

COMMUNITY ASSOCIATIONS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the Real Estate Code to enact the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions governing the payment of common expenses and assessments of a community association;
- ▶ provides costs and attorney fees under certain circumstances;
- ▶ regulates liens and foreclosures related to assessments;
- ▶ regulates termination of utility services and use of recreational facilities within a community association;
- ▶ provides for future lease payments to be credited toward an assessment under certain circumstances;
- ▶ requires written assessment statements under certain circumstances; and
- ▶ regulates assessment payments by a lien holder.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-8a-101, Utah Code Annotated 1953

57-8a-102, Utah Code Annotated 1953

57-8a-103, Utah Code Annotated 1953

57-8a-201, Utah Code Annotated 1953

57-8a-202, Utah Code Annotated 1953

57-8a-203, Utah Code Annotated 1953

57-8a-204, Utah Code Annotated 1953

57-8a-205, Utah Code Annotated 1953

57-8a-206, Utah Code Annotated 1953

57-8a-207, Utah Code Annotated 1953

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

Section 1. Section **57-8a-101** is enacted to read:

CHAPTER 8a. COMMUNITY ASSOCIATION ACT

Part 1. General Provisions

57-8a-101. Title.

This chapter is known as the "Community Association Act."

Section 2. Section **57-8a-102** is enacted to read:

57-8a-102. Definitions.

As used in this chapter:

(1) (a) "Assessment" means a charge imposed or levied:

(i) by the association;

(ii) on or against a lot or a lot owner; and

(iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes a common expense.

(2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, each member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.

(3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property that the association:

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

(5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(6) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association.

(7) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service,

gratuity, or emolument.

(8) "Lot" means:

(a) a lot, parcel, plot, or other division of land:

(i) designated for separate ownership or occupancy; and

(ii) (A) shown on a recorded subdivision plat; or

(B) the boundaries of which are described in a recorded governing document; or

(b) (i) a unit in a condominium association if the condominium association is a part of a development; or

(ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

(9) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

Section 3. Section **57-8a-103** is enacted to read:

57-8a-103. Scope of chapter.

Remedies provided in this chapter, by law, or in equity are not mutually exclusive.

Section 4. Section **57-8a-201** is enacted to read:

Part 2. Common Expenses and Assessments

57-8a-201. Payment of a common expense or assessment.

(1) An owner shall pay the owner's proportionate share of:

(a) the common expenses; and

(b) any other assessments levied by the association.

(2) A payment described in Subsection (1) shall be in the amount and at the time determined by the board of directors in accordance with the terms of the:

(a) declaration; or

(b) bylaws.

(3) An assessment levied against a lot is:

(a) a debt of the owner at the time the assessment is made; and

(b) collectible as a debt described in Subsection (3)(a).

Section 5. Section **57-8a-202** is enacted to read:

57-8a-202. Unpaid assessment -- Costs and attorney fees.

(1) An association may recover all expenses incurred by the association in collecting an unpaid assessment, including reasonable attorney fees.

(2) (a) An association may maintain an action to recover a money judgment for an unpaid assessment without foreclosing or waiving the lien securing the unpaid assessment.

(b) The prevailing party in an action described in Subsection (2)(a) may recover:

(i) costs; and

(ii) reasonable attorney fees.

Section 6. Section **57-8a-203** is enacted to read:

57-8a-203. Unpaid assessment -- Lien -- Foreclosure.

(1) (a) If an owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property.

(b) Upon the recording of notice of lien by the manager or board of directors, a lien described in Subsection (1)(a) is a lien on the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

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

(ii) encumbrances on the interest of the lot owner:

(A) recorded prior to the date of the recording of notice of lien described in Subsection (1)(b); and

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

(2) (a) The manager or board of directors may enforce a lien described in Subsection (1) by sale or foreclosure of the owner's interest.

(b) The sale or foreclosure described in Subsection (2)(a) shall be conducted in the same manner as foreclosures in:

(i) mortgages; or

(ii) any other manner permitted by law.

(3) In a sale or foreclosure described in Subsection (2)(a), the owner shall pay:

(a) the costs and expenses of the proceedings; and

(b) reasonable attorney fees.

(4) Unless otherwise provided in the declaration, the manager or board of directors may:

(a) bid at a sale or foreclosure described in Subsection (2)(a); and

(b) hold, lease, mortgage, or convey the lot that is subject to the lien.

