

CONDOMINIUM LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Real Estate Code. The act adds definitions. The act entitles the association of unit owners to recover all expenses incurred by the association in collecting unpaid assessments, attorneys' fees, and other fees associated with collection. The act provides that upon failure to pay an assessment, the association may terminate an owner's utility services and access and use of recreational facilities until payment is received unless an owner has requested an informal hearing to dispute the assessment.

The act provides the association the opportunity to collect all future lease payments from a tenant who fails to pay any assessment for a period of more than 30 days. The act adds provisions for setting up an account for assessment funds paid to the association. The act indicates that funds received are to be disbursed to the association until the assessment is paid in full, after which any remaining funds will be paid to the unit owner. The act makes technical changes.

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

AMENDS:

57-8-3, as last amended by Chapter 116, Laws of Utah 1994

57-8-20, as last amended by Chapter 3, Laws of Utah 1986

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

Section 1. Section **57-8-3** is amended to read:

57-8-3. Definitions.

As used in this chapter:

(1) "Assessment" means any charge imposed or levied by the association, including common expenses and fines imposed pursuant to Section 57-8-37, on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter.



28 [~~(1)~~] (2) "Association of unit owners" means all of the unit owners acting as a group in
29 accordance with the declaration and bylaws.

30 [~~(2)~~] (3) "Building" means a building, containing units, and comprising a part of the
31 property.

32 [~~(3)~~] (4) "Common areas and facilities" unless otherwise provided in the declaration or
33 lawful amendments to the declaration means:

34 (a) the land included within the condominium project, whether leasehold or in fee
35 simple;

36 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
37 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

38 (c) the basements, yards, gardens, parking areas, and storage spaces;

39 (d) the premises for lodging of janitors or persons in charge of the property;

40 (e) installations of central services such as power, light, gas, hot and cold water,
41 heating, refrigeration, air conditioning, and incinerating;

42 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
43 apparatus and installations existing for common use;

44 (g) such community and commercial facilities as may be provided for in the
45 declaration; and

46 (h) all other parts of the property necessary or convenient to its existence, maintenance,
47 and safety, or normally in common use.

48 [~~(4)~~] (5) "Common expenses" means:

49 (a) all sums lawfully assessed against the unit owners;

50 (b) expenses of administration, maintenance, repair, or replacement of the common
51 areas and facilities;

52 (c) expenses agreed upon as common expenses by the association of unit owners; and

53 (d) expenses declared common expenses by this chapter, or by the declaration or the
54 bylaws.

55 [~~(5)~~] (6) "Common profits," unless otherwise provided in the declaration or lawful
56 amendments to the declaration, means the balance of all income, rents, profits, and revenues
57 from the common areas and facilities remaining after the deduction of the common expenses.

58 [~~(6)~~] (7) "Condominium" means the ownership of a single unit in a multiunit project

59 together with an undivided interest in common in the common areas and facilities of the
60 property.

61 ~~[(7)]~~ (8) "Condominium project" means a real estate condominium project; a plan or
62 project whereby two or more units, whether contained in existing or proposed apartments,
63 commercial or industrial buildings or structures, or otherwise, are separately offered or
64 proposed to be offered for sale. Condominium project also means the property when the
65 context so requires.

66 ~~[(8)]~~ (9) "Condominium unit" means a unit together with the undivided interest in the
67 common areas and facilities appertaining to that unit. Any reference in this chapter to a
68 condominium unit includes both a physical unit together with its appurtenant undivided interest
69 in the common areas and facilities and a time period unit together with its appurtenant
70 undivided interest, unless the reference is specifically limited to a time period unit.

71 ~~[(9)]~~ (10) "Contractible condominium" means a condominium project from which one
72 or more portions of the land within the project may be withdrawn in accordance with
73 provisions of the declaration and of this chapter. If the withdrawal can occur only by the
74 expiration or termination of one or more leases, then the condominium project is not a
75 contractible condominium within the meaning of this chapter.

76 ~~[(10)]~~ (11) "Convertible land" means a building site which is a portion of the common
77 areas and facilities, described by metes and bounds, within which additional units or limited
78 common areas and facilities may be created in accordance with this chapter.

79 ~~[(11)]~~ (12) "Convertible space" means a portion of the structure within the
80 condominium project, which portion may be converted into one or more units or common areas
81 and facilities, including, but not limited to, limited common areas and facilities in accordance
82 with this chapter.

