

### Part 3 Collection of Assessments

#### **57-8a-301 Lien in favor of association for assessments and costs of collection.**

- (1)
  - (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:
    - (i) an assessment;
    - (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:
      - (A) court costs and reasonable attorney fees;
      - (B) late charges;
      - (C) interest; and
      - (D) any other amount that the association is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and
    - (iii) a fine that the association imposes against a lot owner in accordance with Section 57-8a-208, if:
      - (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot owner did not file an appeal; or
      - (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).
  - (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).
- (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.
- (3) An unpaid assessment or fine accrues interest at the rate provided:
  - (a) in Subsection 15-1-1(2); or
  - (b) in the declaration, if the declaration provides for a different interest rate.
- (4) A lien under this section has priority over each other lien and encumbrance on a lot except:
  - (a) a lien or encumbrance recorded before the declaration is recorded;
  - (b) a first or second security interest on the lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the association; or
  - (c) a lien for real estate taxes or other governmental assessments or charges against the lot.
- (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
- (6) Unless the declaration provides otherwise, if two or more associations have liens for assessments on the same lot, the liens have equal priority, regardless of when the liens are created.

Amended by Chapter 116, 2014 General Session

#### **57-8a-302 Enforcement of a lien.**

- (1)
  - (a) Except as provided in Section 57-8a-105, to enforce a lien established under Section 57-8a-301, an association may:
    - (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by:
      - (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

- (B) this part; or
- (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
  - (A) law for the foreclosure of a mortgage; and
  - (B) this part.
- (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection (1)(a):
  - (i) the association is considered to be the beneficiary under a trust deed; and
  - (ii) the lot owner is considered to be the trustor under a trust deed.
- (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.
- (3)
  - (a) A power of sale and other powers of a trustee under this part and under Sections 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified trustee.
  - (b) An association's execution of a substitution of trustee form authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
  - (c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).
  - (d) A trustee under this part is subject to all duties imposed on a trustee under Sections 57-1-19 through 57-1-34.
- (4) This part does not prohibit an association from bringing an action against a lot owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the lot owner's lot under this part.

Amended by Chapter 95, 2013 General Session

**57-8a-303 Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.**

- (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association shall provide notice to the owner of the lot that is the intended subject of the nonjudicial foreclosure.
- (2) The notice under Subsection (1):
  - (a) shall:
    - (i) notify the lot owner that the association intends to pursue nonjudicial foreclosure with respect to the owner's lot to enforce the association's lien for an unpaid assessment;
    - (ii) notify the lot 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), the association for the project in which your lot is located, intends to foreclose upon your lot and allocated interest in the common areas using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your lot and to collect the amount of an unpaid assessment against your lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. 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 lot,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the association's address for receipt of a demand)."; and

- (iv) be sent to the lot owner by certified mail, return receipt requested; and
  - (b) may be included with other association correspondence to the lot owner.
- (3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot owner mails the association a written demand for judicial foreclosure:
- (a) by U.S. mail, certified with a return receipt requested;
  - (b) to the address stated in the association's notice under Subsection (1); and
  - (c) within 15 days after the date of the postmark on the envelope of the association's notice under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8a-304 Provisions applicable to nonjudicial foreclosure.**

- (1) An association's nonjudicial foreclosure of a lot is governed by:
- (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association's lien were a trust deed; and
  - (b) this part.
- (2) If there is a conflict between a provision of this part and a provision of Sections 57-1-19 through 57-1-34 with respect to an association's nonjudicial foreclosure of a lot, the provision of this part controls.

Enacted by Chapter 355, 2011 General Session

**57-8a-305 One-action rule not applicable -- Abandonment of enforcement proceeding.**

- (1) Subsection 78B-6-901(1) does not apply to an association's judicial or nonjudicial foreclosure of a lot under this part.
- (2) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

Enacted by Chapter 355, 2011 General Session

**57-8a-306 Costs and attorney fees in lien enforcement action.**

- (1) A court entering a judgment or decree in a judicial action brought under this part shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association is the prevailing party, any costs and reasonable attorney fees that the association incurs collecting the judgment.
- (2) In a nonjudicial foreclosure, an association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

Enacted by Chapter 355, 2011 General Session

**57-8a-307 Action to recover unpaid assessment.**

An association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section 57-8a-301.

Enacted by Chapter 355, 2011 General Session

**57-8a-308 Appointment of receiver.**

In an action by an association to collect an assessment or to foreclose a lien for an unpaid assessment, a court may:

- (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money alleged to be due and owing to a lot owner:
  - (a) before commencement of the action; or
  - (b) during the pendency of the action; and
- (2) order the receiver to pay the association, to the extent of the association's common expense assessment, money the receiver holds under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8a-309 Termination of a delinquent owner's rights -- Notice -- Informal hearing.**

- (1) As used in this section, "delinquent lot owner" means a lot owner who fails to pay an assessment when due.
- (2) A board may, if authorized in the declaration, bylaws, or rules and as provided in this section, terminate a delinquent lot owner's right:
  - (a) to receive a utility service for which the lot owner pays as a common expense; or
  - (b) of access to and use of recreational facilities.
- (3)
  - (a) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (2), the manager or board shall give the delinquent lot owner notice in a manner provided in the declaration, bylaws, or association rules.
  - (b)
    - (i) A notice under Subsection (3)(a) shall state:
      - (A) that the association will terminate the lot owner's utility service or right of access to and use of recreational facilities, or both, if the association does not receive payment of the assessment within the time provided in the declaration, bylaws, or association rules, subject to Subsection (3)(b)(ii);
      - (B) the amount of the assessment due, including any interest or late payment fee; and
      - (C) the lot owner's right to request a hearing under Subsection (4).
    - (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.
    - (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a utility service if service is terminated.
- (4)
  - (a) A delinquent lot owner may submit a written request to the board for an informal hearing to dispute the assessment.
  - (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date the delinquent lot owner receives the notice under Subsection (3).

