

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; 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

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

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

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

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

30 owners:

31 (i) each record identified in Subsections 16-6a-1601(1) through (5), [~~in accordance~~
32 ~~with] in the manner described in Sections 16-6a-1601, 16-6a-1602, 16-6a-1603,
33 16-6a-1605, 16-6a-1606, and 16-6a-1610; and~~

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

35 (A) governing documents;

36 (B) most recent approved minutes;

37 (C) most recent budget and financial statement;

38 (D) most recent reserve analysis; and

39 (E) certificate of insurance for each insurance policy the association of unit
40 owners holds.

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

43 (i) a Social Security number;

44 (ii) a bank account number; or

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

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

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

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

53 (B) if the association of unit owners does not have an active website, make
54 physical copies of the documents described in Subsections (1)(a)(ii)(A)
55 through (C) available to unit owners during regular business hours at the
56 association of unit owners' address registered with the Department of
57 Commerce under Section 57-8-13.1.

58 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.

59 (c) If a provision of an association of unit owners' governing documents conflicts with a
60 provision of this section, the provision of this section governs.

61 (3) In a written request to inspect or copy documents:

62 (a) a unit owner shall include:

63 (i) the association of unit owners' name;

- 64 (ii) the unit owner's name;
- 65 (iii) the unit owner's property address;
- 66 (iv) the unit owner's email address;
- 67 (v) a description of the documents requested; and
- 68 (vi) any election or request described in Subsection (3)(b); and
- 69 (b) a unit owner may:
- 70 (i) elect whether to inspect or copy the documents;
- 71 (ii) if the unit owner elects to copy the documents, request hard copies or electronic
- 72 scans of the documents; or
- 73 (iii) subject to Subsection (4), request that:
- 74 (A) the association of unit owners make the copies or electronic scans of the
- 75 requested documents;
- 76 (B) a recognized third party duplicating service make the copies or electronic
- 77 scans of the requested documents;
- 78 (C) the unit owner be allowed to bring any necessary imaging equipment to the
- 79 place of inspection and make copies or electronic scans of the documents while
- 80 inspecting the documents; or
- 81 (D) the association of unit owners email the requested documents to an email
- 82 address provided in the request.
- 83 (4)(a) An association of unit owners shall comply with a request described in Subsection
- 84 (3).
- 85 (b) If an association of unit owners produces the copies or electronic scans:
- 86 (i) the copies or electronic scans shall be legible and accurate; and
- 87 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
- 88 copies or electronic scans and for time spent meeting with the unit owner, which
- 89 may not exceed:
- 90 (A) the actual cost that the association of unit owners paid to a recognized third
- 91 party duplicating service to make the copies or electronic scans; or
- 92 (B) 10 cents per page and [~~\$15-~~] \$20 per hour for the employee's, manager's, or
- 93 other agent's time making the copies or electronic scans.
- 94 (c) If a unit owner requests a recognized third party duplicating service make the copies
- 95 or electronic scans:
- 96 (i) the association of unit owners shall arrange for the delivery and pick up of the
- 97 original documents; and

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

- 132 the association of unit owners to immediately comply with the provision.
- 133 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days
134 after the day on which the unit owner files the motion.
- 135 (d) At least 10 days before the day on which a unit owner files an action described in
136 Subsection (6)(a), the unit owner shall deliver a written notice to the association of
137 unit owners that states:
- 138 (i) the unit owner's name, address, telephone number, and email address;
- 139 (ii) each requirement of this section with which the association of unit owners has
140 failed to comply;
- 141 (iii) a demand that the association of unit owners comply with each requirement with
142 which the association of unit owners has failed to comply; and
- 143 (iv) a date by which the association of unit owners shall remedy the association of
144 unit owners' noncompliance that is at least 10 days after the day on which the unit
145 owner delivers the notice to the association of unit owners.
- 146 (7)(a) The provisions of Section 16-6a-1604 do not apply to an association of unit
147 owners.
- 148 (b) The provisions of this section apply regardless of any conflicting provision in Title
149 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 150 (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right that
151 the unit owner has under this section.
- 152 (9) An association of unit owners is not liable for identifying or providing a document in
153 error, if the association of unit owners identified or provided the erroneous document in
154 good faith.

155 Section 2. Section **57-8-58** is amended to read:

156 **57-8-58 . Liability of declarant or management committee -- Period of declarant**
157 **control.**

- 158 (1) An association may not, after the period of declarant control, bring a legal action against
159 a declarant, a management committee, or an employee, an independent contractor, or an
160 agent of the declarant or the management committee related to the period of declarant
161 control unless:
- 162 (a) the legal action is approved in advance at a meeting where owners of at least 51% in
163 aggregate in interest of the undivided ownership of the common areas and facilities
164 are:
- 165 (i) present; or

