

**Representative John Knotwell** proposes the following substitute bill:

**HOMEOWNERS ASSOCIATION REVISIONS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: John Knotwell**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions related to condominium and community associations.

**Highlighted Provisions:**

This bill:

- ▶ provides that a condominium or community association shall comply with certain requirements before bringing a legal action against a declarant, a management committee or board of directors, or an employee, an independent contractor, or an agent of the declarant or the management committee or board of directors, related to a period of declarant control or period of administrative control; and

- ▶ provides that certain provisions regarding open community association board meetings apply during the period of administrative control.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**57-8a-226**, as enacted by Laws of Utah 2015, Chapter 387



26 ENACTS:

27 57-8-58, Utah Code Annotated 1953

28 57-8a-228, Utah Code Annotated 1953

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

31 Section 1. Section **57-8-58** is enacted to read:

32 **57-8-58. Liability of declarant -- Period of declarant control.**

33 (1) An association may not, after the period of declarant control, bring a legal action  
34 against a declarant, a management committee, or an employee, an independent contractor, or an  
35 agent of the declarant or the management committee related to the period of declarant control  
36 unless:

37 (a) the legal action is approved in advance at a meeting where owners of at least 51%  
38 in aggregate in interest of the undivided ownership of the common areas and facilities are:

39 (i) present; or

40 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or  
41 deny the legal action at the meeting;

42 (b) the legal action is approved by vote in person or by proxy of owners of the lesser  
43 of:

44 (i) more than 75% in aggregate in interest of the total aggregate interest of the  
45 undivided ownership of the common areas and facilities represented by those owners present at  
46 the meeting or represented by a proxy as described in Subsection (1)(a)(i); or

47 (ii) more than 51% in aggregate in interest of the undivided ownership of the common  
48 areas and facilities;

49 (c) the association provides each unit owner with the items described in Subsection (2);

50 (d) the association establishes the trust described in Subsection (3); and

51 (e) the association first:

52 (i) notifies the person subject to the proposed action of the action and the basis of the  
53 association's claim; and

54 (ii) gives the person subject to the proposed action a reasonable opportunity to resolve  
55 the dispute that is the basis of the action.

56 (2) Before unit owners in an association may vote to approve an action described in

57 Subsection (1), the association shall provide each unit owner:

58 (a) a written notice that the association is contemplating legal action; and

59 (b) after the association consults with an attorney licensed to practice in the state, a  
60 written assessment of:

61 (i) the likelihood that the legal action will succeed;

62 (ii) the likely amount in controversy in the legal action;

63 (iii) the likely cost of resolving the legal action to the association's satisfaction; and

64 (iv) the likely effect the legal action will have on a unit owner's or prospective unit

65 buyer's ability to obtain financing for a unit while the legal action is pending.

66 (3) Before the association commences a legal action described in Subsection (1), the  
67 association shall:

68 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,  
69 not including attorney fees; and

70 (b) place the amount described in Subsection (3)(a) in a trust that the association may  
71 only use to pay the costs to resolve the legal action.

72 (4) This section does not apply to an association that brings a legal action that has an  
73 amount in controversy of less than \$75,000.

74 Section 2. Section **57-8a-226** is amended to read:

75 **57-8a-226. Board meetings -- Open meetings.**

76 (1) (a) At least 48 hours before a meeting, the association shall give written notice of  
77 the meeting via email to each lot owner who requests notice of a meeting, unless:

78 (i) notice of the meeting is included in a meeting schedule that was previously provided  
79 to the lot owner; or

80 (ii) (A) the meeting is to address an emergency; and

81 (B) each board member receives notice of the meeting less than 48 hours before the  
82 meeting.

83 (b) A notice described in Subsection (1)(a) shall:

84 (i) be delivered to the lot owner by email, to the email address that the lot owner  
85 provides to the board or the association;

86 (ii) state the time and date of the meeting;

87 (iii) state the location of the meeting; and

88 (iv) if a board member may participate by means of electronic communication, provide  
89 the information necessary to allow the lot owner to participate by the available means of  
90 electronic communication.

91 (2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot  
92 owner or the lot owner's representative if the representative is designated in writing.

93 (b) A board may close a meeting to:

94 (i) consult with an attorney for the purpose of obtaining legal advice;

95 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative  
96 proceedings;

97 (iii) discuss a personnel matter;

98 (iv) discuss a matter relating to contract negotiations, including review of a bid or  
99 proposal;

100 (v) discuss a matter that involves an individual if the discussion is likely to cause the  
101 individual undue embarrassment or violate the individual's reasonable expectation of privacy;  
102 or

103 (vi) discuss a delinquent assessment or fine.

