

CONDOMINIUM AND COMMUNITY

ASSOCIATION PROVISIONS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the filing and recording of certain information under Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act.

Highlighted Provisions:

This bill:

- ▶ addresses the contents of an association's notice of lien on a unit;
- ▶ requires an agent for an association to register with the Division of Corporations and Commercial Code and provide certain information;
- ▶ requires the filing of a notice of an association's right to claim a lien against a lot owner if the association does not record governing documents under Title 57, Chapter 8a, Community Association Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 57-8-20, as last amended by Laws of Utah 2003, Chapter 265

29 57-8a-203, as enacted by Laws of Utah 2004, Chapter 153

30 ENACTS:

31 57-8-40, Utah Code Annotated 1953

32 57-8a-209, Utah Code Annotated 1953

33 57-8a-210, Utah Code Annotated 1953



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

36 Section 1. Section 57-8-20 is amended to read:

37 **57-8-20. Lien for nonpayment of common expenses.**

38 (1) (a) Every unit owner shall pay ~~[his]~~ a proportionate share of the common expenses.

39 (b) Payment under Subsection (1)(a) shall be in the ~~[amounts]~~ amount and at the
40 ~~[times]~~ time determined by the management committee in accordance with the terms of the
41 declaration or the bylaws.

42 (2) (a) An assessment levied against each unit is a debt of the owner at the time the
43 assessment is made and is collectible as ~~[such]~~ a debt.

44 (b) The association ~~[is entitled to]~~ may recover all expenses incurred by the association
45 in collecting any unpaid assessment, including reasonable ~~[attorneys']~~ attorney fees, whether an
46 action is brought against an owner under Subsection (3), or whether a suit to foreclose the lien
47 upon the unit is instituted under Subsection (4).

48 (3) (a) Suit to recover a money judgment for any unpaid assessment ~~[is maintainable]~~
49 may be brought without foreclosing or waiving the lien securing it.

50 (b) The prevailing party in ~~[the action is entitled to]~~ an action under Subsection (3)(a)
51 may recover its costs ~~[of suit]~~ and reasonable ~~[attorneys']~~ attorney fees.

52 (4) (a) Subject to Subsection 57-8-37(6), if ~~[any]~~ a unit owner fails or refuses to pay an
53 assessment when due, that amount constitutes a lien on the interest of the owner in the
54 property, and ~~[upon]~~ the recording of notice of lien ~~[by the manager or management committee~~
55 ~~it]~~ is evidence of the lien, which is a lien upon the unit owner's interest in the property ~~[prior~~
56 ~~to]~~ before all other liens and encumbrances, recorded or unrecorded, except:

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

59 (ii) encumbrances on the interest of the unit owner recorded [~~prior to~~] before the date
60 [~~such~~] the notice is recorded [~~which~~] that by law [~~would be a lien prior to~~] are liens before a
61 subsequently recorded [~~encumbrances~~] encumbrance.

62 (b) A recorded notice of lien under this section shall include:

63 (i) the name, current address, and current telephone number of the manager or
64 management committee, or person signing on behalf of the manager or management committee
65 that is claiming the lien;

66 (ii) the name of the unit owner subject to the lien;

67 (iii) the date of the first delinquency on which the lien is based;

68 (iv) the amount for which the lien is claimed;

69 (v) a legal description of the unit subject to the lien, sufficient for identification; and

70 (vi) the name and signature of the person and any acknowledgment or certificate

71 required under Title 57, Chapter 3, Recording of Documents.

72 [~~(b)~~] (c) (i) The lien for nonpayment of an assessment may be enforced by [~~sale or~~]
73 foreclosure of the unit owner's interest by the manager or management committee.

74 (ii) The [~~sale or~~] foreclosure under Subsection (4)(c)(i) shall be conducted in the same
75 manner as foreclosures [~~in deeds of trust or~~] of mortgages [~~or in any other manner permitted by~~
76 ~~law~~].

77 [~~(c)~~] (d) (i) In any foreclosure [~~or sale~~], the unit owner shall pay the costs and expenses
78 of [~~such~~] the proceedings and reasonable [~~attorneys'~~] attorney fees.

79 (ii) If so provided in the declaration or bylaws, in the case of foreclosure, the owner
80 shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require
81 the appointment of a receiver to collect the rental without regard to the value of the mortgage
82 security.

83 [~~(d)~~] (e) Unless otherwise provided in the declaration, the manager or management
84 committee may bid [~~in~~] on the unit at foreclosure [~~or other sale~~] and hold, lease, mortgage, or
85 convey the unit.