- 166 (ii) represented by a proxy specifically assigned for the purpose of voting to approve
167 or deny the legal action at the meeting;
- 168 (b) the legal action is approved by vote in person or by proxy of owners of the lesser of:
169 (i) more than 75% in aggregate in interest of the total aggregate interest of the
170 undivided ownership of the common areas and facilities represented by those
171 owners present at the meeting or represented by a proxy as described in
172 Subsection (1)(a); or
173 (ii) more than 51% in aggregate in interest of the undivided ownership of the
174 common areas and facilities;
- 175 (c) the association provides each unit owner with the items described in Subsection (2);
176 (d) the association establishes the trust described in Subsection (3); and
177 (e) the association first:
178 (i) notifies the person subject to the proposed action of the action and the basis of the
179 association's claim; and
180 (ii) gives the person subject to the proposed action a reasonable opportunity to
181 resolve the dispute that is the basis of the action.
- 182 (2) Before unit owners in an association may vote to approve an action described in
183 Subsection (1), the association shall provide each unit owner:
184 (a) a written notice that the association is contemplating legal action; and
185 (b) after the association consults with an attorney licensed to practice in the state, a
186 written assessment of:
187 (i) the likelihood that the legal action will succeed;
188 (ii) the likely amount in controversy in the legal action;
189 (iii) the likely cost of resolving the legal action to the association's satisfaction; and
190 (iv) the likely effect the legal action will have on a unit owner's or prospective unit
191 buyer's ability to obtain financing for a unit while the legal action is pending.
- 192 (3) Before the association commences a legal action described in Subsection (1), the
193 association shall:
194 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not
195 including attorney fees; and
196 (b) place the amount described in Subsection (3)(a) in a trust that the association may
197 only use to pay the costs to resolve the legal action.
- 198 (4) This section does not apply to an association that brings a legal action that has an
199 amount in controversy of less than \$75,000.

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

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

204 **57-8a-227 . Records -- Availability for examination.**

205 (1)(a) Subject to Subsection (1)(b) and regardless of whether the association is
 206 incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an
 207 association shall keep and make available to lot owners:

208 (i) each record identified in Subsections 16-6a-1601(1) through (5), [~~in accordance~~
 209 ~~with]~~ in the manner described in Sections 16-6a-1601, 16-6a-1602, 16-6a-1603,
 210 16-6a-1605, 16-6a-1606, and 16-6a-1610; and

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

212 (A) governing documents;

213 (B) most recent approved minutes;

214 (C) most recent budget and financial statement;

215 (D) most recent reserve analysis; and

216 (E) certificate of insurance for each insurance policy the association holds.

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

219 (i) a Social Security number;

220 (ii) a bank account number; or

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

222 (2)(a) In addition to the requirements described in Subsection (1), an association shall:

223 (i) make documents available to lot owners in accordance with the association's
 224 governing documents; and

225 (ii)(A) if the association has an active website, make the documents described in
 226 Subsections (1)(a)(ii)(A) through (C) available to lot owners, free of charge,
 227 through the website; or

228 (B) if the association does not have an active website, make physical copies of the
 229 documents described in Subsections (1)(a)(ii)(A) through (C) available to lot
 230 owners during regular business hours at the association's address registered
 231 with the Department of Commerce under Section 57-8a-105.

232 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.

233 (c) If a provision of an association's governing documents conflicts with a provision of

234 this section, the provision of this section governs.

235 (3) In a written request to inspect or copy documents:

236 (a) a lot owner shall include:

237 (i) the association's name;

238 (ii) the lot owner's name;

239 (iii) the lot owner's property address;

240 (iv) the lot owner's email address;

241 (v) a description of the documents requested; and

242 (vi) any election or request described in Subsection (3)(b); and

243 (b) a lot owner may:

244 (i) elect whether to inspect or copy the documents;

245 (ii) if the lot owner elects to copy the documents, request hard copies or electronic
246 scans of the documents; or

247 (iii) subject to Subsection (4), request that:

248 (A) the association make the copies or electronic scans of the requested
249 documents;

250 (B) a recognized third party duplicating service make the copies or electronic
251 scans of the requested documents;

252 (C) the lot owner be allowed to bring any necessary imaging equipment to the
253 place of inspection and make copies or electronic scans of the documents while
254 inspecting the documents; or

255 (D) the association email the requested documents to an email address provided in
256 the request.

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

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

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

260 (ii) the lot owner shall pay the association the reasonable cost of the copies or
261 electronic scans and for time spent meeting with the lot owner, which may not
262 exceed:

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

265 (B) 10 cents per page and [~~\$15~~] \$20 per hour for the employee's, manager's, or
266 other agent's time.

