

Senator Michael G. Waddoups proposes the following substitute bill:

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 provides an arbitration provision. 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

ENACTS:

57-8-38, Utah Code Annotated 1953

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.



26 As used in this chapter:

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

30 [~~(1)~~] (2) "Association of unit owners" means all of the residential unit owners acting as
31 a group in accordance with the declaration and bylaws.

32 [~~(2)~~] (3) "Building" means a building, containing units, and comprising a part of the
33 property.

34 [~~(3)~~] (4) "Common areas and facilities" unless otherwise provided in the declaration or
35 lawful amendments to the declaration means:

36 (a) the land included within the residential condominium project, whether leasehold or
37 in fee simple;

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

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

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

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

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

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

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

50 [~~(4)~~] (5) "Common expenses" means:

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

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

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

56 (d) expenses declared common expenses by this chapter, or by the declaration or the

57 bylaws.

58 ~~[(5)]~~ (6) "Common profits," unless otherwise provided in the declaration or lawful
59 amendments to the declaration, means the balance of all income, rents, profits, and revenues
60 from the common areas and facilities remaining after the deduction of the common expenses.

61 ~~[(6)]~~ (7) "Condominium" means the ownership of a single residential unit in a
62 multiunit project together with an undivided interest in common in the common areas and
63 facilities of the property.

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

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

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

80 ~~[(10)]~~ (11) "Convertible land" means a building site which is a portion of the common
81 areas and facilities, described by metes and bounds, within which additional residential units or
82 limited common areas and facilities may be created in accordance with this chapter.

83 ~~[(11)]~~ (12) "Convertible space" means a portion of the structure within the
84 condominium project, which portion may be converted into one or more residential units or
85 common areas and facilities, including~~[-but not limited to;]~~ limited common areas and
86 facilities in accordance with this chapter.

87 ~~[(12)]~~ (13) "Declarant" means all persons who execute the declaration or on whose

88 behalf the declaration is executed. From the time of the recordation of any amendment to the
89 declaration expanding an expandable condominium, all persons who execute that amendment
90 or on whose behalf that amendment is executed shall also come within this definition. Any
91 successors of the persons referred to in this subsection who come to stand in the same relation
92 to the condominium project as their predecessors also come within this definition.

93 ~~[(13)]~~ (14) "Declaration" means the instrument by which the property is submitted to
94 the provisions of this act, as it from time to time may be lawfully amended.

95 ~~[(14)]~~ (15) "Expandable condominium" means a condominium project to which
96 additional land or an interest in it may be added in accordance with the declaration and this
97 chapter.

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

104 ~~[(16)]~~ (17) "Limited common areas and facilities" means those common areas and
105 facilities designated in the declaration as reserved for use of a certain residential unit or units to
106 the exclusion of the other units.

107 ~~[(17)]~~ (18) "Majority" or "majority of the unit owners," unless otherwise provided in
108 the declaration or lawful amendments to the declaration, means the owners of more than 50%
109 in the aggregate in interest of the undivided ownership of the common areas and facilities.

110 ~~[(18)]~~ (19) "Management committee" means the committee as provided in the
111 declaration charged with and having the responsibility and authority to make and to enforce all
112 of the reasonable rules covering the operation and maintenance of the property.

113 ~~[(19)]~~ (20) "Par value" means a number of dollars or points assigned to each residential
114 unit by the declaration. Substantially identical residential units shall be assigned the same par
115 value, but residential units located at substantially different heights above the ground, or having
116 substantially different views, or having substantially different amenities or other characteristics
117 that might result in differences in market value, may~~[-but need not,]~~ be considered
118 substantially identical within the meaning of this subsection. If par value is stated in terms of

119 dollars, that statement may not be considered to reflect or control the sales price or fair market
120 value of any residential unit, and no opinion, appraisal, or fair market transaction at a different
121 figure may affect the par value of any residential unit, or any undivided interest in the common
122 areas and facilities, voting rights in the unit owners' association, liability for common expenses,
123 or right to common profits, assigned on the basis thereof.

124 ~~[(20)]~~ (21) "Person" means an individual, corporation, partnership, association, trustee,
125 or other legal entity.

126 ~~[(21)]~~ (22) "Property" means the land, whether leasehold or in fee simple, the building,
127 if any, all improvements and structures thereon, all easements, rights, and appurtenances
128 belonging thereto, and all articles of personal property intended for use in connection
129 therewith.

130 ~~[(22)]~~ (23) "Record," "recording," "recorded," and "recorder" have the meaning stated
131 in Title 57, Chapter 3, Recording of Documents.

132 ~~[(23)]~~ (24) "Record of survey map" means a plat or plats of survey of land and
133 residential units prepared in accordance with Section 57-8-13.