86 (5) (a) [~~When~~] If authorized in the declaration or bylaws, if the owner fails or refuses to
87 pay any assessment when due, the management committee may, after giving notice and an
88 opportunity to be heard in accordance with Subsection (5)(b):

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

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

91 (b) (i) Before terminating utility services or right of access to and use of recreational
92 facilities under Subsection (5)(a), the manager or management committee shall give written
93 notice to the unit owner in the manner provided in the declaration, bylaws, or association rules.

94 (ii) The notice required by Subsection (5)(b)(i) shall state:

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

98 [(ii)] (B) the amount of the assessment due, including any interest or late payment fee;
99 and

100 [(iii)] (C) the right to request a hearing under Subsection (5)(c).

101 (c) (i) A unit owner who is given notice under Subsection (5)(b) may request an
102 informal hearing to dispute the assessment by submitting a written request to the management
103 committee within 14 days from the date the notice is received.

104 [(i) ~~The hearing~~] (ii) A hearing under Subsection (5)(c)(i) shall be conducted in
105 accordance with the standards provided in the declaration, bylaws, or association rules.

106 [(ii)] (iii) If a hearing is requested, utility services or right of access to and use [~~or~~] of
107 recreational facilities may not be terminated until after the hearing [~~has been~~] is conducted and
108 a final decision [~~has been~~] is entered.

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

112 (e) The remedies provided in this Subsection (5) [~~shall only~~] apply only to residential
113 condominium units.

114 (6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the
115 unit fails to pay any assessment for a period of more than 60 days after it is due and payable,
116 the management committee, upon compliance with this Subsection (6)(a), may demand the
117 tenant to pay to the association all future lease payments due the owner, commencing with the
118 next monthly or other periodic payment, until the amount due to the association is paid.

119 (b) (i) The manager or management committee [~~must~~] shall give the unit owner written
120 notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand

121 full payment from the tenant[~~This notice shall:~~] under Subsection (6)(a).

122 (ii) Notice under Subsection (6)(b)(i) shall:

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

126 [(ii)] (B) state the amount of the assessment due, including any interest or late payment
127 fee;

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

130 [(iv)] (D) provide the requirements and rights described in Subsections (6)(b) through
131 (f).

132 (c) (i) If the unit owner fails to pay the amount of the assessment due by the date
133 specified in the notice, the manager or management committee may deliver written notice to
134 the tenant, in accordance with the declaration, bylaws, or association rules, that demands future
135 payments due to the owner be paid to the association pursuant to Subsection (6)(d).

136 (ii) A copy of the notice must be mailed to the unit owner.

137 (iii) The notice provided to the tenant [~~must~~] shall state:

138 [(i)] (A) that due to the owner's failure to pay the assessment within the time period
139 allowed, the owner has been notified of the management committee's intent to collect all lease
140 payments due to the association pursuant to Subsection (6)(a);

141 [(ii)] (B) that until notification by the association that the assessment due, including
142 any interest or late payment fee, has been paid, all future lease payments due to the owner are
143 to be paid to the association; and

144 [(iii)] (C) payment by the tenant to the association in compliance with this Subsection
145 (6) will not constitute a default under the terms of the lease agreement. If payment is in
146 compliance with this Subsection (6) suit or other action may not be initiated by the owner
147 against the tenant for failure to pay.

148 (d) (i) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited
149 in a separate account and disbursed to the association until the assessment due, together with
150 any cost of administration, which may not exceed \$25, is paid in full.

151 (ii) Any remaining balance [~~must~~] shall be paid to the owner within five business days

152 of payment in full to the association.

153 (e) (i) Within five business days of payment in full of the assessment, including any
154 interest or late payment fee, the manager or management committee [~~must~~] shall notify the
155 tenant in writing that future lease payments are no longer due to the association.

156 (ii) A copy of this notification [~~must~~] shall be mailed to the unit owner.

157 (f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive
158 occupancy of a unit by [~~any~~] a person [~~or persons~~], other than the unit owner, for which the unit
159 owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

160 (7) (a) (i) The manager or management committee shall, upon the written request of
161 any unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written
162 statement indicating any unpaid assessments with respect to the unit covered by the request.
163 [~~This~~]

164 (ii) A written statement under Subsection (7)(a)(i) of unpaid assessments is conclusive
165 upon the remaining unit owners and upon the manager and management committee in favor of
166 all persons who rely on the written statement in good faith.

