

1 **HOMEOWNERS ASSOCIATION MODIFICATIONS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: J. Stuart Adams

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Condominium Ownership Act and the Community
10 Association Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ enacts provisions regarding a management committee that imposes sanctions or
14 pursues legal action;
- 15 ▶ establishes that a management committee acts for an association of unit owners;
- 16 ▶ regulates how an association of unit owners and an association may handle
17 association funds;
- 18 ▶ amends provisions regarding a management committee and a board's use of money
19 in a reserve fund;
- 20 ▶ amends provisions related to rental restrictions;
- 21 ▶ enacts provisions requiring a lot owner to comply with the governing documents of
22 an association;
- 23 ▶ requires an association of unit owners and an association to make certain documents
24 available to unit and lot owners:
 - 25 • free of charge, through the association of unit owners' or association's website;
- 26 or
 - 27 • at the association of unit owners' or association's address;
- 28 ▶ requires a unit or lot owner to include certain information in a written request for

29 documentation;

30 ▶ establishes a penalty for the failure of an association of unit owners or an
31 association to fulfill a request;

32 ▶ provides that an association of unit owners or an association is not liable for
33 erroneous documents identified or produced in good faith; and

34 ▶ makes technical and conforming changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 None

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **57-8-7.5**, as last amended by Laws of Utah 2015, Chapters 34 and 325

42 **57-8-10.1**, as last amended by Laws of Utah 2017, Chapter 131

43 **57-8-17**, as repealed and reenacted by Laws of Utah 2015, Chapter 325

44 **57-8a-209**, as last amended by Laws of Utah 2017, Chapter 131

45 **57-8a-211**, as last amended by Laws of Utah 2015, Chapter 34

46 **57-8a-227**, as enacted by Laws of Utah 2015, Chapter 325

47 ENACTS:

48 **57-8-10.7**, Utah Code Annotated 1953

49 **57-8-59**, Utah Code Annotated 1953

50 **57-8-60**, Utah Code Annotated 1953

51 **57-8a-212.5**, Utah Code Annotated 1953

52 **57-8a-230**, Utah Code Annotated 1953

53

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

55 Section 1. Section **57-8-7.5** is amended to read:

56 **57-8-7.5. Reserve analysis -- Reserve fund.**

57 (1) As used in this section:

58 (a) "Reserve analysis" means an analysis to determine:

59 (i) the need for a reserve fund to accumulate reserve funds; and

60 (ii) the appropriate amount of any reserve fund.

61 (b) "Reserve fund line item" means the line item in an association of unit owners'

62 annual budget that identifies the amount to be placed into a reserve fund.

63 (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring

64 common areas and facilities that have a useful life of three years or more and a remaining

65 useful life of less than 30 years, if the cost cannot reasonably be funded from the general

66 budget or other funds of the association of unit owners.

67 (2) Except as otherwise provided in the declaration, a management committee shall:

68 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

69 (b) review and, if necessary, update a previously conducted reserve analysis no less

70 frequently than every three years.

71 (3) The management committee may conduct a reserve analysis itself or may engage a

72 reliable person or organization, as determined by the management committee, to conduct the

73 reserve analysis.

74 (4) A reserve fund analysis shall include:

75 (a) a list of the components identified in the reserve analysis that will reasonably

76 require reserve funds;

77 (b) a statement of the probable remaining useful life, as of the date of the reserve

78 analysis, of each component identified in the reserve analysis;

79 (c) an estimate of the cost to repair, replace, or restore each component identified in the

80 reserve analysis;

81 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the

82 cost to repair, replace, or restore each component identified in the reserve analysis during the

83 component's useful life and at the end of the component's useful life; and

84 (e) a reserve funding plan that recommends how the association of unit owners may
85 fund the annual contribution described in Subsection (4)(d).

86 (5) An association of unit owners shall:

87 (a) annually provide unit owners a summary of the most recent reserve analysis or
88 update; and

89 (b) provide a copy of the complete reserve analysis or update to a unit owner who
90 requests a copy.

91 (6) In formulating [~~its~~] the association of unit owners' budget each year, an association
92 of unit owners shall include a reserve fund line item in:

93 (a) an amount the management committee determines, based on the reserve analysis, to
94 be prudent; or

95 (b) an amount required by the declaration, if the declaration requires an amount higher
96 than the amount determined under Subsection (6)(a).

