

Effective 5/7/2025

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

- (1) An association may not, after the period of declarant control, bring a legal action against a declarant, a management committee, or an employee, an independent contractor, or an agent of the declarant or the management committee related to the period of declarant control unless:
 - (a) the legal action is approved in advance at a meeting where owners of at least 51% in aggregate in interest of the undivided ownership of the common areas and facilities are:
 - (i) present; or
 - (ii) represented by a proxy specifically assigned for the purpose of voting to approve or deny the legal action at the meeting;
 - (b) the legal action is approved by vote in person or by proxy of owners of the lesser of:
 - (i) more than 75% in aggregate in interest of the total aggregate interest of the undivided ownership of the common areas and facilities represented by those owners present at the meeting or represented by a proxy as described in Subsection (1)(a); or
 - (ii) more than 51% in aggregate in interest of the undivided ownership of the common areas and facilities;
 - (c) the association provides each unit owner with the items described in Subsection (2);
 - (d) the association establishes the trust described in Subsection (3); and
 - (e) the association first:
 - (i) notifies the person subject to the proposed action of the action and the basis of the association's claim; and
 - (ii) gives the person subject to the proposed action a reasonable opportunity to resolve the dispute that is the basis of the action.
- (2) Before unit owners in an association may vote to approve an action described in Subsection (1), the association shall provide each unit owner:
 - (a) a written notice that the association is contemplating legal action; and
 - (b) after the association consults with an attorney licensed to practice in the state, a written assessment of:
 - (i) the likelihood that the legal action will succeed;
 - (ii) the likely amount in controversy in the legal action;
 - (iii) the likely cost of resolving the legal action to the association's satisfaction; and
 - (iv) the likely effect the legal action will have on a unit owner's or prospective unit buyer's ability to obtain financing for a unit while the legal action is pending.
- (3) Before the association commences a legal action described in Subsection (1), the association shall:
 - (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action, not including attorney fees; and
 - (b) place the amount described in Subsection (3)(a) in a trust that the association may only use to pay the costs to resolve the legal action.
- (4) This section does not apply to an association that brings a legal action that has an amount in controversy of less than \$75,000.
- (5) In a legal action brought by one or more unit owners solely against the declarant before the end of the period of declarant control, a declarant may not use any funds paid by a unit owner to the association to pay for costs of the declarant's legal defense.

Amended by Chapter 197, 2025 General Session

Amended by Chapter 226, 2025 General Session