83 ~~[(12)]~~ (13) "Declarant" means all persons who execute the declaration or on whose
84 behalf the declaration is executed. From the time of the recordation of any amendment to the
85 declaration expanding an expandable condominium, all persons who execute that amendment
86 or on whose behalf that amendment is executed shall also come within this definition. Any
87 successors of the persons referred to in this subsection who come to stand in the same relation
88 to the condominium project as their predecessors also come within this definition.

89 ~~[(13)]~~ (14) "Declaration" means the instrument by which the property is submitted to

90 the provisions of this act, as it from time to time may be lawfully amended.

91 ~~[(14)]~~ (15) "Expandable condominium" means a condominium project to which
92 additional land or an interest in it may be added in accordance with the declaration and this
93 chapter.

94 ~~[(15)]~~ (16) "Leasehold condominium" means a condominium project in all or any
95 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
96 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
97 time. A condominium project including leased land, or an interest in the land, upon which no
98 units are situated or to be situated is not a leasehold condominium within the meaning of this
99 chapter.

100 ~~[(16)]~~ (17) "Limited common areas and facilities" means those common areas and
101 facilities designated in the declaration as reserved for use of a certain unit or units to the
102 exclusion of the other units.

103 ~~[(17)]~~ (18) "Majority" or "majority of the unit owners," unless otherwise provided in
104 the declaration or lawful amendments to the declaration, means the owners of more than 50%
105 in the aggregate in interest of the undivided ownership of the common areas and facilities.

106 ~~[(18)]~~ (19) "Management committee" means the committee as provided in the
107 declaration charged with and having the responsibility and authority to make and to enforce all
108 of the reasonable rules covering the operation and maintenance of the property.

109 ~~[(19)]~~ (20) "Par value" means a number of dollars or points assigned to each unit by the
110 declaration. Substantially identical units shall be assigned the same par value, but units located
111 at substantially different heights above the ground, or having substantially different views, or
112 having substantially different amenities or other characteristics that might result in differences
113 in market value, may, but need not, be considered substantially identical within the meaning of
114 this subsection. If par value is stated in terms of dollars, that statement may not be considered
115 to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal,
116 or fair market transaction at a different figure may affect the par value of any unit, or any
117 undivided interest in the common areas and facilities, voting rights in the unit owners'
118 association, liability for common expenses, or right to common profits, assigned on the basis
119 thereof.

120 ~~[(20)]~~ (21) "Person" means an individual, corporation, partnership, association, trustee,

121 or other legal entity.

122 ~~[(21)]~~ (22) "Property" means the land, whether leasehold or in fee simple, the building,
123 if any, all improvements and structures thereon, all easements, rights, and appurtenances
124 belonging thereto, and all articles of personal property intended for use in connection
125 therewith.

126 ~~[(22)]~~ (23) "Record," "recording," "recorded," and "recorder" have the meaning stated
127 in Title 57, Chapter 3, Recording of Documents.

128 ~~[(23)]~~ (24) "Record of survey map" means a plat or plats of survey of land and units
129 prepared in accordance with Section 57-8-13.

130 ~~[(24)]~~ (25) "Size" means the number of cubic feet, or the number of square feet of
131 ground or floor space, within each unit as computed by reference to the record of survey map
132 and rounded off to a whole number. Certain spaces within the units including, without
133 limitation, attic, basement, or garage space may, but need not, be omitted from the calculation
134 or be partially discounted by the use of a ratio, if the same basis of calculation is employed for
135 all units in the condominium project and if that basis is described in the declaration.

136 ~~[(25)]~~ (26) "Time period unit" means an annually recurring part or parts of a year
137 specified in the declaration as a period for which a physical unit is separately owned and
138 includes a timeshare estate as defined in Subsection 57-19-2(17).

139 ~~[(26)]~~ (27) "Unit" means either a separate physical part of the property intended for any
140 type of independent use, including one or more rooms or spaces located in one or more floors
141 or part or parts of floors in a building or a time period unit, as the context may require. A
142 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
143 proposed condominium unit under an expandable condominium project, not constructed, is a
144 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

145 ~~[(27)]~~ (28) "Unit number" means the number, letter, or combination of numbers and
146 letters designating the unit in the declaration and in the record of survey map.

