

ACCESS TO LANDLOCKED PARCELS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark W. Walker

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies county and municipal land use provisions.

Highlighted Provisions:

This bill:

▶ prohibits counties and municipalities from approving a subdivision plat that creates or results in a landlocked parcel of property unless the owner of the landlocked parcel consents or is given, and either accepts or rejects, an opportunity to pay fair compensation for access;

▶ allows an owner of property over which access is provided to record a notice of interest against the formerly landlocked parcel of property; and

▶ provides for referral of a dispute over access or the amount of compensation for access to the Property Rights Ombudsman.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-43-204, as enacted by Laws of Utah 2006, Chapter 258

ENACTS:



28 10-9a-604.5, Utah Code Annotated 1953
29 17-27a-604.5, Utah Code Annotated 1953



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

32 Section 1. Section 10-9a-604.5 is enacted to read:

33 **10-9a-604.5. Approval of a subdivision plat that creates or results in a landlocked**
34 **parcel of property -- Providing access -- Referral of a dispute to the Property Rights**
35 **Ombudsman.**

36 (1) As used in this section, "landlocked" means the state of a parcel of property that has
37 no access to a public street because:

38 (a) the parcel of property is surrounded on all sides by property belonging to one or
39 more owners other than the owner of the parcel of property; and

40 (b) there is no existing right-of-way that provides access from the parcel of property to
41 a public street.

42 (2) A municipality may not approve a subdivision plat that creates or results in a
43 landlocked parcel of property unless:

44 (a) the owner of the landlocked parcel consents in writing; or

45 (b) (i) the applicant seeking approval of the subdivision plat makes reasonable access
46 to a public street available to the landlocked parcel; and

47 (ii) the owner of the landlocked parcel:

48 (A) is given a reasonable opportunity to agree or not to agree to pay, at the time the
49 landlocked parcel is developed, fair compensation for the access; and

50 (B) agrees or chooses not to agree to pay fair compensation for the access.

51 (3) An owner of a landlocked parcel of property who is provided access to a public
52 street under Subsection (2) and agrees to pay fair compensation for that access agrees, for the
53 owner and for any successor in interest, to pay fair compensation for the access at the time the
54 formerly landlocked parcel is developed.

55 (4) (a) If the owner of the landlocked parcel of property agrees to pay fair
56 compensation for the access, as provided in Subsection (3), the owner of the property over
57 which access to the formerly landlocked parcel is provided may record a notice of interest
58 against the formerly landlocked parcel in the office of the recorder of the county in which the

59 formerly landlocked parcel is located.

60 (b) Each property owner who records a notice of interest under Subsection (4)(a) shall
61 serve a copy of the notice on the owner of the formerly landlocked parcel.

62 (5) A dispute under this section relating to access to a landlocked parcel of property or
63 the amount of fair compensation for access may be referred to the Office of the Property Rights
64 Ombudsman as provided in Section 13-43-204.

65 Section 2. Section **13-43-204** is amended to read:

66 **13-43-204. Office of Property Rights Ombudsman -- Arbitration or mediation of**
67 **takings or eminent domain disputes.**

68 (1) If requested by the private property owner and otherwise appropriate, the Office of
69 the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, [~~disputes~~]
70 a dispute between a private property [~~owners~~] owner and a government [~~entities~~] entity that
71 [~~involve~~] involves:

72 (a) a takings or eminent domain [~~issues~~] issue;

73 (b) [~~actions~~] an action for eminent domain under Title 78, Chapter 34, Eminent
74 Domain; [~~or~~]

75 (c) [~~disputes~~] a dispute about relocation assistance under Title 57, Chapter 12, Utah
76 Relocation Assistance Act[~~;~~]; or

77 (d) a dispute under Section 10-9a-604.5 or 17-27a-604.5 related to a parcel of
78 property's access to a public street or the amount of fair compensation for access.

79 (2) If arbitration or mediation is requested by a private property owner under this
80 section, Section 57-12-14 or [~~78-34-21~~] 78B-6-522, and arranged by the Office of the Property
81 Rights Ombudsman, the government entity or condemning entity shall participate in the
82 mediation or arbitration as if the matter were ordered to mediation or arbitration by a court.

83 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
84 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78,
85 Chapter 31a, Utah Uniform Arbitration Act.

86 (ii) In applying Title 78, Chapter 31a, Utah Uniform Arbitration Act, the arbitrator and
87 parties shall treat the matter as if:

88 (A) it were ordered to arbitration by a court; and

89 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as

90 provided for in this section was appointed as arbitrator by the court.

91 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
92 arbitrated is not already the subject of legal action, the district court having jurisdiction over
93 the county where the private property involved in the dispute is located is the court referred to
94 in Title 78, Chapter 31a, Utah Uniform Arbitration Act.

