

HOMEOWNERS ASSOCIATION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill clarifies an association's right to attach and enforce liens following a period of noncompliance with the registration requirements described in this bill.

Highlighted Provisions:

This bill:

- ▶ specifies how an association ends a period of noncompliance with the registration requirements described in this bill;
- ▶ clarifies that after an association ends a period of noncompliance with the registration requirements described in this bill:
 - a lien may arise for the nonpayment of any assessment that occurred during the period of noncompliance; and
 - the association may enforce any lien that arose before the period of noncompliance; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **57-8-13.1**, as last amended by Laws of Utah 2012, Chapter 63
 - 29 **57-8-44**, as enacted by Laws of Utah 2011, Chapter 355
 - 30 **57-8-45**, as enacted by Laws of Utah 2011, Chapter 355
 - 31 **57-8a-105**, as last amended by Laws of Utah 2012, Chapter 63
 - 32 **57-8a-301**, as enacted by Laws of Utah 2011, Chapter 355
 - 33 **57-8a-302**, as enacted by Laws of Utah 2011, Chapter 355
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35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **57-8-13.1** is amended to read:

37 **57-8-13.1. Registration with Department of Commerce.**

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

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

42 (b) An association of unit owners existing under a declaration recorded before May 10,
43 2011, shall, no later than July 1, 2011, register with the department in the manner established
44 by the department.

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

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

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

50 (c) the name and address of each management committee member;

51 (d) the name, address, telephone number, and, if the contact person wishes to use email
52 or facsimile transmission for communicating payoff information, the email address or facsimile
53 number, as applicable, of a primary contact person who has association payoff information that
54 a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or
55 sale of the owner's unit; and

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

57 (4) An association of unit owners that has registered under Subsection (2) shall submit
58 to the department an updated registration, in the manner established by the department, within

59 90 days after a change in any of the information provided under Subsection (3).

60 (5) (a) During any period of noncompliance with the registration requirement [of]
61 described in Subsection (2) or the requirement for an updated registration [~~under~~] described in
62 Subsection (4):

63 (i) a lien [~~for the nonpayment of common expenses~~] may not arise under Section
64 [~~57-8-20 against any condominium unit~~] 57-8-44; and

65 (ii) an association of unit owners may not enforce [~~a previous~~] an existing lien that
66 arose under Section [~~57-8-20 against any condominium unit~~] 57-8-44.

67 (b) A period of noncompliance with the registration requirement of Subsection (2) or
68 with the updated registration requirement of Subsection (4) does not begin until after the
69 expiration of the 90-day period specified in Subsection (2) or (4), respectively.

70 (c) An association of unit owners that is not in compliance with the registration
71 requirement described in Subsection (2) may end the period of noncompliance by registering
72 with the department in the manner established by the department under Subsection (2).

73 (d) An association of unit owners that is not in compliance with the updated
74 registration requirement described in Subsection (4) may end the period of noncompliance by
75 submitting to the department an updated registration in the manner established by the
76 department under Subsection (4).

77 (e) Beginning on the date an association of unit owners ends a period of
78 noncompliance:

79 (i) a lien may arise under Section 57-8a-44 for any event that:

80 (A) occurred during the period of noncompliance; and

81 (B) would have given rise to a lien under Section 57-8-44 had the association of unit
82 owners been in compliance with the registration requirements described in this section; and

83 (ii) an association of unit owners may enforce a lien described in Subsection (5)(e) or a
84 lien that existed before the period of noncompliance.

85 Section 2. Section **57-8-44** is amended to read:

86 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
87 **collection.**

88 (1) (a) [~~An~~] Except as provided in Section 57-8-13.1, an association of unit owners has
89 a lien on a unit for:

- 90 (i) an assessment;
- 91 (ii) except as provided in the declaration, fees, charges, and costs associated with
- 92 collecting an unpaid assessment, including:
 - 93 (A) court costs and reasonable attorney fees;
 - 94 (B) late charges;
 - 95 (C) interest; and
 - 96 (D) any other amount that the association of unit owners is entitled to recover under the
 - 97 declaration, this chapter, or an administrative or judicial decision; and
 - 98 (iii) a fine that the association of unit owners imposes against the owner of the unit.
- 99 (b) The recording of a declaration constitutes record notice and perfection of a lien
- 100 described in Subsection (1)(a).
- 101 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
- 102 is for the full amount of the assessment from the time the first installment is due, unless the
- 103 association of unit owners otherwise provides in a notice of assessment.
- 104 (3) An unpaid assessment or fine accrues interest at the rate provided:
 - 105 (a) in Subsection 15-1-1(2); or
 - 106 (b) in the governing documents, if the governing documents provide for a different
 - 107 interest rate.
- 108 (4) A lien under this section has priority over each other lien and encumbrance on a
- 109 unit except:
 - 110 (a) a lien or encumbrance recorded before the declaration is recorded;
 - 111 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
 - 112 that is recorded before a recorded notice of lien by or on behalf of the association of unit
 - 113 owners; or
 - 114 (c) a lien for real estate taxes or other governmental assessments or charges against the
 - 115 unit.
- 116 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
- 117 Exemptions Act.
- 118 (6) Unless the declaration provides otherwise, if two or more associations of unit
- 119 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
- 120 when the liens are created.

121 Section 3. Section **57-8-45** is amended to read:

122 **57-8-45. Enforcement of a lien.**

123 (1) (a) [~~7~~] Except as provided in Section 57-8-13.1, to enforce a lien established
124 under Section 57-8-44, an association of unit owners may:

125 (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a
126 deed of trust, in the manner provided by:

127 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

128 (B) this chapter; or

129 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

130 (A) law for the foreclosure of a mortgage; and

131 (B) this chapter.

