

**Effective 5/12/2020**

**57-8-46 Notice of nonjudicial foreclosure -- Limitations on nonjudicial foreclosure.**

- (1) At least 30 calendar days before the day on which an association of unit owners initiates a nonjudicial foreclosure by filing for record a notice of default in accordance with Section 57-1-24, the association of unit owners shall deliver notice to the owner of the unit that is the intended subject of the nonjudicial foreclosure.
- (2) The notice under Subsection (1):
  - (a) shall:
    - (i) notify the unit owner that the association of unit owners intends to pursue nonjudicial foreclosure with respect to the owner's unit to enforce the association of unit owners' lien for an unpaid assessment;
    - (ii) notify the unit owner of the owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure;
    - (iii) be in substantially the following form:

"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association of unit owners), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities for delinquent assessments using a procedure that will not require it to file a lawsuit or involve a court. This procedure is governed by Utah Code, Sections 57-8-46 and 57-8-47, and is being followed in order to enforce the association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. This procedure cannot and will not be used to foreclose upon your unit for delinquent fines for a violation of the association of unit owners' governing documents. Alternatively, you have the right to demand that a foreclosure of your property for delinquent assessments be conducted in a lawsuit with the oversight of a judge. If you make this demand, the association of unit owners may also include a claim for delinquent fines for a violation of the association of unit owners' governing documents. Additionally, if you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure proceeding upon my unit,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 30 days after the day on which this notice was delivered to you. The address to which you must mail your demand is (insert the address of the association of unit owners for receipt of a demand).";

and
    - (iv) be sent to the unit owner by certified mail, return receipt requested; and
  - (b) may be included with other association correspondence to the unit owner.
- (3) An association of unit owners may not use a nonjudicial foreclosure to enforce a lien if:
  - (a) the association of unit owners fails to provide notice in accordance with Subsection (1);
  - (b) the unit owner mails the association of unit owners a written demand for judicial foreclosure:
    - (i) by U.S. mail, certified with a return receipt requested;
    - (ii) to the address stated in the association of unit owners' notice under Subsection (1); and
    - (iii) within 30 days after the day on which the return receipt described in Subsection (2)(a)(iv) shows the association of unit owners' notice under Subsection (1) is delivered;
  - (c) the lien includes a fine described in Subsection 57-8-44(1)(a)(iii); or

- (d) unless the lien is on a time share estate as defined in Section 57-19-2, the lien does not include an assessment described in Subsection 57-8-44(1)(a)(i) that is delinquent more than 180 days after the day on which the assessment is due.

Amended by Chapter 398, 2020 General Session