134 (25) "Residential unit" means either a separate physical part of the property intended
135 for residential use, including one or more rooms or spaces located in one or more floors or part
136 or parts of floors in a building or a time period unit, as the context may require. A convertible
137 space shall be treated as a residential unit in accordance with Subsection 57-8-13.4(3). A
138 proposed residential condominium unit under an expandable condominium project, not
139 constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6
140 are met.

141 ~~[(24)]~~ (26) "Size" means the number of cubic feet, or the number of square feet of
142 ground or floor space, within each residential unit as computed by reference to the record of
143 survey map and rounded off to a whole number. Certain spaces within the residential units
144 including~~[-without limitation,]~~ attic, basement, or garage space may~~[-but need not,]~~ be omitted
145 from the calculation or be partially discounted by the use of a ratio, if the same basis of
146 calculation is employed for all residential units in the condominium project and if that basis is
147 described in the declaration.

148 ~~[(25)]~~ (27) "Time period unit" means an annually recurring part or parts of a year
149 specified in the declaration as a period for which a ~~[physical]~~ residential unit is separately

150 owned and includes a timeshare estate as defined in Subsection 57-19-2(17).

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

157 ~~[(27)]~~ (28) "Unit number" means the number, letter, or combination of numbers and
158 letters designating the residential unit in the declaration and in the record of survey map.

159 ~~[(28)]~~ (29) "Unit owner" means the person or persons owning a residential unit in fee
160 simple and an undivided interest in the fee simple estate of the common areas and facilities in
161 the percentage specified and established in the declaration or, in the case of a leasehold
162 condominium project, the person or persons whose leasehold interest or interests in the
163 residential condominium unit extend for the entire balance of the unexpired term or terms.

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

165 **57-8-20. Lien for nonpayment of common expenses.**

166 (1) Every residential unit owner shall pay his proportionate share of the common
167 expenses. Payment shall be in the amounts and at the times determined by the management
168 committee in accordance with the terms of the declaration or the bylaws.

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

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

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

179 (4) (a) Subject to Subsection 57-8-37(6), if any residential unit owner fails or refuses to
180 [make any payment of the common expenses] pay an assessment when due, that amount

181 constitutes a lien on the interest of the owner in the property, and upon the recording of notice
182 of lien by the manager or management committee it is a lien upon the residential unit owner's
183 interest in the property prior to all other liens and encumbrances, recorded or unrecorded,
184 except:

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

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

190 ~~[(3)]~~ The manager or management committee shall, upon the written request of any unit
191 owner or any encumbrancer or prospective encumbrancer of a unit, and upon payment of a
192 reasonable fee not to exceed \$10, issue to the requesting person or persons, a written statement
193 setting forth the unpaid common expenses with respect to the unit covered by the request. This
194 written statement of indebtedness is conclusive upon the remaining unit owners and upon the
195 manager and management committee in favor of all persons who rely on the written statement
196 in good faith. Unless the manager or management committee complies with the request for a
197 statement of indebtedness within ten days, all unpaid common expenses which became due
198 prior to the date such request was made are subordinate to the lien held by the person
199 requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid
200 common expenses payable with respect to the unit and upon payment the encumbrancer has a
201 lien on the unit for the amounts paid of the same rank as the lien of his encumbrance.]

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

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

211 ~~[(5)]~~ (d) Unless otherwise provided in the declaration, the manager or management

212 committee may bid in the residential unit at foreclosure or other sale and hold, lease, mortgage,
213 or convey the unit.

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

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

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

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

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

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

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

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

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

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

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

242 (6) (a) If authorized in the declaration, bylaws, or rules adopted by resolution of the

243 management committee, if the owner of a unit who is leasing the unit fails to pay any
244 assessment for a period of more than 30 days after it is due and payable, the management
245 committee, upon compliance with this Subsection (6)(a), and in the case of any fine, the
246 expiration of the time for appeal under Subsection 57-8-37(5), may demand the tenant to pay to
247 the association all future lease payments due owner, commencing with the next monthly or
248 other periodic payment, until the amount due to the association is paid.

249 (b) The manager or management committee must give the residential unit owner
250 written notice, in accordance with the declaration, bylaws, or association rules, of its intent to
251 demand full payment from the tenant. This notice shall:

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

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

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

258 (iv) provide the requirements and rights described in Subsections (6)(b) through (f).

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

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

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

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

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

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

282 (f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive
283 occupancy of a unit by any person or persons, other than the residential unit owner, for which
284 the residential unit owner receives any consideration or benefit, including a fee, service,
285 gratuity, or emolument.

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

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

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

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

301 Section 3. Section **57-8-38** is enacted to read:

302 **57-8-38. Arbitration.**

303 The declaration, bylaws, or association rules may provide that disputes between the
304 parties shall be submitted to arbitration pursuant to Title 78, Chapter 31a, Utah Arbitration Act.