97 (7) (a) Within 45 days after the day on which an association of unit owners adopts [~~its~~]
98 the association of unit owners' annual budget, the unit owners may veto the reserve fund line
99 item by a 51% vote of the allocated voting interests in the association of unit owners at a
100 special meeting called by the unit owners for the purpose of voting whether to veto a reserve
101 fund line item.

102 (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a
103 reserve fund line item exists in a previously approved annual budget of the association of unit
104 owners that was not vetoed, the association of unit owners shall fund the reserve account in
105 accordance with that prior reserve fund line item.

106 (8) (a) Subject to Subsection (8)(b), if an association of unit owners does not comply
107 with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance
108 within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:

109 (i) injunctive relief requiring the association of unit owners to comply with the

110 requirements of Subsection (5), (6), or (7);
111 (ii) \$500 or actual damages, whichever is greater;
112 (iii) any other remedy provided by law; and
113 (iv) reasonable costs and attorney fees.
114 (b) No fewer than 90 days before the day on which a unit owner files a complaint under
115 Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to
116 the association of unit owners.
117 (c) A notice under Subsection (8)(b) shall state:
118 (i) the requirement in Subsection (5), (6), or (7) with which the association of unit
119 owners has failed to comply;
120 (ii) a demand that the association of unit owners come into compliance with the
121 requirements; and
122 (iii) a date, no fewer than 90 days after the day on which the unit owner delivers the
123 notice, by which the association of unit owners shall remedy its noncompliance.
124 (d) In a case filed under Subsection (8)(a), a court may order an association of unit
125 owners to produce the summary of the reserve analysis or the complete reserve analysis on an
126 expedited basis and at the association of unit owners' expense.
127 (9) (a) [A] Unless a majority of the members of the association of unit owners vote to
128 approve the use of reserve fund money for that purpose, a management committee may not use
129 money in a reserve fund:
130 (i) for daily maintenance expenses~~[-, unless a majority of the members of the~~
131 ~~association of unit owners vote to approve the use of reserve fund money for that purpose];~~ or
132 (ii) for any purpose other than the purpose for which the reserve fund was established.
133 (b) A management committee shall maintain a reserve fund separate from other funds
134 of the association of unit owners.
135 (c) This Subsection (9) may not be construed to limit a management committee from
136 prudently investing money in a reserve fund, subject to any investment constraints imposed by

137 the declaration.

138 (10) Subsections (2) through (9) do not apply to an association of unit owners during
139 the period of administrative control.

140 (11) For a condominium project whose initial declaration is recorded on or after May
141 12, 2015, during the period of administrative control, for any property that the declarant sells to
142 a third party, the declarant shall give the third party:

143 (a) a copy of the association of unit owners' governing documents; and

144 (b) a copy of the association of unit owners' most recent financial statement that
145 includes any reserve funds held by the association of unit owners or by a subsidiary of the
146 association of unit owners.

147 (12) Except as otherwise provided in this section, this section applies to each
148 association of unit owners, regardless of when the association of unit owners was created.

149 Section 2. Section **57-8-10.1** is amended to read:

150 **57-8-10.1. Rental restrictions.**

151 (1) (a) Subject to Subsections (1)(b), (5), and (6), an association of unit owners may:

152 (i) create restrictions on the number and term of rentals in a condominium project; or

153 (ii) prohibit rentals in the condominium project.

154 (b) An association of unit owners that creates a rental restriction or prohibition in
155 accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a
156 declaration or by amending the declaration.

157 (2) If an association of unit owners prohibits or imposes restrictions on the number and
158 term of rentals, the restrictions shall include:

159 (a) a provision that requires a condominium project to exempt from the rental
160 restrictions the following unit owner and the unit owner's unit:

161 (i) a unit owner in the military for the period of the unit owner's deployment;

162 (ii) a unit occupied by a unit owner's parent, child, or sibling;

163 (iii) a unit owner whose employer has relocated the unit owner for ~~no less than~~ two

164 years or less;

165 (iv) a unit owned by an entity that is occupied by an individual who:

166 (A) has voting rights under the entity's organizing documents; and

167 (B) has a 25% or greater share of ownership, control, and right to profits and losses of

168 the entity; or

169 (v) a unit owned by a trust or other entity created for estate planning purposes if the

170 trust or other estate planning entity was created for the estate of:

171 (A) a current resident of the unit; or

172 (B) the parent, child, or sibling of the current resident of the unit;

173 (b) a provision that allows a unit owner who has a rental in the condominium project

174 before the time the rental restriction described in Subsection (1)(a) is recorded with the county

175 recorder of the county in which the condominium project is located to continue renting until:

176 (i) the unit owner occupies the unit; [~~or~~]

177 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a

178 similar position of ownership or control of an entity or trust that holds an ownership interest in

179 the unit, occupies the unit; [~~and~~] or

180 (iii) the unit is transferred; and

181 (c) a requirement that the association of unit owners create, by rule or resolution,

182 procedures to:

183 (i) determine and track the number of rentals and units in the condominium project

184 subject to the provisions described in Subsections (2)(a) and (b); and

185 (ii) ensure consistent administration and enforcement of the rental restrictions.