167 (b) Unless the manager or management committee complies with the request for a
168 statement of any unpaid assessments within ten days, all unpaid assessments [~~which~~] that
169 became due [~~prior to~~] before the date the request was made are subordinate to the lien held by
170 the person requesting the statement.

171 (8) (a) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due
172 with respect to the unit.

173 (b) Upon payment, the encumbrancer has a lien on the unit for the amounts paid.

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

176 Section 2. Section **57-8-40** is enacted to read:

177 **57-8-40. Registration of agent.**

178 (1) If an association of unit owners or management committee appoints an agent to
179 receive and collect each owner's share of common expenses, the agent shall register as an agent
180 for the association of unit owners or management committee with the Division of Corporations
181 and Commercial Code.

182 (2) Registration as an agent under Subsection (1) consists of filing a statement with the

183 Division of Corporations and Commercial Code including the agent's:

184 (a) name;

185 (b) street address; and

186 (c) phone number.

187 (3) If an association of unit owners or management committee replaces an agent or any
 188 of the information required by Subsection (2) changes, the agent shall register with the
 189 Division of Corporations and Commercial Code or update the information.

190 Section 3. Section **57-8a-203** is amended to read:

191 **57-8a-203. Unpaid assessment -- Lien -- Foreclosure.**

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

194 (b) A recorded notice of lien under this section shall include:

195 (i) the name, current address, and current telephone number of the manager or
 196 management committee, or person signing on behalf of the manager or management committee
 197 that is claiming the lien;

198 (ii) the name of the unit owner subject to the lien;

199 (iii) the date of the first delinquency on which the lien is based;

200 (iv) the amount for which the lien is claimed;

201 (v) a legal description of the unit subject to the lien, sufficient for identification; and

202 (vi) the name and signature of the person and any acknowledgment or certificate

203 required under Title 57, Chapter 3, Recording of Documents.

204 ~~[(b) Upon the recording]~~ (c) Recording of notice of lien [by the manager or board of
 205 directors, a lien] is evidence of the lien described in Subsection (1)(a), which is a lien on the
 206 unit owner's interest in the property ~~[prior to]~~ before all other liens and encumbrances, recorded
 207 or unrecorded, except:

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

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

211 (A) recorded ~~[prior to]~~ before the date of the recording of notice of lien described in
 212 Subsection (1)~~[(b)]~~(c); and

213 (B) that by law ~~[would be]~~ are a lien ~~[prior to]~~ before subsequently recorded

214 encumbrances.

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

217 (b) The [~~sale or~~] foreclosure described in Subsection (2)(a) shall be conducted in the
218 same manner as foreclosures [~~in: (i) of mortgages[; or]~~].
219 [~~(ii) any other manner permitted by law.~~]

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

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

222 (b) reasonable attorney fees.

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

225 (a) bid at a [~~sale or~~] foreclosure described in Subsection (2)(a); and

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

227 Section 4. Section **57-8a-209** is enacted to read:

228 **57-8a-209. Registration of agent for the board of directors.**

229 (1) If the board of directors appoints an agent to receive and collect each owner's share
230 of common expenses, the agent shall register as an agent for the board of directors with the
231 Division of Corporations and Commercial Code.

232 (2) Registration as an agent under Subsection (1) consists of filing a statement with the
233 Division of Corporations and Commercial Code including the agent's:

234 (a) name;

235 (b) street address; and

236 (c) phone number.

237 (3) If the board of directors replaces an agent or any of the information required by
238 Subsection (2) changes, the agent shall register with the Division of Corporations and
239 Commercial Code or update the information.

240 Section 5. Section **57-8a-210** is enacted to read:

241 **57-8a-210. Notice of right to assess owner in absence of recorded governing**
242 **documents.**

243 (1) If an association does not file governing documents with the county recorder,
244 before the association may collect an assessment the association shall file for recording a notice

245 of the association's right to:

246 (a) assess owners of lots; and

247 (b) claim a lien against a lot for an unpaid assessment.

248 (2) The recorded notice shall include:

249 (a) the name, current address, and current telephone number of the manager or
250 management committee, or person signing on behalf of the manager or management committee
251 that is claiming the lien;

252 (b) a legal description of the unit subject to the lien, sufficient for identification; and

253 (c) the name and signature of the person and any acknowledgment or certificate
254 required under title 57, Chapter 3, Recording of Documents.

Legislative Review Note
as of 2-4-08 3:27 PM

Office of Legislative Research and General Counsel

H.B. 400 - Condominium and Community Association Provisions

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
