

## HB0104S01 compared with HB0104

~~text~~ shows text that was in HB0104 but was deleted in HB0104S01.

inserted text shows text that was not in HB0104 but was inserted into HB0104S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Senator J. Stuart Adams proposes the following substitute bill:

### HOMEOWNER ASSOCIATION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: ~~\_\_\_\_\_~~ J. Stuart Adams

---

#### LONG TITLE

##### General Description:

This bill modifies provisions relating to condominium owner and homeowner associations.

##### Highlighted Provisions:

This bill:

- ▶ prohibits an association from charging a fee for providing information needed for a closing on a sale of a unit or lot ~~;~~ unless provided for in the declaration, limits the amount of the fee, and provides a consequence if an association fails to provide the information within a specified time;
- ▶ requires associations to register with the Department of Commerce and to submit an updated registration under specified circumstances, and establishes consequences for a failure to register or update a previous registration;~~;~~

## HB0104S01 compared with HB0104

~~— specifies that a lien for nonpayment of assessments arises when a notice of lien is recorded, regardless of when the default occurred;~~ and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

~~{AMENDS:~~

~~— 57-8-20, as last amended by Laws of Utah 2010, Chapter 309~~

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

~~{ENACTS:~~

~~57-8-6.3, Utah Code Annotated 1953~~

~~57-8-13.1, Utah Code Annotated 1953~~

~~57-8a-105, Utah Code Annotated 1953~~

~~57-8a-106, Utah Code Annotated 1953~~

---

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

Section 1. Section **57-8-6.3** is enacted to read:

**57-8-6.3. Fee for providing information needed at closing.**

(1) Unless specifically authorized in the declaration, an association of unit owners may not charge a fee for providing association **payoff** information needed in connection with the closing of a unit owner's **financing, refinancing, or** sale of the owner's unit.

(2) An association of unit owners may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration to be paid before closing; or

(b) charge the fee if it exceeds \$25.

(3) An association of unit owners that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

Section 2. Section **57-8-13.1** is enacted to read:

## HB0104S01 compared with HB0104

### 57-8-13.1. Registration with Department of Commerce.

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration, an association of unit owners shall register with the department in the manner established by the department.

(b) An association of unit owners existing under a declaration recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association of unit owners registering as required in this section to provide with each registration:

(a) the name and address of the association of unit owners;

(b) the name, address, telephone number, and, if applicable, email address of the president of the association of unit owners;

(c) ~~the number of condominium units within the association of unit owners; and~~

~~(d) contact information for the management committee;~~

(d) the name, address, telephone number, and email address of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit; and

(e) a registration fee not to exceed \$37.

(4) An association of unit owners that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) During any period of noncompliance with the registration requirements of Subsection (2) or the requirement for an updated registration under Subsection (4):

(a) a lien for the nonpayment of common expenses may not arise under Section 57-8-20 against any condominium unit; and

(b) an association of unit owners may not enforce a previous lien under Section 57-8-20 against any condominium unit.

Section 3. Section ~~{57-8-20}~~57-8a-105 is ~~{amended to read:~~

~~57-8-20. Lien for nonpayment of common expenses:~~

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

## HB0104S01 compared with HB0104

~~Payment shall be in the amounts and at the times determined by the management committee in accordance with the terms of the declaration or the bylaws:~~

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

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

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

~~—— (4) (a) Subject to Subsection 57-8-37(6), if any unit owner fails or refuses to pay an assessment when due, that amount [constitutes] becomes a lien on the interest of the owner in the property[, and] upon the recording of a notice of lien by the manager or management committee [it], regardless of when the default in the payment of the assessment occurred.~~

~~—— (b) A lien under Subsection (4)(a) is a lien upon 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 unit or special improvement district; and~~

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

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

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

~~—— [(d)] (e) Unless otherwise provided in the declaration, the manager or management~~

## HB0104S01 compared with HB0104

~~committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey the unit.~~

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

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

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

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

~~—— (i) utility services 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 association rules, which time shall be stated and be at least 48 hours;~~

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

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

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

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

~~—— (ii) 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.~~

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

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

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

## HB0104S01 compared with HB0104

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

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

~~—— (i) provide notice to the tenant that full payment of remaining lease payments will commence 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 Subsections (6)(b) through (f):~~

~~—— (c) If the unit owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee 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 (6)(d). A copy of the notice must be mailed to the unit owner. The notice provided to the tenant must 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 management committee's intent to collect all lease payments due to the association pursuant to Subsection (6)(a);~~

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

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

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

## HB0104S01 compared with HB0104

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

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

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

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

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

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

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

~~—— Section 4. Section ~~57-8a-105~~ is } enacted to read:~~

### **57-8a-105. Registration with Department of Commerce.**

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

## HB0104S01 compared with HB0104

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

~~(c) the number of lots within the association; and~~

~~(d) contact information for the manager;~~

(d) the name, address, telephone number, and email address of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) During any period of noncompliance with the registration requirements of Subsection (2) or the requirement for an updated registration under Subsection (4):

(a) a lien for the nonpayment of an assessment may not arise under Section 57-8a-203 against any lot; and

(b) an association may not enforce a previous lien under Section 57-8a-203 against any lot.

Section ~~5~~4. Section **57-8a-106** is enacted to read:

### **57-8a-106. Fee for providing information needed at closing.**

(1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, an association may not charge a fee for providing association **payoff** information needed in connection with the **financing, refinancing, or** closing of a lot owner's sale of the owner's lot.

(2) An association may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration of



## HB0104S01 compared with HB0104

covenants, conditions, and restrictions to be paid before closing; or

(b) charge the fee if it exceeds \$25.

(3) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

~~{ Section 6. Section 57-8a-203 is amended 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] becomes a lien on the interest of the owner in the property[. (b) Upon] upon the recording of a notice of lien by the manager or board of directors, [a] regardless of when the default in the payment of the assessment occurred.~~

~~(b) 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)(a); 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~~

**HB0104S01 compared with HB0104**

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

**Legislative Review Note**

~~as of 1-26-11 6:13 AM~~

~~Office of Legislative Research and General Counsel}~~