

MOBILE HOME PARK RESIDENCY ACT

AMENDMENT

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies the Mobile Home Park Residency Act and Natural Resources Act. The act modifies the requirements of each lease agreement for the rental of mobile home park space. The act allows that controversies arising between mobile home park owner and resident shall have the option of being submitted to mediation and arbitration, and gives the resident the right to request that the mediation or arbitration be conducted through the Office of the Private Property Ombudsman. The act regulates the date upon which a late fee for nonpayment of rent may be assessed and the amount of the fee. The act requires that space or facilities in a mobile home park reserved for renter-specific use may not be changed by the mobile home park owner for alternative use without the consent of the majority of residents within the park. The act expands the authorities of the private property ombudsman to include the power to mediate or conduct or arrange arbitration for disputes between a mobile home park owner and a resident. The act appropriates \$5,000 from the General Fund for fiscal year 2001-02 to the Department of Natural Resources for the Office of the Private Property Ombudsman to assist in the process of mediation and arbitration between a mobile home park owner and a resident. The act takes effect on July 1, 2001.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-16-4, as last amended by Chapter 1, Laws of Utah 1997, First Special Session

63-34-13, as last amended by Chapters 291 and 349, Laws of Utah 1999

ENACTS:

57-16-9.5, Utah Code Annotated 1953

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

HB0096

28 Section 1. Section **57-16-4** is amended to read:

29 **57-16-4. Termination of lease or rental agreement -- Required contents of lease --**
 30 **Increases in rents or fees -- Sale of homes.**

31 (1) A mobile home park or its agents may not terminate a lease or rental agreement upon
 32 any ground other than as specified in this chapter.

33 (2) (a) Each agreement for the lease of mobile home space shall be written and signed by
 34 the parties. ~~[Each]~~ Beginning July 1, 2001, each new or renewed lease shall contain at least the
 35 following information:

36 ~~[(a)]~~ (i) the name and address of the mobile home park owner and any persons authorized
 37 to act for the owner, upon whom notice and service of process may be served;

38 ~~[(b)]~~ (ii) that the initial lease is a term lease, and the [type] specific term of the leasehold,
 39 ~~[and whether it be term or periodic]~~ subject to Subsection (2)(b);

40 ~~[(c)-a]~~ (iii) conspicuously displayed full disclosure of all rent, service charges, and other
 41 fees presently being charged on a periodic basis;

42 ~~[(d)]~~ (iv) the date or dates on which the payment of rent, fees, and service charges are due,
 43 subject to Subsection (3)(c); [and]

44 ~~[(e)]~~ (v) all rules that pertain to the mobile home park which, if broken, may constitute
 45 grounds for eviction[-];

46 (vi) that any controversy related to interpretation or changes in rules, but not including
 47 controversies concerning eviction proceedings for nonpayment of rent, arising under this Title 57,
 48 Chapter 16, between mobile home park owner and resident that cannot be settled by a simple
 49 meeting of both parties shall have the option of being submitted for mediation with an independent
 50 mediator, subject to Section 57-16-9.5;

51 (vii) that any controversy under Subsection (2)(a)(vi) that cannot be settled by mediation
 52 shall have the option of being submitted to arbitration with an independent arbitrator, subject to
 53 Section 57-16-9.5; and

54 (viii) that the resident has the right to request that mediation or arbitration be conducted
 55 through the Office of the Private Property Ombudsman, subject to Section 57-16-9.5, and the lease
 56 must contain the telephone number of that office.

57 (b) Beginning July 1, 2001, each new or renewed agreement for the lease of mobile home
 58 space shall give the resident the option of a term of at least one year, which term is renewable at

59 the option of the resident at the end of the first term, and thereafter, either renewable for the same
60 term or changeable to a periodic term at the option of the mobile home park owner.