95 (iv) An arbitration award under this chapter may not be vacated under the provisions of
96 Subsection [~~78-31a-124~~] 78B-11-124(1)(e) because of the lack of an arbitration agreement
97 between the parties.

98 (b) The Office of the Property Rights Ombudsman shall issue a written statement
99 declining to arbitrate or to appoint an arbitrator when, in the opinion of the Office of the
100 Property Rights Ombudsman:

101 (i) the issues are not ripe for review;

102 (ii) assuming the alleged facts are true, no cause of action exists under United States or
103 Utah law;

104 (iii) all issues raised are beyond the scope of the Office of the Property Rights
105 Ombudsman's statutory duty to review; or

106 (iv) the arbitration is otherwise not appropriate.

107 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
108 arbitrate a dispute when:

109 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
110 arbitrator and agrees to pay for the services of another arbitrator;

111 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
112 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
113 the services of another arbitrator; or

114 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
115 appoint another person to arbitrate the dispute with no charge to the parties for the services of
116 the appointed arbitrator.

117 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
118 Ombudsman shall appoint an arbitrator who is agreeable to:

119 (A) both parties; or

120 (B) the Office of the Property Rights Ombudsman and the party paying for the

121 arbitrator.

122 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
123 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

124 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
125 expenses incurred in the performance of the arbitrator's duties at the rates established by the
126 Division of Finance under Sections 63A-3-106 and 63A-3-107.

127 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
128 regulations, and rules of Utah and the United States in conducting the arbitration and in
129 determining the award.

130 (e) The property owner and government entity may agree in advance of arbitration that
131 the arbitration is binding and that no de novo review may occur.

132 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
133 necessary before bringing legal action to adjudicate any claim.

134 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
135 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
136 administrative remedies or as a bar to bringing legal action.

137 (h) Arbitration under this section is not subject to Title 63, Chapter 46b,
138 Administrative Procedures Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

139 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
140 Subsection (3)(e), any party may submit the award, or any issue upon which the award is based,
141 to the district court for de novo review.

142 (4) The filing with the Office of the Property Rights Ombudsman of a request for
143 mediation or arbitration of a constitutional taking issue does not stay any county or municipal
144 land use decision, including the decision of a board of adjustment.

145 (5) Members of the Office of the Property Rights Ombudsman may not be compelled
146 to testify in a civil action filed concerning the subject matter of any review, mediation, or
147 arbitration by the Office of the Property Rights Ombudsman.

148 Section 3. Section **17-27a-604.5** is enacted to read:

149 **17-27a-604.5. Approval of a subdivision plat that creates or results in a**
150 **landlocked parcel of property -- Providing access -- Referral of a dispute to the Property**
151 **Rights Ombudsman.**

152 (1) As used in this section, "landlocked" means the state of a parcel of property that has
153 no access to a public street because:

154 (a) the parcel of property is surrounded on all sides by property belonging to one or
155 more owners other than the owner of the parcel of property; and

156 (b) there is no existing right-of-way that provides access from the parcel of property to
157 a public street.

158 (2) A county may not approve a subdivision plat that creates or results in a landlocked
159 parcel of property unless:

160 (a) the owner of the landlocked parcel consents in writing; or

161 (b) (i) the applicant seeking approval of the subdivision plat makes reasonable access
162 to a public street available to the landlocked parcel; and

163 (ii) the owner of the landlocked parcel:

164 (A) is given a reasonable opportunity to agree or not to agree to pay, at the time the
165 landlocked parcel is developed, fair compensation for the access; and

166 (B) agrees or chooses not to agree to pay fair compensation for the access.

167 (3) An owner of a landlocked parcel of property who is provided access to a public
168 street under Subsection (2) and agrees to pay fair compensation for that access agrees, for the
169 owner and for any successor in interest, to pay fair compensation for the access at the time the
170 formerly landlocked parcel is developed.

171 (4) (a) If the owner of the landlocked parcel of property agrees to pay fair
172 compensation for the access, as provided in Subsection (3), the owner of the property over
173 which access to the formerly landlocked parcel is provided may record a notice of interest
174 against the formerly landlocked parcel in the office of the recorder of the county in which the
175 formerly landlocked parcel is located.

176 (b) Each property owner who records a notice of interest under Subsection (4)(a) shall
177 serve a copy of the notice on the owner of the formerly landlocked parcel.

178 (5) A dispute under this section relating to access to a landlocked parcel of property or
179 the amount of fair compensation for access may be referred to the Office of the Property Rights
180 Ombudsman as provided in Section 13-43-204.

Legislative Review Note
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Office of Legislative Research and General Counsel