

CONDOMINIUM AND COMMUNITY ASSOCIATION**AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies real estate provisions relating to condominiums and community associations.

Highlighted Provisions:

This bill:

- ▶ provides requirements for a notice of lien for an unpaid assessment;
- ▶ modifies a provision relating to the enforcement of a lien for unpaid assessments;
- ▶ requires an agent for an association to register with the Division of Corporations and Commercial Code and provide certain information; 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:



57-8-42, Utah Code Annotated 1953

57-8a-212, Utah Code Annotated 1953

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.

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

(b) Payment under Subsection (1)(a) shall be in the ~~[amounts]~~ amount and at the ~~[times]~~ time 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]~~ a debt.

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

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

(4) (a) Subject to Subsection 57-8-37(6), if ~~[any]~~ a unit owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property, ~~[and]~~ which arises upon the recording of a notice of lien ~~[by the manager or management committee it is a lien upon the unit owner's interest in the property prior to]~~ that includes:

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

(ii) the name of the owner of the unit that is subject to the lien, if the name is known or as the name is shown on the association's records;

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

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

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

61 (vi) any acknowledgment or certificate required under Chapter 3, Recording of
62 Documents.

63 (b) A lien under Subsection (4)(a) has priority over all other liens and encumbrances,
64 recorded or unrecorded, except:

65 (i) a tax and special assessment ~~[liens]~~ lien on the unit in favor of any assessing unit or
66 special improvement district; and

67 (ii) ~~[encumbrances]~~ an encumbrance on the interest of the unit owner, recorded ~~[prior~~
68 ~~to]~~ before the date ~~[such]~~ the notice is recorded ~~[which], that~~ by law ~~[would be a lien prior to]~~
69 is a lien before a subsequently recorded ~~[encumbrances]~~ encumbrance.

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

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

76 ~~[(c)]~~ (d) In any foreclosure ~~[or sale,]~~ under Subsection (4)(c):

77 (i) the unit owner shall pay the costs and expenses of ~~[such proceedings]~~ foreclosure
78 and reasonable attorney fees~~[- If so];~~

79 (ii) if provided in the declaration or bylaws~~[- in the case of foreclosure,];~~

80 (A) the unit owner shall pay a reasonable ~~[rental]~~ rent for the unit~~[-];~~ and

81 (B) the plaintiff ~~[in the foreclosure action]~~ may require the appointment of a receiver to
82 collect the ~~[rental]~~ rent without regard to the value of the mortgage security~~[-]; and~~

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

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

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

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

(b) (i) Before terminating utility services or a right of access to 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.

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

~~[(i)]~~ (A) that utility services or a right of access to 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)]~~ (B) the amount of the assessment due, including any interest or late payment fee; and

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

(c) (i) 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]~~ after the date the notice is received.

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

~~[(ii)]~~ (iii) If a hearing is requested, utility services or the right of access to and use ~~[or]~~ 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 only to residential condominium units.

(6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the 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) (i) The manager or management committee ~~[must]~~ shall 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:]~~

(ii) The notice under Subsection (6)(b)(i) shall:

~~[(i)]~~ (A) 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)]~~ (B) state the amount of the assessment due, including any interest or late payment fee;

~~[(iii)]~~ (C) 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)]~~ (D) provide the requirements and rights described in Subsections (6)(b) through (f).

(c) (i) 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]~~

(ii) The manager or management committee shall mail a copy of [the] a notice ~~[must be mailed]~~ under Subsection (6)(c)(i) to the unit owner.

(iii) The notice provided to the tenant ~~[must]~~ under Subsection (6)(c)(i) shall state:

~~[(i)]~~ (A) 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)]~~ (B) 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)]~~ (C) 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.

(iv) 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) (i) 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 cost of administration, which may not exceed \$25, is paid in full.

(ii) Any remaining balance ~~[must]~~ shall be paid to the owner within five business days ~~[of]~~ after payment in full to the association.

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

(ii) The manager or management committee shall mail a copy of [this] a notification ~~[must be mailed]~~ under Subsection (6)(e)(i) 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) (i) 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]~~

(ii) A written statement of unpaid assessments under Subsection (7)(a)(i) 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]~~ that became due prior to the date the request was made are subordinate to the lien held by the person requesting the statement.

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

(b) 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 2. Section **57-8-42** is enacted to read:

57-8-42. Registration of agent.

(1) If an association of unit owners or management committee appoints an agent to

receive and collect each owner's share of common expenses, the agent shall register as an agent for the association of unit owners or management committee with the Division of Corporations and Commercial Code within 70 days after appointment.

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

(a) agent's name;

(b) agent's street address;

(c) agent's phone number;

(d) name of the association;

(e) date of the agent's appointment; and

(f) number of units in the development.

(3) If an association of unit owners or management committee replaces an agent or any of the information required by Subsection (2) changes, the agent shall register with the Division of Corporations and Commercial Code or update the information within 70 days after the replacement or change.

Section 3. 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 a lien on the interest of the owner in the property.

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

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

(ii) the name of the owner of the unit that is subject to the lien, if the name is known or as the name is shown on the association's records;

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

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

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

(vi) any acknowledgment or certificate required under Chapter 3, Recording of Documents.

~~[(b) Upon the recording of]~~ (c) Recording a notice of lien ~~[by the manager or board of~~

~~directors, a lien~~ is evidence of the lien described in Subsection (1)(a), which is a lien on the unit owner's interest in the property ~~[prior to]~~ with priority over all other liens and encumbrances, recorded or unrecorded, except:

(i) a tax and special assessment ~~[liens]~~ lien on the unit in favor of any assessing lot or special improvement district; and

(ii) ~~[encumbrances]~~ an encumbrance on the interest of the lot owner:

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

(B) that by law ~~[would be]~~ is a lien ~~[prior to]~~ before 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]~~ a foreclosure of a mortgage.

~~[(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

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

Section 4. Section **57-8a-212** is enacted to read:

57-8a-212. Registration of agent for the board of directors.

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

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

(a) agent's name;

(b) agent's street address;

245 (c) agent's phone number;
246 (d) name of the association;
247 (e) date of the agent's appointment; and
248 (f) number of units in the development.
249 (3) If the board of directors replaces an agent or any of the information required by
250 Subsection (2) changes, the agent shall register with the Division of Corporations and
251 Commercial Code or update the information within 70 days after the replacement or change.

Legislative Review Note
as of 1-13-11 11:43 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 225, 2011 General Session

SHORT TITLE: Condominium and Community Association Amendments

SPONSOR: Froerer, G.

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation will result in Commerce Service Fund revenue and expenditures of \$79,700 in the first year, and \$70,100 annually thereafter.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Commerce Service Fund	\$0	\$70,100	\$70,100
Commerce Service, One-time	\$0	\$9,600	\$0
Total Revenue	\$0	\$79,700	\$70,100
Expenditure:			
Commerce Service Fund	\$0	\$70,100	\$70,100
Commerce Service, One-time	\$0	\$9,600	\$0
Total Expenditure	\$0	\$79,700	\$70,100
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of the legislation will require additional filing for certain management companies. Individuals who become agents will also incur a filing fee. Fees will be set at a level sufficient to raise \$79,700 in FY 2012 and \$70,100 in FY 2013.