

HOMEOWNER ASSOCIATION UTILITIES AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dixon M. Pitcher

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill modifies provisions relating to utility service to homeowner associations.

Highlighted Provisions:

This bill:

- defines terms;
- addresses the circumstances under which an electrical corporation or a gas corporation may discontinue service to a unit or a lot;
- provides a procedure by which an association may:
 - pay a unit owner's or a lot owner's delinquent utility bill to maintain service; or
 - enter a unit or a lot to winterize the unit or lot;
- addresses the method by which an association may recover ~~H~~→ **actual and**

reasonable ~~←H~~ money used to pay a unit

owner's or a lot owner's utility bill or to winterize a unit or a lot; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-3, as last amended by Laws of Utah 2013, Chapters 95 and 152



57-8a-102, as last amended by Laws of Utah 2013, Chapters 95 and 152

ENACTS:

57-8-56, Utah Code Annotated 1953

57-8A-225, Utah Code Annotated 1953

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

Section 1. Section 57-8-3 is amended to read:

57-8-3. Definitions.

As used in this chapter:

(1) "Assessment" means any charge imposed by the association, including:

(a) common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter; and

(b) an amount that an association of unit owners assesses to a unit owner under Subsection 57-8-43(9)(g).

(2) "Association of unit owners" means all of the unit owners:

(a) acting as a group in accordance with the declaration and bylaws; or

(b) organized as a legal entity in accordance with the declaration.

(3) "Building" means a building, containing units, and comprising a part of the property.

(4) "Commercial condominium project" means a condominium project that has no residential units within the project.

(5) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:

(a) the land included within the condominium project, whether leasehold or in fee simple;

(b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and storage spaces;

(d) the premises for lodging of janitors or persons in charge of the property;

(e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;

(f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(g) such community and commercial facilities as may be provided for in the declaration; and

(h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(6) "Common expenses" means:

(a) all sums lawfully assessed against the unit owners;

(b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) expenses agreed upon as common expenses by the association of unit owners; and

(d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.

(7) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(8) "Condominium" means the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.

(9) "Condominium plat" means a plat or plats of survey of land and units prepared in accordance with Section [57-8-13](#).

(10) "Condominium project" means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.

(11) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.

(12) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.

(13) "Convertible land" means a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in accordance with this chapter.

(14) "Convertible space" means a portion of the structure within the condominium project, which portion may be converted into one or more units or common areas and facilities, including limited common areas and facilities in accordance with this chapter.

(15) "Declarant" means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.

(16) "Declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.

(17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

~~[(17)]~~ (18) "Expandable condominium" means a condominium project to which additional land or an interest in it may be added in accordance with the declaration and this chapter.

(19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

~~[(18)]~~ (20) "Governing documents":

(a) means a written instrument by which an association of unit owners may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association of unit owners; and

(b) includes:

(i) articles of incorporation;

- (ii) bylaws;
- (iii) a plat;
- (iv) a declaration of covenants, conditions, and restrictions; and
- (v) rules of the association of unit owners.

~~[(19)]~~ (21) "Independent third party" means a person that:

- (a) is not related to the unit owner;
- (b) shares no pecuniary interests with the unit owner; and
- (c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

~~[(20)]~~ (22) "Leasehold condominium" means a condominium project in all or any portion of which each unit owner owns an estate for years in his unit, or in the land upon which that unit is situated, or both, with all those leasehold interests to expire naturally at the same time. A condominium project including leased land, or an interest in the land, upon which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.

~~[(21)]~~ (23) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

~~[(22)]~~ (24) "Majority" or "majority of the unit owners," unless otherwise provided in the declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

~~[(23)]~~ (25) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.

~~[(24)]~~ (26) "Mixed-use condominium project" means a condominium project that has both residential and commercial units in the condominium project.

~~[(25)]~~ (27) "Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this

subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.

~~[(26)]~~ (28) "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

~~[(27)]~~ (29) "Property" means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

~~[(28)]~~ (30) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title 57, Chapter 3, Recording of Documents.

~~[(29)]~~ (31) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number. Certain spaces within the units including attic, basement, or garage space may be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all units in the condominium project and if that basis is described in the declaration.

~~[(30)]~~ (32) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in Subsection 57-19-2(19).

~~[(31)]~~ (33) "Unit" means either a separate physical part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or a time period unit, as the context may require. A convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A proposed condominium unit under an expandable condominium project, not constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6 are met.

~~[(32)]~~ (34) "Unit number" means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.

[~~(33)~~] (35) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

Section 2. Section **57-8-56** is enacted to read:

57-8-56. Association of unit owners' right to pay delinquent utilities.

(1) Upon request in accordance with Subsection (2), at least 10 days before the day on which an electrical corporation or a gas corporation discontinues service to a unit, the electrical corporation or gas corporation shall give the association of unit owners:

(a) written notice that the electrical corporation or gas corporation will discontinue service to the unit; and

(b) an opportunity to pay any delinquent charges and maintain service to the unit.

