

**Senator Lincoln Fillmore** proposes the following substitute bill:

**SOLAR ACCESS AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

House Sponsor: Francis D. Gibson

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to restrictions on solar energy systems.

**Highlighted Provisions:**

This bill:

▶ provides that, for real property governed by a community association, a governing document may not prohibit or restrict an owner's installation of a solar energy system under certain circumstances;

▶ provides that a declaration may prohibit or restrict the size, location, or manner of placement of a solar energy system under certain circumstances;

▶ provides that an association may, by association rule restrict an owner's installation of a solar energy system under certain circumstances;

▶ provides for attorney fees in an action brought under an enacted chapter; and

▶ provides an applicability date.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **57-8a-102**, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

28 ENACTS:

29 **57-8a-701**, Utah Code Annotated 1953

30 **57-8a-702**, Utah Code Annotated 1953

31 **57-8a-703**, Utah Code Annotated 1953

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

34 Section 1. Section **57-8a-102** is amended to read:

35 **57-8a-102. Definitions.**

36 As used in this chapter:

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

38 (i) by the association;

39 (ii) on or against a lot or a lot owner; and

40 (iii) pursuant to a governing document recorded with the county recorder.

41 (b) "Assessment" includes:

42 (i) a common expense; and

43 (ii) an amount assessed against a lot owner under Subsection **57-8a-405(7)**.

44 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or  
45 other legal entity, any member of which:

46 (i) is an owner of a residential lot located within the jurisdiction of the association, as  
47 described in the governing documents; and

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

49 (A) real property taxes;

50 (B) insurance premiums;

51 (C) maintenance costs; or

52 (D) for improvement of real property not owned by the member.

53 (b) "Association" or "homeowner association" does not include an association created  
54 under Title 57, Chapter 8, Condominium Ownership Act.

55 (3) "Board of directors" or "board" means the entity, regardless of name, with primary  
56 authority to manage the affairs of the association.

- 57 (4) "Common areas" means property that the association:  
58 (a) owns;  
59 (b) maintains;  
60 (c) repairs; or  
61 (d) administers.
- 62 (5) "Common expense" means costs incurred by the association to exercise any of the  
63 powers provided for in the association's governing documents.
- 64 (6) "Declarant":  
65 (a) means the person who executes a declaration and submits it for recording in the  
66 office of the recorder of the county in which the property described in the declaration is  
67 located; and  
68 (b) includes the person's successor and assign.
- 69 (7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.  
70 (8) "Gas corporation" means the same as that term is defined in Section 54-2-1.
- 71 (9) (a) "Governing documents" means a written instrument by which the association  
72 may:  
73 (i) exercise powers; or  
74 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the  
75 association.  
76 (b) "Governing documents" includes:  
77 (i) articles of incorporation;  
78 (ii) bylaws;  
79 (iii) a plat;  
80 (iv) a declaration of covenants, conditions, and restrictions; and  
81 (v) rules of the association.
- 82 (10) "Independent third party" means a person that:  
83 (a) is not related to the owner of the residential lot;  
84 (b) shares no pecuniary interests with the owner of the residential lot; and  
85 (c) purchases the residential lot in good faith and without the intent to defraud a current  
86 or future lienholder.
- 87 (11) "Judicial foreclosure" means a foreclosure of a lot:

- 88 (a) for the nonpayment of an assessment; and
- 89 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 90 property; and
- 91 (ii) as provided in Part 3, Collection of Assessments.
- 92 (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 93 (a) by a person or persons other than the owner; and
- 94 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 95 gratuity, or emolument.
- 96 (13) "Limited common areas" means common areas described in the declaration and
- 97 allocated for the exclusive use of one or more lot owners.
- 98 (14) "Lot" means:
- 99 (a) a lot, parcel, plot, or other division of land:
- 100 (i) designated for separate ownership or occupancy; and
- 101 (ii) (A) shown on a recorded subdivision plat; or
- 102 (B) the boundaries of which are described in a recorded governing document; or
- 103 (b) (i) a unit in a condominium association if the condominium association is a part of
- 104 a development; or
- 105 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 106 development.
- 107 (15) (a) "Means of electronic communication" means an electronic system that allows
- 108 individuals to communicate orally in real time.
- 109 (b) "Means of electronic communication" includes:
- 110 (i) web conferencing;
- 111 (ii) video conferencing; and
- 112 (iii) telephone conferencing.
- 113 (16) "Meeting" means a gathering of a board, whether in person or by means of
- 114 electronic communication, at which the board can take binding action.
- 115 (17) "Mixed-use project" means a project under this chapter that has both residential
- 116 and commercial lots in the project.
- 117 (18) "Nonjudicial foreclosure" means the sale of a lot:
- 118 (a) for the nonpayment of an assessment; and

119 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through  
120 57-1-34; and

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

122 (19) "Period of administrative control" means the period during which the person who  
123 filed the association's governing documents or the person's successor in interest retains  
124 authority to:

125 (a) appoint or remove members of the association's board of directors; or

126 (b) exercise power or authority assigned to the association under the association's  
127 governing documents.

