

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 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



28 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

29 ENACTS:

30 **57-8-56**, Utah Code Annotated 1953

31 **57-8A-225**, Utah Code Annotated 1953



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

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

35 **57-8-3. Definitions.**

36 As used in this chapter:

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

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

40 (b) an amount that an association of unit owners assesses to a unit owner under

41 Subsection **57-8-43**(9)(g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (6) "Common expenses" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 [~~(17)~~] (18) "Expandable condominium" means a condominium project to which
111 additional land or an interest in it may be added in accordance with the declaration and this
112 chapter.

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

114 [~~(18)~~] (20) "Governing documents":

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

116 (i) exercise powers; or

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

119 (b) includes:

120 (i) articles of incorporation;

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

125 [~~(19)~~] (21) "Independent third party" means a person that:

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

130 [~~(20)~~] (22) "Leasehold condominium" means a condominium project in all or any
131 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
132 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
133 time. A condominium project including leased land, or an interest in the land, upon which no
134 units are situated or to be situated is not a leasehold condominium within the meaning of this
135 chapter.

136 [~~(21)~~] (23) "Limited common areas and facilities" means those common areas and
137 facilities designated in the declaration as reserved for use of a certain unit or units to the
138 exclusion of the other units.

139 [~~(22)~~] (24) "Majority" or "majority of the unit owners," unless otherwise provided in
140 the declaration or lawful amendments to the declaration, means the owners of more than 50%
141 in the aggregate in interest of the undivided ownership of the common areas and facilities.

142 [~~(23)~~] (25) "Management committee" means the committee as provided in the
143 declaration charged with and having the responsibility and authority to make and to enforce all
144 of the reasonable rules covering the operation and maintenance of the property.

145 [~~(24)~~] (26) "Mixed-use condominium project" means a condominium project that has
146 both residential and commercial units in the condominium project.

147 [~~(25)~~] (27) "Par value" means a number of dollars or points assigned to each unit by the
148 declaration. Substantially identical units shall be assigned the same par value, but units located
149 at substantially different heights above the ground, or having substantially different views, or
150 having substantially different amenities or other characteristics that might result in differences
151 in market value, may be considered substantially identical within the meaning of this

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

158 ~~[(26)]~~ (28) "Person" means an individual, corporation, partnership, association, trustee,
159 or other legal entity.

160 ~~[(27)]~~ (29) "Property" means the land, whether leasehold or in fee simple, the building,
161 if any, all improvements and structures thereon, all easements, rights, and appurtenances
162 belonging thereto, and all articles of personal property intended for use in connection
163 therewith.

164 ~~[(28)]~~ (30) "Record," "recording," "recorded," and "recorder" have the meaning stated
165 in Title 57, Chapter 3, Recording of Documents.

166 ~~[(29)]~~ (31) "Size" means the number of cubic feet, or the number of square feet of
167 ground or floor space, within each unit as computed by reference to the record of survey map
168 and rounded off to a whole number. Certain spaces within the units including attic, basement,
169 or garage space may be omitted from the calculation or be partially discounted by the use of a
170 ratio, if the same basis of calculation is employed for all units in the condominium project and
171 if that basis is described in the declaration.

172 ~~[(30)]~~ (32) "Time period unit" means an annually recurring part or parts of a year
173 specified in the declaration as a period for which a unit is separately owned and includes a
174 timeshare estate as defined in Subsection 57-19-2(19).

175 ~~[(31)]~~ (33) "Unit" means either a separate physical part of the property intended for any
176 type of independent use, including one or more rooms or spaces located in one or more floors
177 or part or parts of floors in a building or a time period unit, as the context may require. A
178 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
179 proposed condominium unit under an expandable condominium project, not constructed, is a
180 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

181 ~~[(32)]~~ (34) "Unit number" means the number, letter, or combination of numbers and
182 letters designating the unit in the declaration and in the record of survey map.

183 ~~[(33)]~~ (35) "Unit owner" means the person or persons owning a unit in fee simple and
184 an undivided interest in the fee simple estate of the common areas and facilities in the
185 percentage specified and established in the declaration or, in the case of a leasehold
186 condominium project, the person or persons whose leasehold interest or interests in the
187 condominium unit extend for the entire balance of the unexpired term or terms.