61 (3) (a) Increases in rent or fees for periodic tenancies shall be unenforceable until 60 days
62 after notice of the increase is mailed to the resident. If service charges are not included in the rent,
63 service charges may be increased during the leasehold period after notice to the resident is given,
64 and increases or decreases in electricity rates shall be passed through to the resident. Increases or
65 decreases in the total cost of other service charges shall be passed through to the resident.

66 (b) The mobile home park may not alter the date or dates on which rent, fees, and service
67 charges are due unless a 60-day written notice precedes the alteration.

68 (c) (i) Late fees for nonpayment of rent may be assessed only after the expiration of ten
69 days after the due date.

70 (ii) Late fees on rental payments shall be reasonable, and in no case may exceed \$50.

71 (iii) A constable may be sent to collect a late rental payment only after the expiration of
72 ten days after the due date.

73 (4) Any rule or condition of a lease purporting to prevent or unreasonably limit the sale
74 of a mobile home belonging to a resident is void and unenforceable. The mobile home park may,
75 however, reserve the right to approve the prospective purchaser of a mobile home who intends to
76 become a resident, but the approval may not be unreasonably withheld. The mobile home park
77 may require proof of ownership as a condition of approval. The mobile home park may
78 unconditionally refuse to approve any purchaser of a mobile home who does not register prior to
79 purchase.

80 (5) A mobile home park may not restrict a resident's right to advertise for sale or to sell
81 his mobile home. However, the park may limit the size of a "for sale" sign affixed to the mobile
82 home to not more than 144 square inches.

83 (6) A mobile home park may not compel a resident who desires to sell his mobile home,
84 either directly or indirectly, to sell it through an agent designated by the mobile home park.

85 (7) In order to upgrade the quality of a mobile home park, it may require that a mobile
86 home be removed from the park upon sale if:

87 (a) the mobile home does not meet minimum size specifications; or

88 (b) the mobile home is in rundown condition or in disrepair.

89 (8) Space or facilities in a mobile home park reserved for renter-specific use, such as club

90 houses and storage facilities, may not be changed by the mobile home park owner for alternative
91 use without the consent of the majority of residents within the park.

92 Section 2. Section **57-16-9.5** is enacted to read:

93 **57-16-9.5. Dispute resolution.**

94 (1) A mobile home park owner may not initiate legal action on any matter which is the
95 subject of mediation under Subsection 57-16-4(2)(a)(vi) or arbitration under Subsection
96 57-16-4(2)(a)(vii) until the mobile home park owner has participated in the mediation or
97 arbitration.

98 (2) If requested by the resident, the mediation and arbitration provided for in Subsections
99 57-16-4(2)(a)(vi) and 57-16-4(2)(a)(vii) may be arranged through the Office of the Private Property
100 Ombudsman established in Section 63-34-13.

101 (3) The private property ombudsman may appoint a mediator or one or more arbitrators
102 to assist the parties in resolving a dispute.

103 (4) The private property ombudsman shall issue a written statement declining to mediate
104 or arbitrate or to appoint a mediator or arbitrator when, in the opinion of the private property
105 ombudsman:

106 (a) the issues are not ripe for review;

107 (b) no cause of action exists under this section even if the alleged facts are true; or

108 (c) mediation or arbitration is otherwise inappropriate.

109 (5) In conducting or arranging for arbitration, the private property ombudsman shall follow
110 the procedures and requirements of Title 78, Chapter 31a, Utah Arbitration Act. In applying the
111 Utah Arbitration Act, the arbitrator and parties shall treat the matter as if:

112 (a) it were ordered to arbitration by a court; and

113 (b) the private property ombudsman or other arbitrator chosen as provided for in
114 Subsection 57-16-4(2)(a)(vii) was appointed as arbitrator by the court.

115 (6) Arbitration under this section is not subject to Chapter 46b, Administrative Procedures
116 Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

117 (7) The mobile home park owner and resident may agree before the start of arbitration that
118 the resulting award shall be binding and not subject to de novo review.