132 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

133 (1)(a):

134 (i) the association of unit owners is considered to be the beneficiary under a trust deed;

135 and

136 (ii) the unit owner is considered to be the trustor under a trust deed.

137 (2) A unit owner's acceptance of the owner's interest in a unit constitutes a

138 simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as

139 provided in this section for the purpose of securing payment of all amounts due under the

140 declaration and this chapter.

141 (3) (a) A power of sale and other powers of a trustee under this part and under Sections

142 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a

143 qualified trustee.

144 (b) An association of unit owners' execution of a substitution of trustee form

145 authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

146 (c) A person may not be a trustee under this part unless the person qualifies as a trustee

147 under Subsection 57-1-21(1)(a)(i) or (iv).

148 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections

149 57-1-19 through 57-1-34.

150 (4) This chapter does not prohibit an association of unit owners from bringing an

151 action against a unit owner to recover an amount for which a lien is created under Section

152 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken
153 before the sale or foreclosure of the unit owner's unit under this chapter.

154 Section 4. Section **57-8a-105** is amended to read:

155 **57-8a-105. Registration with Department of Commerce.**

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

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

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

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

166 (a) the name and address of the association;

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

169 (c) contact information for the manager;

170 (d) the name, address, telephone number, and, if the contact person wishes to use email
171 or facsimile transmission for communicating payoff information, the email address or facsimile
172 number, as applicable, of a primary contact person who has association payoff information that
173 a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or
174 sale of the owner's lot; and

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

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

179 (5) (a) During any period of noncompliance with the registration requirement [of]
180 described in Subsection (2) or the requirement for an updated registration [~~under~~] described in
181 Subsection (4):

182 (i) a lien [~~for the nonpayment of an assessment~~] may not arise under Section

183 [~~57-8a-203 against any lot~~] 57-8a-301; and

184 (ii) an association may not enforce [~~a previous~~] an existing lien that arose under
185 Section [~~57-8a-203 against any lot~~] 57-8a-301.

186 (b) A period of noncompliance with the registration requirement of Subsection (2) or
187 with the updated registration requirement of Subsection (4) does not begin until after the
188 expiration of the 90-day period specified in Subsection (2) or (4), respectively.

189 (c) An association that is not in compliance with the registration requirement described
190 in Subsection (2) may end the period of noncompliance by registering with the department in
191 the manner established by the department under Subsection (2).

192 (d) An association that is not in compliance with the updated registration requirement
193 described in Subsection (4) may end the period of noncompliance by submitting to the
194 department an updated registration in the manner established by the department under
195 Subsection (4).

196 (e) Beginning on the date an association ends a period of noncompliance:

197 (i) a lien may arise under Section 57-8a-301 for any event that:

198 (A) occurred during the period of noncompliance; and

199 (B) would have given rise to a lien under Section 57-8a-301 had the association been in
200 compliance with the registration requirements described in this section; and

201 (ii) an association may enforce a lien described in Subsection (5)(e) or a lien that
202 existed before the period of noncompliance.

203 Section 5. Section **57-8a-301** is amended to read:

204 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

205 (1) (a) [~~An~~] Except as provided in Section 57-8a-105, an association has a lien on a lot
206 for:

207 (i) an assessment;

208 (ii) except as provided in the declaration, fees, charges, and costs associated with
209 collecting an unpaid assessment, including:

210 (A) court costs and reasonable attorney fees;

211 (B) late charges;

212 (C) interest; and

213 (D) any other amount that the association is entitled to recover under the declaration,

214 this chapter, or an administrative or judicial decision; and

215 (iii) a fine that the association imposes against the owner of the lot.

216 (b) The recording of a declaration constitutes record notice and perfection of a lien
217 described in Subsection (1)(a).

218 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
219 is for the full amount of the assessment from the time the first installment is due, unless the
220 association otherwise provides in a notice of assessment.

221 (3) An unpaid assessment or fine accrues interest at the rate provided:

222 (a) in Subsection 15-1-1(2); or

223 (b) in the declaration, if the declaration provides for a different interest rate.

224 (4) A lien under this section has priority over each other lien and encumbrance on a lot
225 except:

226 (a) a lien or encumbrance recorded before the declaration is recorded;

227 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
228 is recorded before a recorded notice of lien by or on behalf of the association; or

229 (c) a lien for real estate taxes or other governmental assessments or charges against the
230 lot.

231 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
232 Exemptions Act.

233 (6) Unless the declaration provides otherwise, if two or more associations have liens
234 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
235 created.

236 Section 6. Section **57-8a-302** is amended to read:

237 **57-8a-302. Enforcement of a lien.**

238 (1) (a) [~~For~~] Except as provided in Section 57-8a-105, to enforce a lien established
239 under Section 57-8a-301, an association may:

240 (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed
241 of trust, in the manner provided by:

242 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

243 (B) this part; or

244 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

- 245 (A) law for the foreclosure of a mortgage; and
246 (B) this part.
- 247 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection
248 (1)(a):
- 249 (i) the association is considered to be the beneficiary under a trust deed; and
250 (ii) the lot owner is considered to be the trustor under a trust deed.
- 251 (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous
252 conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this
253 section for the purpose of securing payment of all amounts due under the declaration and this
254 chapter.
- 255 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
256 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified
257 trustee.
- 258 (b) An association's execution of a substitution of trustee form authorized in Section
259 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
- 260 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
261 under Subsection 57-1-21(1)(a)(i) or (iv).
- 262 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
263 57-1-19 through 57-1-34.
- 264 (4) This part does not prohibit an association from bringing an action against a lot
265 owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking
266 a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure
267 of the lot owner's lot under this part.

Legislative Review Note
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Office of Legislative Research and General Counsel