

1                   **HOMEOWNER ASSOCIATION UTILITIES AMENDMENTS**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Dixon M. Pitcher**

5                                   Senate Sponsor: Brian E. Shiozawa

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7   **LONG TITLE**

8   **General Description:**

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

10 **Highlighted Provisions:**

11       This bill:

- 12           ▶ defines terms;
- 13           ▶ addresses the circumstances under which an electrical corporation or a gas
- 14 corporation may discontinue service to a unit or a lot;
- 15           ▶ provides a procedure by which an association may:
  - 16               • pay a unit owner's or a lot owner's delinquent utility bill to maintain service; or
  - 17               • enter a unit or a lot to winterize the unit or lot;
- 18           ▶ addresses the method by which an association may recover actual and reasonable
- 19 money used to pay a unit owner's or a lot owner's utility bill or to winterize a unit or
- 20 a lot; and
- 21           ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23       None

24 **Other Special Clauses:**

25       None

26 **Utah Code Sections Affected:**

27 AMENDS:

28       **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

29       **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

30 ENACTS:

31 **57-8-56**, Utah Code Annotated 1953

32 **57-8a-225**, Utah Code Annotated 1953

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

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

36 **57-8-3. Definitions.**

37 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (6) "Common expenses" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 ~~[(17)]~~ (18) "Expandable condominium" means a condominium project to which  
112 additional land or an interest in it may be added in accordance with the declaration and this  
113 chapter.

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

115 [~~(18)~~] (20) "Governing documents":

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

117 (i) exercise powers; or

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

120 (b) includes:

121 (i) articles of incorporation;

122 (ii) bylaws;

123 (iii) a plat;

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

125 (v) rules of the association of unit owners.

126 [~~(19)~~] (21) "Independent third party" means a person that:

127 (a) is not related to the unit owner;

128 (b) shares no pecuniary interests with the unit owner; and

129 (c) purchases the unit in good faith and without the intent to defraud a current or future  
130 lienholder.

131 [~~(20)~~] (22) "Leasehold condominium" means a condominium project in all or any  
132 portion of which each unit owner owns an estate for years in his unit, or in the land upon which  
133 that unit is situated, or both, with all those leasehold interests to expire naturally at the same  
134 time. A condominium project including leased land, or an interest in the land, upon which no  
135 units are situated or to be situated is not a leasehold condominium within the meaning of this  
136 chapter.

137 [~~(21)~~] (23) "Limited common areas and facilities" means those common areas and  
138 facilities designated in the declaration as reserved for use of a certain unit or units to the  
139 exclusion of the other units.

140 [~~(22)~~] (24) "Majority" or "majority of the unit owners," unless otherwise provided in  
141 the declaration or lawful amendments to the declaration, means the owners of more than 50%

142 in the aggregate in interest of the undivided ownership of the common areas and facilities.

143 ~~[(23)]~~ (25) "Management committee" means the committee as provided in the  
144 declaration charged with and having the responsibility and authority to make and to enforce all  
145 of the reasonable rules covering the operation and maintenance of the property.

146 ~~[(24)]~~ (26) "Mixed-use condominium project" means a condominium project that has  
147 both residential and commercial units in the condominium project.

148 ~~[(25)]~~ (27) "Par value" means a number of dollars or points assigned to each unit by the  
149 declaration. Substantially identical units shall be assigned the same par value, but units located  
150 at substantially different heights above the ground, or having substantially different views, or  
151 having substantially different amenities or other characteristics that might result in differences  
152 in market value, may be considered substantially identical within the meaning of this  
153 subsection. If par value is stated in terms of dollars, that statement may not be considered to  
154 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or  
155 fair market transaction at a different figure may affect the par value of any unit, or any  
156 undivided interest in the common areas and facilities, voting rights in the unit owners'  
157 association, liability for common expenses, or right to common profits, assigned on the basis  
158 thereof.

159 ~~[(26)]~~ (28) "Person" means an individual, corporation, partnership, association, trustee,  
160 or other legal entity.

161 ~~[(27)]~~ (29) "Property" means the land, whether leasehold or in fee simple, the building,  
162 if any, all improvements and structures thereon, all easements, rights, and appurtenances  
163 belonging thereto, and all articles of personal property intended for use in connection  
164 therewith.

165 ~~[(28)]~~ (30) "Record," "recording," "recorded," and "recorder" have the meaning stated  
166 in Title 57, Chapter 3, Recording of Documents.

167 ~~[(29)]~~ (31) "Size" means the number of cubic feet, or the number of square feet of  
168 ground or floor space, within each unit as computed by reference to the record of survey map  
169 and rounded off to a whole number. Certain spaces within the units including attic, basement,

170 or garage space may be omitted from the calculation or be partially discounted by the use of a  
171 ratio, if the same basis of calculation is employed for all units in the condominium project and  
172 if that basis is described in the declaration.

173 ~~[(30)]~~ (32) "Time period unit" means an annually recurring part or parts of a year  
174 specified in the declaration as a period for which a unit is separately owned and includes a  
175 timeshare estate as defined in Subsection 57-19-2(19).