- (5) A board shall conduct an informal hearing requested under Subsection (4) in accordance with the standards provided in the declaration, bylaws, or association rules.
- (6) If a delinquent lot owner requests a hearing, the association may not terminate a utility service or right of access to and use of recreational facilities until after the board:
  - (a) conducts the hearing; and
  - (b) enters a final decision.
- (7) If an association terminates a utility service or a right of access to and use of recreational facilities, the association shall take immediate action to reinstate the service or right following the lot owner's payment of the assessment, including any interest and late payment fee.
- (8) An association may:
  - (a) assess a lot owner for the cost associated with reinstating a utility service that the association terminates as provided in this section; and
  - (b) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection (3).

Enacted by Chapter 355, 2011 General Session

**57-8a-310 Requiring tenant in residential lot to pay rent to association if owner fails to pay assessment.**

- (1) As used in this section:
  - (a) "Amount owing" means the total of:
    - (i) any assessment or obligation under Section 57-8a-301 that is due and owing; and
    - (ii) any applicable interest, late fee, and cost of collection.
  - (b) "Lease" means an arrangement under which a tenant occupies a lot owner's lot in exchange for the lot owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument.
  - (c) "Tenant" means a person, other than the lot owner, who has regular, exclusive occupancy of the lot owner's lot.
- (2) Subject to Subsections (3) and (4), the board may require a tenant under a lease with a lot owner to pay the association all future lease payments due to the lot owner:
  - (a) if:
    - (i) the lot owner fails to pay an assessment for a period of more than 60 days after the assessment is due and payable; and
    - (ii) authorized in the declaration, bylaws, or rules;
  - (b) beginning with the next monthly or periodic payment due from the tenant; and
  - (c) until the association is paid the amount owing.
- (3)
  - (a) Before requiring a tenant to pay lease payments to the association under Subsection (2), the association's manager or board shall give the lot owner notice, in accordance with the declaration, bylaws, or association rules.
  - (b) The notice required under Subsection (3)(a) shall state:
    - (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees;
    - (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and
    - (iii) that the association intends to demand payment of future lease payments from the lot owner's tenant if the lot owner does not pay the amount owing within 15 days.

- (4)
  - (a) If a lot owner fails to pay the amount owing within 15 days after the association's manager or board gives the lot owner notice under Subsection (3), the association's manager or board may exercise the association's rights under Subsection (2) by delivering a written notice to the tenant.
  - (b) A notice under Subsection (4)(a) shall state that:
    - (i) due to the lot owner's failure to pay an assessment within the required time, the board has notified the lot owner of the board's intent to collect all lease payments until the amount owing is paid;
    - (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the association, until the amount owing is paid; and
    - (iii) the tenant's payment of lease payments to the association does not constitute a default under the terms of the lease with the lot owner.
  - (c) The manager or board shall mail a copy of the notice to the lot owner.
- (5)
  - (a) A tenant to whom notice under Subsection (4) is given shall pay to the association all future lease payments as they become due and owing to the lot owner:
    - (i) beginning with the next monthly or other periodic payment after the notice under Subsection (4) is delivered to the tenant; and
    - (ii) until the association notifies the tenant under Subsection (6) that the amount owing is paid.
  - (b) A lot owner:
    - (i) shall credit each payment that the tenant makes to the association under this section against any obligation that the tenant owes to the owner as though the tenant made the payment to the owner; and
    - (ii) may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an association as required under this section.
- (6)
  - (a) Within five business days after the amount owing is paid, the association's manager or board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the association.
  - (b) The manager or board shall mail a copy of the notification described in Subsection (6)(a) to the lot owner.
- (7)
  - (a) An association shall deposit money paid to the association under this section in a separate account and disburse that money to the association until:
    - (i) the amount owing is paid; and
    - (ii) any cost of administration, not to exceed \$25, is paid.
  - (b) The association shall, within five business days after the amount owing is paid, pay to the lot owner any remaining balance.

Enacted by Chapter 355, 2011 General Session

**57-8a-311 Statement from association's manager or board of unpaid assessment.**

- (1) An association's manager or board shall issue a written statement indicating any unpaid assessment with respect to a lot owner's lot upon:
  - (a) a written request by the lot owner; and
  - (b) payment of a reasonable fee not to exceed \$25.

(2) A written statement under Subsection (1) is conclusive in favor of a person who relies on the written statement in good faith.

Enacted by Chapter 355, 2011 General Session