Section 7. Section **57-8a-204** is enacted to read:

57-8a-204. Unpaid assessment -- Utility service -- Right of access and use.

(1) When authorized in the declaration, bylaws, or rules adopted by the board of directors, if the owner fails or refuses to pay an assessment when due, the board of directors may, after giving notice and an opportunity to be heard in accordance with Subsection (2), terminate an owner's right:

(a) to receive utility services paid as a common expense; and

(b) of access and use of recreational facilities.

(2) (a) Before terminating utility services or right of access and use of recreational facilities under Subsection (1), the manager or board of directors shall give written notice to the owner in the manner provided in the declaration, bylaws, or rules.

(b) The notice described in Subsection (2)(a) shall inform the owner:

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

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

(iii) of the right to request a hearing under Subsection (3).

(3) (a) An owner who is given notice under Subsection (2) may request an informal hearing to dispute the assessment by submitting a written request to the board of directors within 14 days after the date on which the owner receives the notice described in Subsection (2).

(b) The hearing shall be conducted by the board of directors in accordance with the standards provided in the declaration, bylaws, or rules.

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

(4) Upon payment of the assessment due, including any interest or late payment fee, the manager or board of directors shall immediately take action to reinstate the terminated utility services.

Section 8. Section **57-8a-205** is enacted to read:

57-8a-205. Unpaid assessment -- Future lease payments.

(1) When authorized in the declaration, bylaws, or rules adopted by the board of directors, if the owner of a lot who is leasing the lot fails to pay an assessment for more than 60 days after the assessment is due, the board of directors, upon compliance with this section, may demand that the tenant pay to the association all future lease payments due to the owner, beginning with the next monthly or other periodic payment, until the amount due to the association is paid.

(2) (a) The manager or board of directors shall give the owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant under this section.

(b) The notice described in Subsection (2)(a) shall:

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

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

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

(iv) provide the requirements and rights described in this section.

(3) (a) If the owner fails to pay the assessment due by the date specified in the notice described in Subsection (2), the manager or board of directors may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future

payments due to the owner be paid to the association pursuant to Subsection (4).

(b) The manager or board of directors shall mail a copy of the notice described in this Subsection (3) to the owner.

(c) The notice provided to the tenant under this Subsection (3) shall state:

(i) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the intent of the board of directors to collect all lease payments due to the association;

(ii) that until notification by the association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the association all future lease payments due to the owner; and

(iii) that payment by the tenant to the association in compliance with this section will not constitute a default under the terms of the lease agreement.

(d) If a tenant makes payments in compliance with this section, the owner may not initiate an action against the tenant.

(4) (a) All funds paid to the association pursuant to this section shall be:

(i) deposited in a separate account; and

(ii) disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full.

(b) Any remaining balance shall be paid to the owner within five business days after payment in full to the association.

(5) (a) Within five business days after payment in full of the assessment, including any interest or late payment fee, the manager or board of directors shall notify the tenant in writing that future lease payments are no longer due to the association.

(b) The manager or board of directors shall mail a copy of the notification described in Subsection (5)(a) to the unit owner.

Section 9. Section **57-8a-206** is enacted to read:

57-8a-206. Written statement of unpaid assessment.

(1) (a) The manager or board of directors shall issue a written statement indicating any

unpaid assessment with respect to a lot covered by the request, upon:

- (i) the written request of any unit owner; and
- (ii) payment of a reasonable fee not to exceed \$10.

(b) The written statement described in Subsection (1)(a) is binding in favor of any person who relies in good faith on the written statement upon the:

- (i) remaining owners;
- (ii) manager; and
- (iii) board of directors.

(2) Unless the manager or board of directors complies with a request described in Subsection (1)(a) within ten days, any unpaid assessment that became due prior to the date the request described in Subsection (1)(a) was made is subordinate to a lien held by the person requesting the statement pursuant to Subsection (1)(a).

Section 10. Section **57-8a-207** is enacted to read:

57-8a-207. Payment of unpaid assessment by encumbrancer.

(1) An encumbrancer holding a lien on a lot may pay any unpaid assessment due with respect to the lot.

(2) Upon a payment described in Subsection (1), the encumbrancer has a lien on the lot for the amounts paid.