119 (8) If no previous agreement has been made under Subsection (7), any party may submit
120 the arbitration award or any issue upon which the award is based to the district court for de novo

121 review within 30 days after an arbitrator issues a final award. If no party files for review with the
122 district court within 30 days, the award shall be final and binding on the parties.

123 (9) Upon request by either party, the record of the arbitration shall be available to the court
124 to assist its review of the matter.

125 (10) The fee for submitting a claim to mediation or arbitration shall be the same as for
126 filing a small claims affidavit as provided in Subsection 21-1-5(1)(c), and shall be paid by the
127 person submitting the claim.

128 Section 3. Section **63-34-13** is amended to read:

129 **63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.**

130 (1) As used in this section:

131 (a) "Constitutional taking" or "taking" means a governmental action that results in a taking
132 of private property so that compensation to the owner of the property is required by:

133 (i) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

134 (ii) Utah Constitution Article I, Section 22.

135 (b) "Takings law" means the provisions of the federal and state constitutions, the case law
136 interpreting those provisions, and any relevant statutory provisions that require a governmental unit
137 to compensate a private property owner for a constitutional taking.

138 (2) (a) There is created a private property ombudsman in the Department of Natural
139 Resources.

140 (b) The executive director of the Department of Natural Resources shall hire a person with
141 background or expertise in takings law to fill the position.

142 (c) The person hired to fill the position is an exempt employee.

143 (d) The executive director of the Department of Natural Resources may hire clerks, interns,
144 or other personnel to assist the private property ombudsman.

145 (3) The private property ombudsman shall:

146 (a) develop and maintain expertise in and understanding of takings law;

147 (b) assist state agencies and local governments in developing the guidelines required by
148 this chapter and, Chapter 90a, Constitutional Taking Issues;

149 (c) at the request of a state agency or local government, assist the state agency or local
150 government in analyzing actions with potential takings implications;

151 (d) advise private property owners who have a legitimate potential or actual takings claim

152 against a state or local government entity;

153 (e) identify state or local government actions that have potential takings implications and,
154 if appropriate, advise those state or local government entities about those implications;

155 (f) provide information to private citizens, civic groups, government entities, and other
156 interested parties about takings law and their rights and responsibilities under it; ~~and~~

157 (g) if appropriate and requested to do so by the private property owner, mediate or conduct
158 or arrange arbitration for disputes between private property owners and government entities that
159 involve:

160 (i) takings issues law;

161 (ii) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or

162 (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation
163 Assistance Act[-]; and

164 (h) if appropriate and requested to do so by the resident of a mobile home park, mediate
165 or conduct or arrange arbitration for disputes between a mobile home park owner and a resident
166 as provided in Subsection 57-16-4(2)(a)(viii) and Section 57-16-9.5.

167 (4) (a) (i) In conducting or arranging for arbitration, the private property ombudsman shall
168 follow the procedures and requirements of Title 78, Chapter 31a, Utah Arbitration Act.

169 (ii) In applying the Utah Arbitration Act, the arbitrator and parties shall treat the matter
170 as if:

171 (A) it were ordered to arbitration by a court; and

172 (B) the private property ombudsman or other arbitrator chosen as provided for in this
173 section was appointed as arbitrator by the court.

174 (iii) For the purpose of arbitrations conducted under this section, if the dispute to be
175 arbitrated is not already the subject of legal action, the district court having jurisdiction over the
176 county where the private property involved in the dispute is located shall act as the court referred
177 to in Title 78, Chapter 31a, Utah Arbitration Act.

178 (iv) The award from an arbitration conducted under this chapter may not be vacated under
179 the provisions of [~~Title 78, Chapter 31a,~~] Subsection [~~14~~] 78-31a-14(1)(e)[~~, Utah Arbitration Act,~~]
180 because of the lack of an arbitration agreement between the parties.

