

Representative Wayne A. Harper proposes to substitute the following bill:

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 either be required to or have the option of being submitted to mediation and arbitration, and gives the mobile home park owner or 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 \$9,000 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:



26 **57-16-9.5**, Utah Code Annotated 1953

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

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 controversies arising under this Title 57, Chapter 16, between mobile home park
47 owner and resident may have the option of being submitted to mediation or arbitration under
48 Subsection 57-16-9.5(1) or shall be required to be submitted to mediation or arbitration under
49 Subsection 57-16-9.5(2) prior to commencement of legal action; and

50 (vii) that the mobile home park owner or resident has the right to request that mediation
51 or arbitration be conducted through the Office of the Private Property Ombudsman, subject to
52 Section 57-16-9.5, and the lease must contain the telephone number of that office.

53 (b) Beginning July 1, 2001, each new or renewed agreement for the lease of mobile home
54 space shall give the resident the option of a term of at least one year, which term is renewable at
55 the option of the resident at the end of the first term, and thereafter, either renewable for the same
56 term or changeable to a periodic term.

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

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

64 (c) (i) Late fees for nonpayment of rent may be assessed only after the expiration of five
65 business days after the due date.

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

67 (iii) A constable may be sent to collect a late rental payment only after the expiration of
68 five business days after the due date. The cost of collection shall not exceed \$50.

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

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

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

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

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

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

85 (8) Space or facilities in a mobile home park reserved for renter-specific use, such as club
86 houses and common use areas and facilities, may not be changed by the mobile home park owner
87 for alternative use without the consent of the majority of residents within the park.

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

89 **57-16-9.5. Dispute resolution.**

90 (1) In controversies arising under this Title 57, Chapter 16, except those related to
91 interpretation or changes in rules or eviction proceedings for nonpayment of rent, a mobile home
92 park owner and resident may mutually agree to mediate or arbitrate the dispute according to the
93 requirements of this Section 57-16-9.5 prior to commencement of legal action.

94 (2) In controversies arising under this Title 57, Chapter 16, related to interpretation or
95 changes in rules, but not including controversies concerning eviction proceedings for nonpayment
96 of rent, in which a majority of the residents of a mobile home park do not agree to the proposed
97 changes, the mobile home park owner and resident shall be required to mediate or arbitrate the
98 dispute according to the requirements of this Section 57-16-9.5 prior to commencement of legal
99 action.

100 (3) At the option of an owner of a mobile home park or a resident, the mediation and
101 arbitration provided for in Subsections 57-16-9.5(1) and 57-16-9.5(2) may be arranged through the
102 Office of the Private Property Ombudsman established in Section 63-34-13.

103 (4) The private property ombudsman may appoint a mediator or one or more arbitrators
104 to assist the parties in resolving a dispute.

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

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

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

110 (c) mediation or arbitration is otherwise inappropriate.

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

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

115 (b) the private property ombudsman or other arbitrator chosen as provided for in
116 Subsection 57-16-9.5(4) was appointed as arbitrator by the court.

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

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

121 (9) If no previous agreement has been made under Subsection (8), any party may submit
122 the arbitration award or any issue upon which the award is based to the district court for de novo
123 review within 30 days after an arbitrator issues a final award. If no party files for review with the
124 district court within 30 days, the award shall be final and binding on the parties.

125 (10) Upon request by either party, the record of the arbitration shall be available to the
126 court to assist its review of the matter.

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

130 (12) For those disputes under Subsection 59-16-9.5(1) in which the mobile home park
131 owner and tenant mutually agree to mediate or arbitrate, the cost of the mediation or arbitration
132 shall be divided equally between the parties.

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

134 **63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.**

135 (1) As used in this section:

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

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

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

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

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

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

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

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

- 150 (3) The private property ombudsman shall:
- 151 (a) develop and maintain expertise in and understanding of takings law;
- 152 (b) assist state agencies and local governments in developing the guidelines required by
153 this chapter and, Chapter 90a, Constitutional Taking Issues;
- 154 (c) at the request of a state agency or local government, assist the state agency or local
155 government in analyzing actions with potential takings implications;
- 156 (d) advise private property owners who have a legitimate potential or actual takings claim
157 against a state or local government entity;
- 158 (e) identify state or local government actions that have potential takings implications and,
159 if appropriate, advise those state or local government entities about those implications;
- 160 (f) provide information to private citizens, civic groups, government entities, and other
161 interested parties about takings law and their rights and responsibilities under it; [~~and~~]
- 162 (g) if appropriate and requested to do so by the private property owner, mediate or conduct
163 or arrange arbitration for disputes between private property owners and government entities that
164 involve:
- 165 (i) takings issues law;
- 166 (ii) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or
- 167 (iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation
168 Assistance Act[-]; and
- 169 (h) if appropriate and requested to do so by the resident of a mobile home park, mediate
170 or conduct or arrange arbitration for disputes between a mobile home park owner and a resident
171 as provided in Section 57-16-9.5.
- 172 (4) (a) (i) In conducting or arranging for arbitration, the private property ombudsman shall
173 follow the procedures and requirements of Title 78, Chapter 31a, Utah Arbitration Act.
- 174 (ii) In applying the Utah Arbitration Act, the arbitrator and parties shall treat the matter
175 as if:
- 176 (A) it were ordered to arbitration by a court; and
- 177 (B) the private property ombudsman or other arbitrator chosen as provided for in this
178 section was appointed as arbitrator by the court.
- 179 (iii) For the purpose of arbitrations conducted under this section, if the dispute to be
180 arbitrated is not already the subject of legal action, the district court having jurisdiction over the

181 county where the private property involved in the dispute is located shall act as the court referred
182 to in Title 78, Chapter 31a, Utah Arbitration Act.

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

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

188 (i) the issues are not ripe for review;

189 (ii) assuming the alleged facts are true, no cause of action exists under United States or
190 Utah law;

191 (iii) all issues raised are beyond the scope of the ombudsman's statutory duty to review;

192 or

193 (iv) the arbitration is otherwise not appropriate.

194 (c) (i) The private property ombudsman shall appoint another person to arbitrate a dispute
195 when:

196 (A) either party objects to the private property ombudsman serving as the arbitrator and
197 agrees to pay for the services of another arbitrator;

198 (B) the private property ombudsman declines to arbitrate the dispute for a reason other
199 than those stated in Subsection (4)(b) and one or both parties are willing to pay for the services of
200 another arbitrator; or

201 (C) the private property ombudsman determines that it is appropriate to appoint another
202 person to arbitrate the dispute with no charge to the parties for the services of the appointed
203 arbitrator.

204 (ii) In appointing another person to arbitrate a dispute, the private property ombudsman
205 shall appoint an arbitrator who is:

206 (A) agreeable to both parties; or

207 (B) agreeable to the party paying for the arbitrator and the private property ombudsman.

208 (iii) The private property ombudsman may, on the initiative of the private property
209 ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the
210 arbitration.

211 (iv) The Department of Natural Resources may provide an arbitrator per diem and

212 reimburse expenses incurred in the performance of the arbitrator's duties at the rates established
213 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

214 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
215 regulations, and rules of Utah and the United States in conducting the arbitration and in
216 determining the award.

217 (e) The property owner and government entity may agree in advance of arbitration that the
218 arbitration shall be binding and that no de novo review may occur.

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

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

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

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

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

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

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

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

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

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

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

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

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

247 Section 4. **Appropriation.**

248 (1) There is appropriated from the General Fund for fiscal year 2001-02, \$9,000 to the
249 Department of Natural Resources for the Office of the Private Property Ombudsman.

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

252 Section 5. **Effective date.**

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