104 (3) (a) At each meeting, the board shall provide each lot owner a reasonable  
105 opportunity to offer comments.

106 (b) The board may limit the comments described in Subsection (3)(a) to one specific  
107 time period during the meeting.

108 (4) A board member may not avoid or obstruct the requirements of this section.

109 (5) Nothing in this section shall affect the validity or enforceability of an action of a  
110 board.

111 (6) (a) [The] Except as provided in Subsection (6)(b), the provisions of this section do  
112 not apply during the period of administrative control.

113 (b) During the period of administrative control, the association shall hold a meeting  
114 that complies with Subsections (1) through (3):

115 (i) at least once each year; and

116 (ii) each time the association:

117 (A) increases a fee; or

118 (B) raises an assessment.

119 (7) The provisions of this section apply regardless of when the association's first  
120 governing document was recorded.

121 (8) (a) Subject to Subsection (8)(d), if an association fails to comply with a provision of  
122 Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period  
123 described in Subsection (8)(d), a lot owner may file an action in court for:

124 (i) injunctive relief requiring the association to comply with the provisions of  
125 Subsections (1) through (4);

126 (ii) \$500 or actual damages, whichever is greater; or

127 (iii) any other relief provided by law.

128 (b) In an action described in Subsection (8)(a), the court may award costs and  
129 reasonable attorney fees to the prevailing party.

130 (c) Upon motion from the lot owner, notice to the association, and a hearing in which  
131 the court finds a likelihood that the association has failed to comply with a provision of  
132 Subsections (1) through (4), the court may order the association to immediately comply with  
133 the provisions of Subsections (1) through (4).

134 (d) At least 90 days before the day on which a lot owner files an action described in  
135 Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:

136 (i) the lot owner's name, address, telephone number, and email address;

137 (ii) each requirement of Subsections (1) through (4) with which the association has  
138 failed to comply;

139 (iii) a demand that the association comply with each requirement with which the  
140 association has failed to comply; and

141 (iv) a date by which the association shall remedy the association's noncompliance that  
142 is at least 90 days after the day on which the lot owner delivers the notice to the association.

143 Section 3. Section **57-8a-228** is enacted to read:

144 **57-8a-228. Liability of declarant -- Period of administrative control.**

145 (1) An association may not, after the period of administrative control, bring a legal  
146 action against a declarant, a board of directors, or an employee, an independent contractor, or  
147 the agent of the declarant or the previous board of directors, ~~H~~→ ~~the~~ ←~~H~~ related to the period of  
148 administrative control unless:

149 (a) the legal action is approved in advance at a meeting where owners of at least 51%

150 of the allocated voting interests of the lot owners in the association are:

151 (i) present; or

152 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or  
153 deny the legal action at the meeting;

154 (b) the legal action is approved by vote in person or by proxy of owners of the lesser  
155 of:

156 (i) more than 75% of the allocated voting interests of the lot owners present at the  
157 meeting or represented by a proxy as described in Subsection (1)(a)(i); or

158 (ii) more than 51% of the allocated voting interests of the lot owners in the association;

159 (c) the association provides each lot owner with the items described in Subsection (2);

160 (d) the association establishes the trust described in Subsection (3); and

161 (e) the association first:

162 (i) notifies the person subject to the proposed legal action of the legal action and basis  
163 of the association's claim; and

164 (ii) gives the person subject to the claim a reasonable opportunity to resolve the dispute  
165 that is the basis of the proposed legal action.

166 (2) Before lot owners in an association may vote to approve an action described in  
167 Subsection (1), the association shall provide each lot owner:

168 (a) a written notice that the association is contemplating legal action; and

169 (b) after the association consults with an attorney licensed to practice in the state, a  
170 written assessment of:

171 (i) the likelihood that the legal action will succeed;

172 (ii) the likely amount in controversy in the legal action;

173 (iii) the likely cost of resolving the legal action to the association's satisfaction; and

174 (iv) the likely effect the legal action will have on a lot owner's or prospective lot  
175 buyer's ability to obtain financing for a lot while the legal action is pending.

176 (c) a written assessment of the likely effect any legal action will have on a lot owner's  
177 or prospective lot buyer's ability to obtain financing for a unit while the legal action is pending.

178 (3) Before the association commences a legal action described in Subsection (1), the  
179 association shall:

180 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,

181 not including attorney fees; and

182 (b) place the amount described in Subsection (3)(a) in a trust that the association may  
183 only use to pay the costs to resolve the legal action.

184 (4) This section does not apply to an association that brings a legal action that has an  
185 amount in controversy of less than \$75,000.