claim a reasonable opportunity to resolve the
352 dispute that is the basis of the proposed legal action.
- 353 (2) Before lot owners in an association may vote to approve an action described in
354 Subsection (1), the association shall provide each lot owner:
- 355 (a) a written notice that the association is contemplating legal action; and
- 356 (b) after the association consults with an attorney licensed to practice in the state, a
357 written assessment of:
- 358 (i) the likelihood that the legal action will succeed;
- 359 (ii) the likely amount in controversy in the legal action;
- 360 (iii) the likely cost of resolving the legal action to the association's satisfaction; and
- 361 (iv) the likely effect the legal action will have on a lot owner's or prospective lot
362 buyer's ability to obtain financing for a lot while the legal action is pending.
- 363 (3) Before the association commences a legal action described in Subsection (1), the
364 association shall:
- 365 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not
366 including attorney fees; and
- 367 (b) place the amount described in Subsection (3)(a) in a trust that the association may
368 only use to pay the costs to resolve the legal action.

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

371 (5) In a legal action brought by one or more lot owners before the end of the period of
372 administrative control, a declarant may not use any funds paid by the lot owner to the
373 declarant to pay for costs of the legal action.

374 Section 5. Section **57-8a-502** is amended to read:

375 **57-8a-502 . Period of administrative control.**

376 (1) As used in this section, "undeveloped land" means land within an association that a
377 declarant designates for potential development on which no new development has taken
378 place and no infrastructure for construction has been installed.

379 ~~[(1)]~~ (2) ~~[Unless otherwise provided for in a declaration,]~~ For an association comprised of
380 300 lots or more, a period of administrative control terminates on~~[the first to occur of~~
381 ~~the following]:~~

382 (a) the date provided in the declaration; or

383 ~~[(a)]~~ (b) if the declaration does not provide a date, the first to occur of the following:

384 (i) 60 days after [75%] 80% of the lots~~[that may be created]~~ are conveyed to lot
385 owners other than a declarant;

386 ~~[(b)]~~ (ii) seven years after all declarants have ceased to offer lots for sale in the
387 ordinary course of business; or

388 ~~[(c)]~~ (iii) the day the declarant, after giving written notice to the lot owners, records an
389 instrument voluntarily surrendering all rights to control activities of the
390 association.

391 (3) For an association comprised of fewer than 300 lots, a period of administrative control
392 terminates on the first to occur of the following:

393 (a) the date provided in the declaration; or

394 (b) if the declaration does not provide a date, the first to occur of the following:

395 (i) 60 days after 80% of the lots are conveyed to lot owners other than a declarant;

396 (ii) one year after all declarants have ceased to offer lots for sale in the ordinary
397 course of business; or

398 (iii) the day the declarant, after giving written notice to the lot owners, records an
399 instrument voluntarily surrendering all rights to control activities of the
400 association.

401 ~~[(2)]~~ (4)(a) A declarant may voluntarily surrender the right to appoint and remove a
402 member of the board before the period of administrative control terminates under

- 403 Subsection ~~[(1)]~~ (2).
- 404 (b) Subject to Subsection ~~[(2)(a)]~~ (4)(a), the declarant may require, for the duration of the
405 period of administrative control, that actions of the association or board, as specified
406 in a recorded instrument executed by the declarant, be approved by the declarant
407 before they become effective.
- 408 (c) During a period of administrative control, except as provided in Subsection ~~[(2)(a),]~~
409 (4)(a), a declarant may appoint the declarant's officers, employees, or agents as
410 members of the board.
- 411 ~~[(3)]~~ (5)(a) Upon termination of the period of administrative control, the lot owners shall
412 elect a board consisting of an odd number of at least three members, a majority of
413 whom shall be lot owners.
- 414 (b) Unless the declaration provides for the election of officers by the lot owners, the
415 board shall elect officers of the association.
- 416 (c) The board members and officers shall take office upon election or appointment.
- 417 (6)(a) When calculating the percentage in Subsection (2)(b)(i) or (3)(b)(i), a declarant
418 may not include any undeveloped land.
- 419 (b) After the day on which the declarant conveys at least one lot to a lot owner other
420 than the declarant, the declarant may not amend the declaration without approval of a
421 majority of lot owners.
- 422 Section 6. **Effective Date.**
- 423 This bill takes effect on May 7, 2025.