

1                                   **CONDOMINIUM ASSOCIATION COMMON**

2   **EXPENSES**

3   2010 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Carol Spackman Moss**

6   Senate Sponsor: Ross I. Romero

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies a provision of the Condominium Ownership Act relating to common  
11 expenses.

12                   **Highlighted Provisions:**

13                   This bill:

14                   ▶ includes rules adopted by the condominium association management committee  
15 among the documents that may authorize the management committee to terminate  
16 certain services of an owner who has failed to pay an assessment.

17                   **Monies Appropriated in this Bill:**

18                   None

19                   **Other Special Clauses:**

20                   None

21                   **Utah Code Sections Affected:**

22                   AMENDS:

23                   **57-8-20**, as last amended by Laws of Utah 2003, Chapter 265

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

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

27                   **57-8-20. Lien for nonpayment of common expenses.**

28                   (1) Every unit owner shall pay his proportionate share of the common expenses.

29                   Payment shall be in the amounts and at the times determined by the management committee in

30 accordance with the terms of the declaration or the bylaws.

31 (2) (a) An assessment levied against each unit is a debt of the owner at the time the  
32 assessment is made and is collectible as such.

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

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

40 (4) (a) Subject to Subsection 57-8-37(6), if any unit owner fails or refuses to pay an  
41 assessment when due, that amount constitutes a lien on the interest of the owner in the  
42 property, and upon the recording of notice of lien by the manager or management committee it  
43 is a lien upon the unit owner's interest in the property prior to all other liens and  
44 encumbrances, recorded or unrecorded, except:

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

47 (ii) encumbrances on the interest of the unit owner recorded prior to the date such  
48 notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

49 (b) The lien for nonpayment of an assessment may be enforced by sale or foreclosure  
50 of the unit owner's interest by the manager or management committee. The sale or foreclosure  
51 shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any  
52 other manner permitted by law.

53 (c) In any foreclosure or sale, the unit owner shall pay the costs and expenses of such  
54 proceedings and reasonable [~~attorneys'~~] attorney fees. If so provided in the declaration or  
55 bylaws, in the case of foreclosure, the owner shall pay a reasonable rental for the unit, and the  
56 plaintiff in the foreclosure action may require the appointment of a receiver to collect the  
57 rental without regard to the value of the mortgage security.

58 (d) Unless otherwise provided in the declaration, the manager or management  
59 committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey  
60 the unit.

61 (5) (a) When authorized in the declaration [~~or~~], bylaws, or rules adopted by the  
62 management committee, if the owner fails or refuses to pay any assessment when due, the  
63 management committee may, after giving notice and an opportunity to be heard in accordance  
64 with Subsection (5)(b):

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

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

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

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

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

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

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

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

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

85 (d) Upon payment of the assessment due, including any interest or late payment fee,

86 the manager or management committee shall immediately take action to reinstate the  
87 terminated utility services to the unit.

88 (e) The remedies provided in this Subsection (5) shall only apply to residential  
89 condominium units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

138 (b) Unless the manager or management committee complies with the request for a  
139 statement of any unpaid assessments within 10 days, all unpaid assessments which became  
140 due prior to the date the request was made are subordinate to the lien held by the person  
141 requesting the statement.

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

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