

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 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 provides guidelines for mobile home park resident associations. The act regulates when space or facilities in a mobile home park reserved for renter-specific use may be changed by the mobile home park owner for alternative use. 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 57-16-5.5, Utah Code Annotated 1953

27 57-16-9.5, Utah Code Annotated 1953

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

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

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

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

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

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

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

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

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

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

47 (vi) that controversies arising under this Title 57, Chapter 16, between mobile home park
48 owner and resident may have the option of being submitted to mediation or arbitration under
49 Subsection 57-16-9.5(1) 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 10% of
67 the monthly rent. A separate late fee may be charged for each month the rent is in arrears.

68 (iii) A notice of a late rental payment may be sent only after the expiration of five business
69 days after the due date and may be either:

70 (A) delivered by sending a certified letter, return receipt requested; or

71 (B) delivered by a constable. The cost of a constable fee charged to a resident may not
72 exceed the actual cost of the collection process.

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) (a) Space or facilities in a mobile home park reserved for renter-specific use, such as
90 club houses, recreational facilities, play areas, and tenant-designated amenities, may be changed
91 by the mobile home park owner if:

92 (i) the mobile home park owner notifies the mobile home park association in the park, and
93 the mobile home park association does not protest the action within 60 days of the notice; or

94 (ii) if no mobile home park association exists, the mobile home park owner notifies the
95 residents of the park, and the majority of the residents in the park, based on one-vote per space,
96 do not protest the action within 60 days of the notice.

97 (b) If there is a protest under Subsection (8)(a)(i) or (a)(ii), the mobile home park owner
98 and resident may submit the dispute to mediation or arbitration under the provisions of Section
99 57-16-9.5.

100 Section 2. Section **57-16-5.5** is enacted to read:

101 **57-16-5.5. Mobile home park residents' associations.**

102 (1) Residents in mobile home parks shall have the right to form associations comprised
103 of residents of the mobile home park in which they reside.

104 (2) The membership of the resident association may elect officers of the association at a
105 meeting where a majority of the members are present.

106 (3) Except in emergency situations, there shall be seven days' notice of an association
107 meeting to all residents of the park. All residents of the park, even if not members of the
108 association, may attend association meetings. The park operator and non-resident employees shall
109 not be members of the association, and shall not attend meetings unless invited by the association.

110 (4) A resident association may not impose fees, dues, or assessments, upon its members
111 unless two-thirds of the members agree to the assessment of fees, dues, or assessments.

112 (5) It is unlawful for a park owner or operator to increase rent or decrease services to a
113 particular resident, or to bring or threaten to bring an action for eviction or other civil action, or
114 take any other action in retaliation because the particular resident has organized or is a member of
115 a residents' association.

116 (6) No park operator shall harass any resident association, or engage in any unfair or
117 deceptive conduct to inhibit or interfere with the creation or operation of a resident association.

118 (7) The park operator shall permit meetings by any resident association located within the

119 park relating to manufactured home living or social or education purposes, including forums for
120 or speeches by public officials or candidates for public office.

121 (8) Resident associations may use common facilities of the park, if any, free of charge.

122 However, any resident who causes damages to the common facilities shall be liable to the park
123 operator for the damages.

124 Section 3. Section **57-16-9.5** is enacted to read:

125 **57-16-9.5. Dispute resolution.**

126 (1) In a controversy arising under this Title 57, Chapter 16, between a mobile home park
127 owner and resident that cannot be settled by a simple meeting of both parties, except a controversy
128 concerning eviction proceedings for nonpayment of rent, a mobile home park owner and resident
129 may mutually agree to mediate or arbitrate the dispute according to the requirements of this section
130 prior to commencement of legal action. If the dispute is arbitrated, an arbitrator shall base any
131 decision in the dispute upon the terms of the lease and other legal agreements between the parties
132 as interpreted under state law.

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

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

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

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

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

143 (c) mediation or arbitration is otherwise inappropriate.

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

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

148 (b) the private property ombudsman or other arbitrator chosen as provided for in

149 Subsection 57-16-9.5(3) was appointed as arbitrator by the court.

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

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

154 (8) If no previous agreement has been made under Subsection (7), any party may submit
155 the arbitration award or any issue upon which the award is based to the district court for de novo
156 review within 30 days after an arbitrator issues a final award. If no party files for review with the
157 district court within 30 days, the award shall be final and binding on the parties.

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

160 (10) The fee for submitting a claim to mediation or arbitration with the private property
161 ombudsman shall be the same as for filing a small claims affidavit as provided in Subsection
162 21-1-5(1)(c), and shall be paid by the person submitting the claim.

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

166 Section 4. Section **63-34-13** is amended to read:

167 **63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.**

168 (1) As used in this section:

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

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

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

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

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

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

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

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

183 (3) The private property ombudsman shall:

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

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

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

189 (d) advise private property owners who have a legitimate potential or actual takings claim
190 against a state or local government entity;

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

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

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

198 (i) takings issues law;

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

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

202 (h) if appropriate and requested to do so by the resident of a mobile home park, mediate
203 or conduct or arrange arbitration for disputes between a mobile home park owner and a resident
204 as provided in Section 57-16-9.5.

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

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

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

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

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

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

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

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

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

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

226 (iv) the arbitration is otherwise not appropriate.

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

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

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

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

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

239 (A) agreeable to both parties; or

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

241 (iii) The private property ombudsman may, on the initiative of the private property
242 ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the

243 arbitration.

244 (iv) The Department of Natural Resources may provide an arbitrator per diem and
245 reimburse expenses incurred in the performance of the arbitrator's duties at the rates established
246 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

280 **Section 5. Appropriation.**

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

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

285 **Section 6. Effective date.**

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