267 (c) If a lot owner requests a recognized third party duplicating service make the copies

- 268 or electronic scans:
- 269 (i) the association shall arrange for the delivery and pick up of the original
- 270 documents; and
- 271 (ii) the lot owner shall pay the duplicating service directly.
- 272 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
- 273 shall provide the necessary space, light, and power for the imaging equipment.
- 274 (5) Subject to Subsection (9), if, in response to a lot owner's request to inspect or copy
- 275 documents, an association fails to comply with a provision of this section, the
- 276 association shall pay:
- 277 (a) the reasonable costs of inspecting and copying the requested documents;
- 278 (b) for items described in Subsections (1)(a)(ii)(A) through (C), \$25 to the lot owner
- 279 who made the request for each day the request continues unfulfilled, beginning the
- 280 sixth day after the day on which the lot owner made the request; and
- 281 (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the
- 282 inspection and copies of the requested documents.
- 283 (6)(a) In addition to any remedy in the association's governing documents or otherwise
- 284 provided by law, a lot owner may file an action in court against the association under
- 285 this section if:
- 286 (i) subject to Subsection (9), an association fails to make documents available to the
- 287 lot owner in accordance with this section, the association's governing documents,
- 288 or as otherwise provided by law; and
- 289 (ii) the association fails to timely comply with a notice described in Subsection (6)(d).
- 290 (b) In an action described in Subsection (6)(a):
- 291 (i) the lot owner may request:
- 292 (A) injunctive relief requiring the association to comply with the provisions of this
- 293 section;
- 294 (B) [~~\$500~~] \$1,000 or actual damage, whichever is greater; or
- 295 (C) any other relief provided by law; and
- 296 (ii) the court [~~shall~~] may award costs and reasonable attorney fees to the prevailing
- 297 party, including any reasonable attorney fees incurred before the action was filed
- 298 that relate to the request that is the subject of the action.
- 299 (c)(i) In an action described in Subsection (6)(a), upon motion by the lot owner made
- 300 in accordance with Subsection (6)(b), notice to the association, and a hearing in
- 301 which the court finds a likelihood that the association failed to comply with a

- 302 provision of this section, the court shall order the association to immediately
303 comply with the provision.
- 304 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days
305 after the day on which the lot owner files the motion.
- 306 (d) At least 10 days before the day on which a lot owner files an action described in
307 Subsection (6)(a), the lot owner shall deliver a written notice to the association that
308 states:
- 309 (i) the lot owner's name, address, telephone number, and email address;
310 (ii) each requirement of this section with which the association has failed to comply;
311 (iii) a demand that the association comply with each requirement with which the
312 association has failed to comply; and
313 (iv) a date by which the association shall remedy the association's noncompliance
314 that is at least 10 days after the day on which the lot owner delivers the notice to
315 the association.
- 316 (7)(a) The provisions of Section 16-6a-1604 do not apply to an association.
- 317 (b) The provisions of this section apply regardless of any conflicting provision in Title
318 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 319 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that the
320 lot owner has under this section.
- 321 (9) An association is not liable for identifying or providing a document in error, if the
322 association identified or provided the erroneous document in good faith.
- 323 Section 4. Section **57-8a-229** is amended to read:
- 324 **57-8a-229 . Liability of declarant or board of directors -- Period of**
325 **administrative control.**
- 326 (1) An association may not, after the period of administrative control, bring a legal action
327 against a declarant, a board of directors, or an employee, an independent contractor, or
328 the agent of the declarant or the previous board of directors related to the period of
329 administrative control unless:
- 330 (a) the legal action is approved in advance at a meeting where owners of at least 51% of
331 the allocated voting interests of the lot owners in the association are:
- 332 (i) present; or
333 (ii) represented by a proxy specifically assigned for the purpose of voting to approve
334 or deny the legal action at the meeting;
- 335 (b) the legal action is approved by vote in person or by proxy of owners of the lesser of:

- 336 (i) more than 75% of the allocated voting interests of the lot owners present at the
337 meeting or represented by a proxy as described in Subsection (1)(a); or
338 (ii) more than 51% of the allocated voting interests of the lot owners in the
339 association;
- 340 (c) the association provides each lot owner with the items described in Subsection (2);
341 (d) the association establishes the trust described in Subsection (3); and
342 (e) the association first:
- 343 (i) notifies the person subject to the proposed legal action of the legal action and basis
344 of the association's claim; and
345 (ii) gives the person subject to the claim a reasonable opportunity to resolve the
346 dispute that is the basis of the proposed legal action.
- 347 (2) Before lot owners in an association may vote to approve an action described in
348 Subsection (1), the association shall provide each lot owner:
- 349 (a) a written notice that the association is contemplating legal action; and
350 (b) after the association consults with an attorney licensed to practice in the state, a
351 written assessment of:
- 352 (i) the likelihood that the legal action will succeed;
353 (ii) the likely amount in controversy in the legal action;
354 (iii) the likely cost of resolving the legal action to the association's satisfaction; and
355 (iv) the likely effect the legal action will have on a lot owner's or prospective lot
356 buyer's ability to obtain financing for a lot while the legal action is pending.
- 357 (3) Before the association commences a legal action described in Subsection (1), the
358 association shall:
- 359 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not
360 including attorney fees; and
361 (b) place the amount described in Subsection (3)(a) in a trust that the association may
362 only use to pay the costs to resolve the legal action.
- 363 (4) This section does not apply to an association that brings a legal action that has an
364 amount in controversy of less than \$75,000.
- 365 (5) In a legal action brought by one or more lot owners before the end of the period of
366 administrative control, a declarant may not use any funds paid by the lot owner to the
367 declarant to pay for costs of the legal action.

368 **Section 5. Effective Date.**

369 This bill takes effect on May 7, 2025.