128 (20) "Residential lot" means a lot, the use of which is limited by law, covenant, or  
129 otherwise to primarily residential or recreational purposes.

130 (21) "Solar energy system" means:

131 (a) a system that is used to produce electric energy from sunlight; and

132 (b) the components of the system described in Subsection (21)(a).

133 Section 2. Section 57-8a-701 is enacted to read:

134 **Part 7. Solar Access**

135 **57-8a-701. Solar energy system -- Prohibition or restriction in declaration or**  
136 **association rule.**

137 (1) (a) A governing document other than a declaration may not prohibit an owner of a  
138 lot with a detached dwelling from installing a solar energy system.

139 (b) A governing document other than a declaration or an association rule may not  
140 restrict an owner of a lot with a detached dwelling from installing a solar energy system on the  
141 owner's lot.

142 (2) A declaration may, for a lot with a detached dwelling:

143 (a) prohibit a lot owner from installing a solar energy system; or

144 (b) impose a restriction other than a prohibition on a solar energy system's size,  
145 location, or manner of placement if the restriction:

146 (i) decreases the solar energy system's production by 5% or less;

147 (ii) increases the solar energy system's cost of installation by 5% or less; and

148 (iii) complies with Subsection (5);

149 (3) (a) If a declaration does not expressly prohibit the installation of a solar energy

150 system on a lot with a detached dwelling, an association may not amend the declaration to  
151 impose a prohibition on the installation of a solar energy system unless the association  
152 approves the prohibition by a vote of greater than 67% of the allocated voting interests of the  
153 lot owners in the association.

154 (b) An association may amend an existing provision in a declaration that prohibits the  
155 installation of a solar energy system on a lot with a detached dwelling if the association  
156 approves the amendment by a vote of greater than 67% of the allocated voting interests of the  
157 lot owners in the association.

158 (4) An association may, by association rule, for a lot with a detached dwelling, impose  
159 a restriction other than a prohibition on a lot owner's installation of a solar energy system if the  
160 restriction:

161 (a) complies with Subsection (5);

162 (b) decreases the solar energy system's production by 5% or less; and

163 (c) increases the solar energy system's cost of installation by 5%.

164 (5) A declaration or an association rule may require an owner of a detached dwelling  
165 that installs a solar energy system on the owner's lot:

166 (a) to install a solar energy system that, or install the solar energy system in a manner  
167 that:

168 (i) complies with applicable health, safety, and building requirements established by  
169 the state or a political subdivision of the state;

170 (ii) if the solar energy system is used to heat water, is certified by:

171 (A) the Solar Rating and Certification Corporation; or

172 (B) a nationally recognized solar certification entity;

173 (iii) if the solar energy system is used to produce electricity, complies with applicable  
174 safety and performance standards established by:

175 (A) the National Electric Code;

176 (B) the Institute of Electrical and Electronics Engineers;

177 (C) Underwriters Laboratories;

178 (D) an accredited electrical testing laboratory; or

179 (E) the state or a political subdivision of the state;

180 (iv) if the solar energy system is mounted on a roof:

- 181 (A) does not extend above the roof line; or
- 182 (B) has panel frame, support bracket, or visible piping or wiring that has a color or
- 183 texture that is similar to the roof material; or
- 184 (v) if the solar energy system is mounted on the ground, is not visible from the street
- 185 that a lot fronts;
- 186 (b) to pay any reasonable cost or expense incurred by the association to review an
- 187 application to install a solar energy system;
- 188 (c) be responsible, jointly and severally with any subsequent owner of the lot while the
- 189 violation of the rule or requirement occurs, for any cost or expense incurred by the association
- 190 to enforce a declaration requirement or association rule; or
- 191 (d) as a condition of installing a solar energy system, to record a deed restriction
- 192 against the owner's lot that runs with the land that requires the current owner of the lot to
- 193 indemnify or reimburse the association or a member of the association for any loss or damage
- 194 caused by the installation, maintenance, or use of the solar energy system, including costs and
- 195 reasonable attorney fees incurred by the association or a member of the association.

196 Section 3. Section **57-8a-702** is enacted to read:

197 **57-8a-702. Attorney fees.**

198 In an action to enforce this part, the court may award the prevailing party, in addition to

199 any other available relief, an amount equal to the prevailing party's costs and reasonable

200 attorney fees.

201 Section 4. Section **57-8a-703** is enacted to read:

202 **57-8a-703. Applicability.**

203 (1) This part does not apply to prohibition or restriction on a lot owner's installation of

204 a solar energy system:

- 205 (a) described in a declaration recorded before January 1, 2017; or
- 206 (b) created by official association action taken before January 1, 2017.
- 207 (2) This part does not apply during the period of administrative control.