

LIEN FOR HOMEOWNER ASSOCIATION

CHARGES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Steven R. Mascaro

LONG TITLE

General Description:

This bill modifies the Real Estate Code to enact provisions related to liens for homeowner association charges.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ requires that in certain circumstances, a failure to pay homeowner association charges may result in a lien; and
- ▶ establishes provisions related to the recording and priority of the lien.

Monies Appropriated in this Bill:

None

Other Special Clauses:

§ [None] THIS BILL PROVIDES A COORDINATION CLAUSE. §

Utah Code Sections Affected:

ENACTS:

57-24-1, Utah Code Annotated 1953

57-24-2, Utah Code Annotated 1953

57-24-3, Utah Code Annotated 1953

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



28 Section 1. Section 57-24-1 is enacted to read:

29 **CHAPTER 24. HOMEOWNER ASSOCIATIONS ACT**

30 **57-24-1. Title.**

31 This chapter is known as the "Homeowner Associations Act."

32 Section 2. Section 57-24-2 is enacted to read:

33 **57-24-2. Definitions.**

34 As used in this chapter:

35 (1) "Homeowner association" means a mandatory membership association of owners
36 of real property:

37 (a) created pursuant to a recorded instrument that subjects property within the
38 homeowner association to certain restrictive covenants;

39 (b) that represents the mutual interests of the real property owners regarding the
40 construction, protection, and maintenance of the property and improvements commonly owned
41 or used by the homeowner association; and

42 (c) that has the authority under the recorded instrument described in Subsection (1)(a)
43 to compel members of the homeowner association to pay the expenses incurred in performing
44 the obligations of the homeowner association.

45 (2) "Planned unit development" means an area of land developed under unified control
46 or a unified plan of development.

47 Section 3. Section 57-24-3 is enacted to read:

48 **57-24-3. Lien for nonpayment of common expenses.**

49 (1) (a) If a homeowner association manages or owns common areas within a planned
50 unit development, a property owner within the homeowner association shall pay the property
51 owner's share of the common expenses of the homeowner association **^ ACCORDING TO ITS**
51a **GOVERNING DOCUMENTS ^** .

52 (b) A payment described in Subsection (1)(a) shall be in the amount and at the time
53 determined:

54 (i) by the homeowner association; and

55 (ii) pursuant to the recorded instrument under which the homeowner association was
56 created.

57 (2) (a) Subject to Subsection (3) ^ AND THE ASSOCIATION'S GOVERNING DOCUMENTS ^ .
57a if a property owner fails or refuses to pay a payment
58 described in Subsection (1)(a), that amount constitutes a lien on the interest of the property

owner in the property ~~that is subject to the homeowner association~~ .

(b) Subject to Subsection (3), upon the recording of notice of lien by the homeowner association, a lien described in Subsection (2)(a) is a lien on the interest of the property owner in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the property in favor of any assessing unit or special improvement district; and

(ii) encumbrances on the interest of the property owner ~~that~~ recorded prior to the date of the recording of notice of lien described in Subsection (2)(b) ~~that~~; and

~~(B) that by law would be a lien prior to subsequently recorded encumbrances~~ .

(3) A lien described in Subsection (2) is valid only if:

(a) the homeowner association maintains current records for its officers, directors, and trustees with the Division of Corporations and Commercial Code; and

(b) the recording of notice of lien contains:

(i) a day time telephone number of the homeowner association; and

(ii) a mailing address of the homeowner association.

§ SECTION 4. COORDINATING S.B. 129 WITH H.B. 59.

IF THIS H.B. 59 AND S.B. 129, COMMUNITY ASSOCIATIONS, BOTH PASS, IT IS THE INTENT OF THE LEGISLATURE THAT THE OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL IN PREPARING THE UTAH CODE DATABASE FOR PUBLICATION, SHALL COORDINATE THE ENACTMENT OF H.B. 59 WITH S.B. 129 SO THAT:

(1) SECTIONS 57-24-1, 57-24-2, AND 57-24-3 FROM H.B. 59 WILL NOT BE ENACTED; AND

(2) SECTION 57-8a-203, ENACTED IN S.B. 129, SHALL BE MODIFIED SO THAT:

(a) SUBSECTION 57-8a-203(1)(b)(ii) SHALL BE DELETED AND REPLACED WITH THE

FOLLOWING:

"(ii) ENCUMBRANCES ON THE INTEREST OF THE LOT OWNER RECORDED PRIOR TO THE DATE OF THE RECORDING OF NOTICE OF LIEN DESCRIBED IN SUBSECTION (1)(b)."; AND

(b) SUBSECTION 57-24-3(3), ENACTED IN H.B. 59, SHALL BE RENUMBERED AS SUBSECTION 57-8a-203(5) IN S.B. 129 AND MODIFIED AS FOLLOWS:

"(5) A LIEN DESCRIBED IN THIS SECTION IS VALID ONLY IF THE RECORDING OF NOTICE OF LIEN CONTAINS:

(a) A TELEPHONE NUMBER OF THE ASSOCIATION OR THE ASSOCIATION'S APPOINTED REPRESENTATIVE; AND

(b) A MAILING ADDRESS OF THE ASSOCIATION OR THE ASSOCIATION'S APPOINTED REPRESENTATIVE." §

Legislative Review Note

as of 12-23-03 12:49 PM

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

Office of Legislative Research and General Counsel

Senate 2nd Reading Amendments 3-1-2004 sm/tcl

Senate Committee Amendments 2-24-2004 sm/tcl

House Floor Amendments 2-10-2004 kh/tcl

Corrected - House Committee Amendments 1-29-2004 kh/tcl