176 ~~[(31)]~~ (33) "Unit" means either a separate physical part of the property intended for any  
177 type of independent use, including one or more rooms or spaces located in one or more floors  
178 or part or parts of floors in a building or a time period unit, as the context may require. A  
179 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A  
180 proposed condominium unit under an expandable condominium project, not constructed, is a  
181 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

182 ~~[(32)]~~ (34) "Unit number" means the number, letter, or combination of numbers and  
183 letters designating the unit in the declaration and in the record of survey map.

184 ~~[(33)]~~ (35) "Unit owner" means the person or persons owning a unit in fee simple and  
185 an undivided interest in the fee simple estate of the common areas and facilities in the  
186 percentage specified and established in the declaration or, in the case of a leasehold  
187 condominium project, the person or persons whose leasehold interest or interests in the  
188 condominium unit extend for the entire balance of the unexpired term or terms.

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

190 **57-8-56. Association of unit owners' right to pay delinquent utilities.**

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

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

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

197 (2) An association of unit owners may request the notice and opportunity to pay

198 described in Subsection (1) by sending a written request to the electrical corporation or gas  
199 corporation that includes:

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

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

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

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

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

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

215 (i) enter the unit; and

216 (ii) winterize the unit.

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

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

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

222 **57-8a-102. Definitions.**

223 As used in this chapter:

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

225 (i) by the association;

- 226 (ii) on or against a lot or a lot owner; and
- 227 (iii) pursuant to a governing document recorded with the county recorder.
- 228 (b) "Assessment" includes:
- 229 (i) a common expense; and
- 230 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
- 231 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
- 232 other legal entity, any member of which:
- 233 (i) is an owner of a residential lot located within the jurisdiction of the association, as
- 234 described in the governing documents; and
- 235 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
- 236 (A) real property taxes;
- 237 (B) insurance premiums;
- 238 (C) maintenance costs; or
- 239 (D) for improvement of real property not owned by the member.
- 240 (b) "Association" or "homeowner association" does not include an association created
- 241 under Title 57, Chapter 8, Condominium Ownership Act.
- 242 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 243 authority to manage the affairs of the association.
- 244 (4) "Common areas" means property that the association:
- 245 (a) owns;
- 246 (b) maintains;
- 247 (c) repairs; or
- 248 (d) administers.
- 249 (5) "Common expense" means costs incurred by the association to exercise any of the
- 250 powers provided for in the association's governing documents.
- 251 (6) "Declarant":
- 252 (a) means the person who executes a declaration and submits it for recording in the
- 253 office of the recorder of the county in which the property described in the declaration is

254 located; and

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

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

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

258 ~~(7)~~ (9) (a) "Governing documents" means a written instrument by which the  
259 association may:

260 (i) exercise powers; or

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

263 (b) "Governing documents" includes:

264 (i) articles of incorporation;

265 (ii) bylaws;

266 (iii) a plat;

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

268 (v) rules of the association.

269 ~~(8)~~ (10) "Independent third party" means a person that:

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

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

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

274 ~~(9)~~ (11) "Judicial foreclosure" means a foreclosure of a lot:

275 (a) for the nonpayment of an assessment; and

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

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

279 ~~(10)~~ (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

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

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

282 gratuity, or emolument.

283 ~~[(11)]~~ (13) "Limited common areas" means common areas described in the declaration  
284 and allocated for the exclusive use of one or more lot owners.

285 ~~[(12)]~~ (14) "Lot" means:

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

287 (i) designated for separate ownership or occupancy; and

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

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

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

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

294 ~~[(13)]~~ (15) "Mixed-use project" means a project under this chapter that has both  
295 residential and commercial lots in the project.

296 ~~[(14)]~~ (16) "Nonjudicial foreclosure" means the sale of a lot:

297 (a) for the nonpayment of an assessment; and

298 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through  
299 57-1-34; and

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

301 ~~[(15)]~~ (17) "Residential lot" means a lot, the use of which is limited by law, covenant,  
302 or otherwise to primarily residential or recreational purposes.

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

304 **57-8a-225. Association's right to pay delinquent utilities.**

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

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

310 (b) an opportunity to pay any delinquent charges and maintain service to the lot.  
311 (2) An association may request the notice and opportunity to pay described in  
312 Subsection (1) by sending a written request to the electrical corporation or gas corporation that  
313 includes:  
314 (a) the address of each lot in the association;  
315 (b) the association's name, mailing address, phone number, and email address; and  
316 (c) the address where the electrical corporation or gas corporation may send notices.  
317 (3) If, after an electrical corporation or a gas corporation sends a written notice  
318 described in Subsection (1) to an association and the association does not pay the delinquent  
319 charges within 10 days after the day on which the electrical corporation or gas corporation  
320 sends the notice, the electrical corporation or gas corporation may discontinue service to the  
321 lot.  
322 (4) An association may collect any payment to an electrical corporation or a gas  
323 corporation under this section as an assessment in accordance with Section [57-8a-301](#).  
324 (5) (a) If, after an association receives a written notice described in Subsection (1), the  
325 association decides not to pay the delinquent charges, the association may, if permitted by the  
326 association's governing documents, and after reasonable notice to the lot owner:  
327 (i) enter the lot; and  
328 (ii) winterize the lot.  
329 (b) A person who enters a lot in accordance with Subsection (5)(a) is not liable for  
330 trespass.  
331 (c) An association may charge a lot owner an assessment for the actual and reasonable  
332 costs of winterizing a lot in accordance with this Subsection (5).