

**CONDOMINIUM ASSOCIATION COMMON
EXPENSES**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: Ross I. Romero

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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 entitled
39 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 encumbrances,
44 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 rental
57 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 board
62 of directors, if the owner fails or refuses to pay any assessment when due, the management
63 committee may, after giving notice and an opportunity to be heard in accordance with
64 Subsection (5)(b):

65 (i) terminate an owner's right to receive utility services paid as a common expense; and
66 (ii) terminate an owner's right of access and use of recreational facilities.

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

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

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

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

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

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

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

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

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

89 (6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the

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

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

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

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

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

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

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

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

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

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

119 (d) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited in
120 a separate account and disbursed to the association until the assessment due, together with any

121 cost of administration which may not exceed \$25, is paid in full. Any remaining balance must
122 be paid to the owner within five business days of payment in full to the association.

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

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

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

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

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

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

Legislative Review Note
as of 1-29-10 4:45 PM

Office of Legislative Research and General Counsel

H.B. 181 - Condominium Association Common Expenses

Fiscal Note

2010 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.
