

## SB0154S03 compared with SB0154S02

~~{deleted text}~~ shows text that was in SB0154S02 but was deleted in SB0154S03.

Inserted text shows text that was not in SB0154S02 but was inserted into SB0154S03.

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~~{Senator Lincoln Fillmore}~~ Representative Francis D. Gibson 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;

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- ▶ provides for attorney fees in an action brought under an enacted ~~{chapter}~~part; and
- ▶ provides an applicability date.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

#### ENACTS:

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

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

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

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

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

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

As used in this chapter:

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

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

(b) "Assessment" includes:

- (i) a common expense; and
- (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

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

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

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

(A) real property taxes;

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- (B) insurance premiums;
- (C) maintenance costs; or
- (D) for improvement of real property not owned by the member.

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

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

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

- (a) owns;
- (b) maintains;
- (c) repairs; or
- (d) administers.

(5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(6) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

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

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

(9) (a) "Governing documents" means a written instrument by which the association may:

- (i) exercise powers; or
- (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.

(b) "Governing documents" includes:

- (i) articles of incorporation;
- (ii) bylaws;
- (iii) a plat;
- (iv) a declaration of covenants, conditions, and restrictions; and

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(v) rules of the association.

(10) "Independent third party" means a person that:

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

(c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.

(11) "Judicial foreclosure" means a foreclosure of a lot:

(a) for the nonpayment of an assessment; and

(b) (i) in the manner provided by law for the foreclosure of a mortgage on real property; and

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

(12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

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

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

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

(14) "Lot" means:

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

(i) designated for separate ownership or occupancy; and

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

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

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

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

(15) (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.

(b) "Means of electronic communication" includes:

(i) web conferencing;

(ii) video conferencing; and

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(iii) telephone conferencing.

(16) "Meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.

(17) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.

(18) "Nonjudicial foreclosure" means the sale of a lot:

(a) for the nonpayment of an assessment; and

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

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

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

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

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

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

(21) "Solar energy system" means:

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

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

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

### **Part 7. Solar Access**

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

(1) As used in this section, "detached dwelling" means a detached dwelling for which the association does not have an ownership interest in the detached dwelling's roof.

(~~1~~2) (a) A governing document other than a declaration may not prohibit an owner of a lot with a detached dwelling from installing a solar energy system.

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

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owner's lot.

(~~2~~3) A declaration may, for a lot with a detached dwelling:

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

(b) impose a restriction other than a prohibition on a solar energy system's size,

location, or manner of placement if the restriction:

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

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

(iii) complies with Subsection (~~5~~6)~~4~~.

(~~3~~4) (a) If a declaration does not expressly prohibit the installation of a solar energy system on a lot with a detached dwelling, an association may not amend the declaration to impose a prohibition on the installation of a solar energy system unless the association approves the prohibition by a vote of greater than 67% of the allocated voting interests of the lot owners in the association.

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

(~~4~~5) An association may, by association rule, for a lot with a detached dwelling, impose a restriction other than a prohibition on a lot owner's installation of a solar energy system if the restriction:

(a) complies with Subsection (~~5~~6);

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

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

(~~5~~6) A declaration or an association rule may require an owner of a detached dwelling that installs a solar energy system on the owner's lot:

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

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

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

(A) the Solar Rating and Certification Corporation; or

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(B) a nationally recognized solar certification entity;

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

(A) the National Electric Code;

(B) the Institute of Electrical and Electronics Engineers;

(C) Underwriters Laboratories;

(D) an accredited electrical testing laboratory; or

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

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

(A) does not extend above the roof line; or

(B) has panel frame, support bracket, or visible piping or wiring that has a color or texture that is similar to the roof material; or

(v) if the solar energy system is mounted on the ground, is not visible from the street that a lot fronts;

(b) to pay any reasonable cost or expense incurred by the association to review an application to install a solar energy system;

(c) be responsible, jointly and severally with any subsequent owner of the lot while the violation of the rule or requirement occurs, for any cost or expense incurred by the association to enforce a declaration requirement or association rule; or

(d) as a condition of installing a solar energy system, to record a deed restriction against the owner's lot that runs with the land that requires the current owner of the lot to indemnify or reimburse the association or a member of the association for any loss or damage caused by the installation, maintenance, or use of the solar energy system, including costs and reasonable attorney fees incurred by the association or a member of the association.

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

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

In an action to enforce this part, the court may award the prevailing party, in addition to any other available relief, an amount equal to the prevailing party's costs and reasonable attorney fees.

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

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

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(1) Except as provided in Subsection (2), this part applies to a declaration or official association action regardless of when the declaration was recorded or the official association action was taken.

(~~11~~2) This part does not apply to an express prohibition or an express restriction on a lot owner's installation of a solar energy system:

(a) described in a declaration recorded before January 1, 2017; or

(b) created by official association action taken before January 1, 2017.

(~~12~~3) This part does not apply during the period of administrative control.