147 ~~[(28)]~~ (29) "Unit owner" means the person or persons owning a unit in fee simple and
148 an undivided interest in the fee simple estate of the common areas and facilities in the
149 percentage specified and established in the declaration or, in the case of a leasehold
150 condominium project, the person or persons whose leasehold interest or interests in the
151 condominium unit extend for the entire balance of the unexpired term or terms.

152 Section 2. Section **57-8-20** is amended to read:

153 **57-8-20. Lien for nonpayment of common expenses.**

154 (1) Every unit owner shall pay his proportionate share of the common expenses.

155 Payment shall be in the amounts and at the times determined by the management committee in
156 accordance with the terms of the declaration or the bylaws.

157 (2) (a) ~~[The amount of common expenses assessed]~~ An assessment levied against each
158 unit is a debt of the owner at the time the assessment is made and is collectible as such.

159 (b) The association is entitled to recover all expenses incurred by the association in
160 collecting any unpaid assessment, including reasonable attorneys' fees, whether an action is
161 brought against an owner under Subsection (3), or whether a suit to foreclose the lien upon the
162 unit is instituted under Subsection (4).

163 (3) Suit to recover a money judgment for any unpaid [common expenses] assessment is
164 maintainable without foreclosing or waiving the lien securing it. The prevailing party in the
165 action is entitled to recover its costs of suit and reasonable attorneys' fees. [If]

166 (4) (a) Subject to Subsection 57-8-37(6), if any unit owner fails or refuses to [make any
167 payment of the common expenses] pay an assessment when due, that amount constitutes a lien
168 on the interest of the owner in the property, and upon the recording of notice of lien by the
169 manager or management committee it is a lien upon the unit owner's interest in the property
170 prior to all other liens and encumbrances, recorded or unrecorded, except:

171 ~~[(a)]~~ (i) tax and special assessment liens on the unit in favor of any assessing unit or
172 special improvement district; and

173 ~~[(b)]~~ (ii) encumbrances on the interest of the unit owner recorded prior to the date such
174 notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

175 ~~[(3) The manager or management committee shall, upon the written request of any unit~~
176 ~~owner or any encumbrancer or prospective encumbrancer of a unit, and upon payment of a~~
177 ~~reasonable fee not to exceed \$10, issue to the requesting person or persons, a written statement~~
178 ~~setting forth the unpaid common expenses with respect to the unit covered by the request. This~~
179 ~~written statement of indebtedness is conclusive upon the remaining unit owners and upon the~~
180 ~~manager and management committee in favor of all persons who rely on the written statement~~
181 ~~in good faith. Unless the manager or management committee complies with the request for a~~
182 ~~statement of indebtedness within ten days, all unpaid common expenses which became due~~

183 ~~prior to the date such request was made are subordinate to the lien held by the person~~
184 ~~requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid~~
185 ~~common expenses payable with respect to the unit and upon payment the encumbrancer has a~~
186 ~~lien on the unit for the amounts paid of the same rank as the lien of his encumbrance.]~~

187 ~~[(4)]~~ (b) The lien for nonpayment of ~~[common expenses]~~ an assessment may be
188 enforced by sale or foreclosure of the unit owner's interest by the manager or management
189 committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in
190 deeds of trust ~~[or]~~ and mortgages or in any other manner permitted by law.

191 (c) In any foreclosure or sale, the unit owner shall pay the costs and expenses of such
192 proceedings and reasonable attorneys' fees. If so provided in the declaration or bylaws, in the
193 case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in the
194 foreclosure action may require the appointment of a receiver to collect the rental without regard
195 to the value of the mortgage security.

196 ~~[(5)]~~ (d) Unless otherwise provided in the declaration, the manager or management
197 committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey
198 the unit.

199 (5) (a) When authorized in the declaration, bylaws, or rules adopted by resolution of
200 the management committee or association, if the owner fails or refuses to pay any assessment
201 when due, the management committee may, after giving notice and an opportunity to be heard
202 in accordance with Subsection (5)(b), and in the case of a fine, the expiration of the time for
203 appeal under Subsection 57-8-37(5):

204 (i) terminate an owner's right to receive utility services paid as a common expense; and

205 (ii) terminate an owner's right of access and use of recreational facilities.