186 (3) For purposes of Subsection (2)(b)(iii), a transfer occurs when one or more of the

187 following occur:

188 (a) the conveyance, sale, or other transfer of a unit by deed;

189 (b) the granting of a life estate in the unit; or

190 (c) if the unit is owned by a limited liability company, corporation, partnership, or

191 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,
192 membership interests, or partnership interests in a 12-month period.

193 (4) This section does not limit or affect residency age requirements for an association
194 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42
195 U.S.C. Sec. 3607.

196 (5) A declaration or amendment to a declaration recorded before transfer of the first
197 unit from the initial declarant may prohibit or restrict rentals without providing for the
198 exceptions, provisions, and procedures required under Subsection (2).

199 (6) (a) Subsections (1) through (5) do not apply to:

200 (i) a condominium project that contains a time period unit as defined in Section 57-8-3;

201 (ii) any other form of timeshare interest as defined in Section 57-19-2; or

202 (iii) subject to Subsection (6)(b), a condominium project in which the initial
203 declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association
204 of unit owners:

205 (A) adopts a rental restriction or prohibition; or

206 (B) amends an existing rental restriction or prohibition.

207 (b) An association that adopts a rental restriction or amends an existing rental
208 restriction or prohibition before May 9, 2017, is not required to include the exemption
209 described in Subsection (2)(a)(iv).

210 (7) Notwithstanding this section, an association of unit owners may restrict or prohibit
211 rentals without an exception described in Subsection (2) if:

212 (a) the restriction or prohibition receives unanimous approval by all unit owners; and

213 (b) when the restriction or prohibition requires an amendment to the association of unit
214 owners' declaration, the association of unit owners fulfills all other requirements for amending
215 the declaration described in the association of unit owners' governing documents.

216 (8) Except as provided in Subsection (9), an association of unit owners may not require
217 a unit owner who owns a rental unit to:

- 218 (a) obtain the association of unit owners' approval of a prospective renter;
- 219 (b) give the association of unit owners:
 - 220 (i) a copy of a rental application;
 - 221 (ii) a copy of a renter's or prospective renter's credit information or credit report;
 - 222 (iii) a copy of a renter's or prospective renter's background check; or
 - 223 (iv) documentation to verify the renter's age; or
- 224 (c) pay an additional assessment, fine, or fee because the unit is a rental unit.

225 (9) (a) A unit owner who owns a rental unit shall give an association of unit owners the
226 documents described in Subsection (8)(b) if the unit owner is required to provide the
227 documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

228 (b) If an association of unit owners' declaration lawfully prohibits or restricts
229 occupancy of the units by a certain class of individuals, the association of unit owners may
230 require a unit owner who owns a rental unit to give the association of unit owners the
231 information described in Subsection (8)(b), if:

- 232 (i) the information helps the association of unit owners determine whether the renter's
233 occupancy of the unit complies with the association of unit owners' declaration; and
- 234 (ii) the association of unit owners uses the information to determine whether the
235 renter's occupancy of the unit complies with the association of unit owners' declaration.

236 (10) The provisions of Subsections (8) and (9) apply to an association of unit owners
237 regardless of when the association of unit owners is created.

238 Section 3. Section **57-8-10.7** is enacted to read:

239 **57-8-10.7. Board action to enforce governing documents -- Parameters.**

240 (1) (a) The management committee shall use the management committee's reasonable
241 judgment to determine whether to exercise the association of unit owners' powers to impose
242 sanctions or pursue legal action for a violation of the governing documents, including:

- 243 (i) whether to compromise a claim made by or against the management committee or
244 the association of unit owners; and