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

189 **57-8-56. Association of unit owners' right to pay delinquent utilities.**

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

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

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

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

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

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

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

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

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

210 (5) (a) If, after an association of unit owners receives a written notice described in
211 Subsection (1), the association of unit owners decides not to pay the delinquent charges, the
212 association of unit owners may, after reasonable notice to the unit owner:

213 (i) enter the unit; and

- 214 (ii) winterize the unit.
- 215 (b) A person who enters a unit in accordance with Subsection (5)(a) is not liable for
- 216 trespass.
- 217 (c) An association of unit owners may charge a unit owner an assessment for the costs
- 218 of winterizing a unit in accordance with this Subsection (5).

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

220 **57-8a-102. Definitions.**

221 As used in this chapter:

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

- 223 (i) by the association;
- 224 (ii) on or against a lot or a lot owner; and
- 225 (iii) pursuant to a governing document recorded with the county recorder.

226 (b) "Assessment" includes:

- 227 (i) a common expense; and
- 228 (ii) an amount assessed against a lot owner under Subsection [57-8a-405\(7\)](#).

229 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or

230 other legal entity, any member of which:

231 (i) is an owner of a residential lot located within the jurisdiction of the association, as

232 described in the governing documents; and

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

- 234 (A) real property taxes;
- 235 (B) insurance premiums;
- 236 (C) maintenance costs; or
- 237 (D) for improvement of real property not owned by the member.

238 (b) "Association" or "homeowner association" does not include an association created

239 under Title 57, Chapter 8, Condominium Ownership Act.

240 (3) "Board of directors" or "board" means the entity, regardless of name, with primary

241 authority to manage the affairs of the association.

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

- 243 (a) owns;
- 244 (b) maintains;

- 245 (c) repairs; or
- 246 (d) administers.
- 247 (5) "Common expense" means costs incurred by the association to exercise any of the
- 248 powers provided for in the association's governing documents.
- 249 (6) "Declarant":
- 250 (a) means the person who executes a declaration and submits it for recording in the
- 251 office of the recorder of the county in which the property described in the declaration is
- 252 located; and
- 253 (b) includes the person's successor and assign.
- 254 (7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.
- 255 (8) "Gas corporation" means the same as that term is defined in Section 54-2-1.
- 256 ~~(7)~~ (9) (a) "Governing documents" means a written instrument by which the
- 257 association may:
- 258 (i) exercise powers; or
- 259 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 260 association.
- 261 (b) "Governing documents" includes:
- 262 (i) articles of incorporation;
- 263 (ii) bylaws;
- 264 (iii) a plat;
- 265 (iv) a declaration of covenants, conditions, and restrictions; and
- 266 (v) rules of the association.
- 267 ~~(8)~~ (10) "Independent third party" means a person that:
- 268 (a) is not related to the owner of the residential lot;
- 269 (b) shares no pecuniary interests with the owner of the residential lot; and
- 270 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 271 or future lienholder.
- 272 ~~(9)~~ (11) "Judicial foreclosure" means a foreclosure of a lot:
- 273 (a) for the nonpayment of an assessment; and
- 274 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 275 property; and

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

277 [~~(10)~~] (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

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

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

281 [~~(11)~~] (13) "Limited common areas" means common areas described in the declaration
282 and allocated for the exclusive use of one or more lot owners.

283 [~~(12)~~] (14) "Lot" means:

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

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

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

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

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

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

292 [~~(13)~~] (15) "Mixed-use project" means a project under this chapter that has both
293 residential and commercial lots in the project.

294 [~~(14)~~] (16) "Nonjudicial foreclosure" means the sale of a lot:

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

296 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
297 57-1-34; and

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

299 [~~(15)~~] (17) "Residential lot" means a lot, the use of which is limited by law, covenant,
300 or otherwise to primarily residential or recreational purposes.

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

302 **57-8A-225. Association's right to pay delinquent utilities.**

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

306 (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, 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 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