206 (b) Before terminating utility services or right of access and use of recreational
207 facilities under Subsection (5)(a), the manager or management committee shall give written
208 notice to the unit owner in the manner provided in the declaration, bylaws, or association rules.
209 The notice shall state:

210 (i) utility services or right of access and use of recreational facilities will be terminated
211 if payment of the assessment is not received within the time provided in the declaration,
212 bylaws, or association rules, which time shall be stated and be at least 48 hours;

213 (ii) the amount of the assessment due, including any interest or late payment fee; and

214 (iii) the right to request a hearing under Subsection (5)(c).

215 (c) Except for a fine imposed pursuant to 57-8-37, a unit owner who is given notice
216 under Subsection (5)(b) may request an informal hearing to dispute the assessment by
217 submitting a written request to the management committee within 14 days from the date the
218 notice is received.

219 (i) The hearing shall be conducted in accordance with the standards provided in the
220 declaration, bylaws, or association rules.

221 (ii) If a hearing is requested, utility services or right of access and use or recreational
222 facilities may not be terminated until after the hearing has been conducted and a final decision
223 has been entered.

224 (d) Upon payment of the assessment due, including any interest or late payment fee, the
225 manager or management committee shall immediately take action to reinstate the terminated
226 utility services to the unit.

227 (6) (a) The manager or management committee must give the unit owner written
228 notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand
229 full payment from the tenant. This notice shall:

230 (i) provide notice to the tenant that full payment of remaining lease payments will
231 commence with the next monthly or other periodic payment unless the assessment is received
232 within the time period provided in the declaration, bylaws, or association rules;

233 (ii) state the amount of the assessment due, including any interest or late payment fee;

234 (iii) state that any costs of collection, not to exceed \$150, and other assessments that
235 become due may be added to the total amount due; and

236 (iv) provide the requirements and rights described in Subsections (6)(b) through (g).

237 (b) If the unit owner fails to pay the amount of the assessment due by the date specified
238 in the notice, the manager or management committee may deliver written notice to the tenant,
239 in accordance with the declaration, bylaws, or association rules, that demands future payments
240 due to the owner be paid to the association pursuant to Subsection (6)(c). A copy of the notice
241 must be mailed to the unit owner. The notice provided to the tenant must state:

242 (i) that due to the tenant's failure to pay the assessment within the time period allowed,
243 the owner has been notified of the management committee's intent to collect all lease payments
244 due to the association pursuant to Subsection (6)(a);

245 (ii) that until notification by the association that the assessment due, including any
246 interest or late payment fee, has been paid, all future lease payments due to the owner are to be
247 paid to the association; and

248 (iii) payment by the tenant to the association in compliance with this Subsection (6)
249 will not constitute a default under the terms of the lease agreement. If payment is in
250 compliance with this Subsection (6) suit or other action may not be initiated by the owner
251 against the tenant for failure to pay.

252 (c) All funds paid to the association pursuant to Subsection (6)(b) shall be deposited in
253 a separate account and disbursed to the association until the assessment due, together with any
254 cost of administration which may not exceed \$25, is paid in full. Any remaining balance must
255 be paid to the owner within five business days of payment in full to the association.

256 (d) Within five business days of payment in full of the assessment, including any
257 interest or late payment fee, the manager or management committee must notify the tenant in
258 writing that future lease payments are no longer due to the association. A copy of this
259 notification must be mailed to the unit owner.

260 (e) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive
261 occupancy of a unit by any person or persons, other than the unit owner, for which the unit
262 owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

263 (7) (a) The manager or management committee shall, upon the written request of any
264 unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement
265 indicating any unpaid assessments with respect to the unit covered by the request. This written
266 statement of unpaid assessments is conclusive upon the remaining unit owners and upon the
267 manager and management committee in favor of all persons who rely on the written statement
268 in good faith.

269 (b) Unless the manager or management committee complies with the request for a
270 statement of any unpaid assessments within ten days, all unpaid assessments which became due
271 prior to the date the request was made are subordinate to the lien held by the person requesting
272 the statement.

273 (8) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due
274 with respect to the unit. Upon payment, the encumbrancer has a lien on the unit for the
275 amounts paid.

276 (9) Remedies provided in this section, by law, or in equity are not considered to be
277 mutually exclusive.

Legislative Review Note
as of 2-7-03 11:07 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0203

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21-Feb-03

10:15 AM

State Impact

No fiscal impact.

Individual and Business Impact

Individual and business impacts will vary according to circumstances.

Office of the Legislative Fiscal Analyst