(2) An association of unit owners may request the notice and opportunity to pay described in Subsection (1) by sending a written request to the electrical corporation or gas corporation that includes:

(a) the address of each unit in the association of unit owners;

(b) the association of unit owners' name, mailing address, phone number, and email address; and

(c) the address where the electrical corporation or gas corporation may send notices.

(3) If, after an electrical corporation or a gas corporation sends a written notice described in Subsection (1) to an association of unit owners and the association of unit owners does not pay the delinquent charges within 10 days after the day on which the electrical corporation or gas corporation sends the notice, the electrical corporation or gas corporation may discontinue service to the unit.

(4) An association of unit owners may collect any payment to an electrical corporation or a gas corporation under this section as an assessment in accordance with Section [57-8-44](#).

(5) (a) If, after an association of unit owners receives a written notice described in Subsection (1), the association of unit owners decides not to pay the delinquent charges, the association of unit owners may, ~~it~~ **if permitted by the association of unit owners' governing documents, and** ~~it~~ after reasonable notice to the unit owner:

(i) enter the unit; and

(ii) winterize the unit.

(b) A person who enters a unit in accordance with Subsection (5)(a) is not liable for trespass.

(c) An association of unit owners may charge a unit owner an assessment for the ~~H~~→ **actual** and reasonable ~~←H~~ costs of winterizing a unit in accordance with this Subsection (5).

Section 3. Section **57-8a-102** is amended to read:

57-8a-102. Definitions.

As used in this chapter:

(1) (a) "Assessment" means a charge imposed or levied:

(i) by the association;

(ii) on or against a lot or a lot owner; and

(iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes:

(i) a common expense; and

(ii) an amount assessed against a lot owner under Subsection [57-8a-405](#)(7).

(2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:

(i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and

(ii) by virtue of membership or ownership of a residential lot is obligated to pay:

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

(D) for improvement of real property not owned by the member.

(b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.

(3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property that the association:

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

(5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(6) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

(7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

(8) "Gas corporation" means the same as that term is defined in Section 54-2-1.

~~[(7)]~~ (9) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association.

~~[(8)]~~ (10) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.

~~[(9)]~~ (11) "Judicial foreclosure" means a foreclosure of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the manner provided by law for the foreclosure of a mortgage on real property; and

(ii) as provided in Part 3, Collection of Assessments.

~~[(10)]~~ (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

~~[(11)]~~ (13) "Limited common areas" means common areas described in the declaration and allocated for the exclusive use of one or more lot owners.

~~[(12)]~~ (14) "Lot" means:

(a) a lot, parcel, plot, or other division of land:

(i) designated for separate ownership or occupancy; and

(ii) (A) shown on a recorded subdivision plat; or

(B) the boundaries of which are described in a recorded governing document; or

(b) (i) a unit in a condominium association if the condominium association is a part of a development; or

(ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

~~[(13)]~~ (15) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.

~~[(14)]~~ (16) "Nonjudicial foreclosure" means the sale of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and

(ii) as provided in Part 3, Collection of Assessments.

~~[(15)]~~ (17) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

Section 4. Section 57-8A-225 is enacted to read:

57-8A-225. Association's right to pay delinquent utilities.

(1) Upon request in accordance with Subsection (2), at least 10 days before the day on which an electrical corporation or a gas corporation discontinues service to a lot, the electrical corporation or gas corporation shall give the association:

(a) written notice that the electrical corporation or gas corporation will discontinue

307 service to the lot; and

308 (b) an opportunity to pay any delinquent charges and maintain service to the lot.

309 (2) An association may request the notice and opportunity to pay described in
 310 Subsection (1) by sending a written request to the electrical corporation or gas corporation that
 311 includes:

312 (a) the address of each lot in the association;

313 (b) the association's name, mailing address, phone number, and email address; and

314 (c) the address where the electrical corporation or gas corporation may send notices.

315 (3) If, after an electrical corporation or a gas corporation sends a written notice
 316 described in Subsection (1) to an association and the association does not pay the delinquent
 317 charges within 10 days after the day on which the electrical corporation or gas corporation
 318 sends the notice, the electrical corporation or gas corporation may discontinue service to the
 319 lot.

320 (4) An association may collect any payment to an electrical corporation or a gas
 321 corporation under this section as an assessment in accordance with Section [57-8a-301](#).

322 (5) (a) If, after an association receives a written notice described in Subsection (1), the
 323 association decides not to pay the delinquent charges, the association may, ~~H~~→ **if permitted by the**
 323a **association's governing documents, and** ~~H~~ after reasonable

324 notice to the lot owner:

325 (i) enter the lot; and

326 (ii) winterize the lot.

327 (b) A person who enters a lot in accordance with Subsection (5)(a) is not liable for
 328 trespass.

329 (c) An association may charge a lot owner an assessment for the ~~H~~→ **actual and**
 329a **reasonable** ~~H~~ costs of winterizing a
 330 lot in accordance with this Subsection (5).

Legislative Review Note

as of 2-9-15 2:30 PM

Office of Legislative Research and General Counsel