181 (b) The private property ombudsman shall issue a written statement declining to arbitrate
182 or to appoint an arbitrator when, in the opinion of the private property ombudsman:

- 183 (i) the issues are not ripe for review;
- 184 (ii) assuming the alleged facts are true, no cause of action exists under United States or
185 Utah law;
- 186 (iii) all issues raised are beyond the scope of the ombudsman's statutory duty to review;
- 187 or
- 188 (iv) the arbitration is otherwise not appropriate.
- 189 (c) (i) The private property ombudsman shall appoint another person to arbitrate a dispute
190 when:
 - 191 (A) either party objects to the private property ombudsman serving as the arbitrator and
192 agrees to pay for the services of another arbitrator;
 - 193 (B) the private property ombudsman declines to arbitrate the dispute for a reason other
194 than those stated in Subsection (4)(b) and one or both parties are willing to pay for the services of
195 another arbitrator; or
 - 196 (C) the private property ombudsman determines that it is appropriate to appoint another
197 person to arbitrate the dispute with no charge to the parties for the services of the appointed
198 arbitrator.
- 199 (ii) In appointing another person to arbitrate a dispute, the private property ombudsman
200 shall appoint an arbitrator who is:
 - 201 (A) agreeable to both parties; or
 - 202 (B) agreeable to the party paying for the arbitrator and the private property ombudsman.
- 203 (iii) The private property ombudsman may, on the initiative of the private property
204 ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the
205 arbitration.
- 206 (iv) The Department of Natural Resources may provide an arbitrator per diem and
207 reimburse expenses incurred in the performance of the arbitrator's duties at the rates established
208 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 209 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
210 regulations, and rules of Utah and the United States in conducting the arbitration and in
211 determining the award.
- 212 (e) The property owner and government entity may agree in advance of arbitration that the
213 arbitration shall be binding and that no de novo review may occur.

214 (f) Arbitration by or through the private property ombudsman is not necessary before
215 bringing legal action to adjudicate any claim.

216 (g) The lack of arbitration by or through the private property ombudsman does not
217 constitute, and may not be interpreted as constituting, a failure to exhaust available administrative
218 remedies or as a bar to bringing legal action.

219 (h) Arbitration under this section is not subject to Chapter 46b, Administrative Procedures
220 Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

221 (i) Within 30 days after the arbitrator issues the final award and except as provided in
222 Subsection (4)(e), any party may submit the award or any issue upon which the award is based to
223 the district court for de novo review.

224 (5) The filing with the private property ombudsman of a request for mediation or
225 arbitration of a constitutional taking issue does not stay any county or municipal land use decision,
226 including the decision of a board of adjustment.

227 (6) The private property ombudsman may not be compelled to testify in a civil action filed
228 with regard to the subject matter of any review or arbitration by the ombudsman.

229 (7) (a) Except as provided in Subsection (7)(b), evidence of a review by the private
230 property ombudsman and his opinions, writings, findings, and determinations are not admissible
231 as evidence in an action subsequently brought in court and dealing with the same dispute.

232 (b) Subsection (7)(a) does not apply to:

233 (i) actions brought under authority of Title 78, Chapter 6, Small Claims Courts;

234 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78,
235 Chapter 31a, Utah Arbitration Act; [or]

236 (iii) actions for de novo review of an arbitration award or issue brought under the authority
237 of Subsection (4)(i)[-]; or

238 (iv) actions brought under Title 57, Chapter 16, Mobile Home Park Residency Act.

239 (8) The private property ombudsman may not represent private property owners, state
240 agencies, or local governments in court or in adjudicative proceedings under Chapter 46b,
241 Administrative Procedures Act.

242 Section 4. **Appropriation.**

243 (1) There is appropriated from the General Fund for fiscal year 2001-02, \$5,000 to the
244 Department of Natural Resources for the Office of the Private Property Ombudsman.

245 (2) The funding will be used to assist the private property ombudsman with clerical and
246 technical support in carrying out the provisions of Section 57-16-9.5.

247 Section 5. **Effective date.**

248 This act takes effect July 1, 2001, and shall apply to controversies arising on or after that
249 date.

Legislative Review Note
as of 1-15-01 4:23 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel