

1 **HOMEOWNERS ASSOCIATION REVISIONS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John Knotwell**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to condominium and community associations.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that a condominium or community association shall comply with certain
13 requirements before bringing a legal action against a declarant related to a period of
14 declarant control or period of administrative control.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 ENACTS:

21 **57-8-58**, Utah Code Annotated 1953

22 **57-8a-228**, Utah Code Annotated 1953

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

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

26 **57-8-58. Liability of declarant -- Period of declarant control.**

27 **(1) An association may not bring a legal action against a declarant or a declarant's**



28 agent related to the period of declarant control unless:

29 (a) the legal action is approved, by written vote, by owners of more than 75% in
30 aggregate in interest of the undivided ownership of the common areas and facilities;

31 (b) the association provides each unit owner with the items described in Subsection
32 (2);

33 (c) the association establishes the trust described in Subsection (3); and

34 (d) the association first submits the dispute that is the basis for the proposed legal
35 action to nonbinding arbitration in accordance with Title 78B, Chapter 11, Utah Uniform
36 Arbitration Act.

37 (2) Before unit owners in an association may vote to approve an action described in
38 Subsection (1), the association shall provide each unit owner:

39 (a) written notice that the association is contemplating legal action against a declarant
40 or a declarant's agent;

41 (b) a written copy of a legal opinion, signed by an attorney licensed to practice in the
42 state, that assesses:

43 (i) the likelihood that the legal action will succeed; and

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

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

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

50 (a) collect from the association, via a special assessment, an amount equal to 50% of
51 the cost estimated by the attorney described in Subsection (2)(b)(ii); and

52 (b) place the amount described in Subsection (3)(a) in a trust pending the resolution of
53 the legal action.

54 Section 2. Section **57-8a-228** is enacted to read:

55 **57-8a-228. Liability of declarant -- Period of administrative control.**

56 (1) An association may not bring a legal action against a declarant or a declarant's
57 agent related to the period of administrative control unless:

58 (a) the legal action is approved, by written vote, by more than 75% of the allocated

59 voting interests of the lot owners in the association;
60 (b) the association provides each lot owner with the items described in Subsection (2);
61 (c) the association establishes the trust described in Subsection (3); and
62 (d) the association first submits the dispute that is the basis for the proposed legal
63 action to nonbinding arbitration in accordance with Title 78B, Chapter 11, Utah Uniform
64 Arbitration Act.
65 (2) Before lot owners in an association may vote to approve an action described in
66 Subsection (1), the association shall provide each unit owner:
67 (a) written notice that the association is contemplating legal action against a declarant
68 or a declarant's agent;
69 (b) a written copy of a legal opinion, signed by an attorney licensed to practice in the
70 state, that assesses:
71 (i) the likelihood that the legal action will succeed; and
72 (ii) the likely cost of resolving the legal action to the association's satisfaction; and
73 (c) a written assessment of the likely effect any legal action will have on a lot owner's
74 or prospective lot buyer's ability to obtain financing for a unit while the legal action is pending.
75 (3) Before the association commences a legal action described in Subsection (1), the
76 association shall:
77 (a) collect from the association, via a special assessment, an amount equal to 50% of
78 the cost estimated by the attorney described in Subsection (2)(b)(ii); and
79 (b) place the amount described in Subsection (3)(a) in a trust pending the resolution of
80 the legal action.

Legislative Review Note
Office of Legislative Research and General Counsel