

HB0157S03 compared with HB0157S02

~~{deleted text}~~ shows text that was in HB0157S02 but was deleted in HB0157S03.

Inserted text shows text that was not in HB0157S02 but was inserted into HB0157S03.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative John Knotwell}~~Senator Curtis S. Bramble proposes the following substitute bill:

HOMEOWNERS ASSOCIATION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Knotwell

Senate Sponsor: Curtis S. Bramble

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.

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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

ENACTS:

57-8-58, Utah Code Annotated 1953

57-8a-228, Utah Code Annotated 1953

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

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

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

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

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

(i) present; or

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

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

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

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

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

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

(e) the association first:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) state the location of the meeting; and

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

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

(b) A board may close a meeting to:

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

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

(iii) discuss a personnel matter;

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

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

(vi) discuss a delinquent assessment or fine.

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

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

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

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

(6) (a) ~~The~~ Except as provided in Subsection (6)(b), the provisions of this section do

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not apply during the period of administrative control.

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

(i) at least once each year; and

(ii) each time the association:

(A) increases a fee; or

(B) raises an assessment.

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

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

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

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

(iii) any other relief provided by law.

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

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

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

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

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

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

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

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

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

(1) An association may not, after the period of administrative control, bring a legal action against a declarant, a board of directors, or an employee, an independent contractor, or the agent of the declarant or the previous board of directors ~~}; the}~~ related to the period of administrative control unless:

(a) the legal action is approved in advance at a meeting where owners of at least 51% of the allocated voting interests of the lot owners in the association are:

(i) present; or

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

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

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

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

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

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

(e) the association first:

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

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

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

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

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

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

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

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

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

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

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

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

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

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