- 245 (ii) whether to pursue a claim for an unpaid assessment.
246 (b) The association of unit owners may not be required to take enforcement action if
247 the management committee determines, after fair review and acting in good faith and without
248 conflict of interest, that under the particular circumstances:
249 (i) the association of unit owners' legal position does not justify taking any or further
250 enforcement action;
251 (ii) the covenant, restriction, or rule in the governing documents is likely to be
252 construed as inconsistent with current law;
253 (iii) (A) a technical violation has or may have occurred; and
254 (B) the violation is not material as to a reasonable person or does not justify expending
255 the association of unit owners' resources; or
256 (iv) it is not in the association of unit owners' best interests to pursue an enforcement
257 action, based upon hardship, expense, or other reasonable criteria.
258 (2) Subject to Subsection (3), if the management committee decides under Subsection
259 (1)(b) to forego enforcement, the association of unit owners is not prevented from later taking
260 enforcement action.
261 (3) The management committee may not be arbitrary, capricious, or act against public
262 policy in taking or not taking enforcement action.
263 (4) This section does not govern whether the association of unit owners' action in
264 enforcing a provision of the governing documents constitutes a waiver or modification of that
265 provision.

266 Section 4. Section **57-8-17** is amended to read:

267 **57-8-17. Records -- Availability for examination.**

268 (1) (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make
269 documents available to unit owners in accordance with Sections 16-6a-1601 through 1603,
270 16-6a-1605, 16-6a-1606, and 16-6a-1610[;]:

271 (i) regardless of whether the association of unit owners is incorporated under Title 16,

272 Chapter 6a, Utah Revised Nonprofit Corporation Act~~[-];~~ and
273 (ii) including keeping and making available to unit owners a copy of the association of
274 unit owners':
275 (A) declaration and bylaws;
276 (B) most recent approved minutes; and
277 (C) most recent budget and financial statement.
278 (b) An association of unit owners may redact the following information from any
279 document the association of unit owners produces for inspection or copying:
280 (i) a Social Security number;
281 (ii) a bank account number; or
282 (iii) any communication subject to attorney-client privilege.
283 (2) (a) In addition to the requirements described in Subsection (1), an association of
284 unit owners shall:
285 (i) make documents available to unit owners in accordance with the association of unit
286 owners' governing documents~~[-];~~ and
287 (ii) (A) if the association of unit owners has an active website, make the documents
288 described in Subsection (1)(a)(ii) available to unit owners, free of charge, through the website;
289 or
290 (B) if the association of unit owners does not have an active website, make physical
291 copies of the documents described in Subsection (1)(a)(ii) available to unit owners during
292 regular business hours at the association of unit owners' address registered with the Department
293 of Commerce under Section [57-8-13.1](#).
294 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section [57-19-2](#).
295 ~~[(b)]~~ (c) If a provision of an association of unit owners' governing documents conflicts
296 with a provision of this section, the provision of this section governs.
297 (3) In a written request to inspect or copy documents~~[-];~~
298 (a) a unit owner shall include:

299 (i) the association of unit owners' name;
300 (ii) the unit owner's name;
301 (iii) the unit owner's property address;
302 (iv) the unit owner's email address;
303 (v) a description of the documents requested; and
304 (vi) any election or request described in Subsection (3)(b); and
305 (b) a unit owner may:
306 [~~(a)~~] (i) elect whether to inspect or copy the documents;
307 [~~(b)~~] (ii) if the unit owner elects to copy the documents, request hard copies or
308 electronic scans of the documents; or
309 [~~(c)~~] (iii) subject to Subsection (4), request that:
310 [~~(i)~~] (A) the association of unit owners make the copies or electronic scans of the
311 requested documents;
312 [~~(ii)~~] (B) a recognized third party duplicating service make the copies or electronic
313 scans of the requested documents; [~~or~~]
314 [~~(iii)~~] (C) the unit owner be allowed to bring any necessary imaging equipment to the
315 place of inspection and make copies or electronic scans of the documents while inspecting the
316 documents[-]; or
317 (D) the association of unit owners email the requested documents to an email address
318 provided in the request.
319 (4) (a) An association of unit owners shall comply with a request described in
320 Subsection (3).
321 (b) If an association of unit owners produces the copies or electronic scans:
322 (i) the copies or electronic scans shall be legible and accurate; and
323 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
324 copies or electronic scans and for time spent meeting with the unit owner, which may not
325 exceed:

326 (A) the actual cost that the association of unit owners paid to a recognized third party
327 duplicating service to make the copies or electronic scans; or

328 (B) [~~if an employee, manager, or other agent of the association of unit owners makes~~
329 ~~the copies or electronic scans;~~] 10 cents per page and \$15 per hour for the employee's,
330 manager's, or other agent's time making the copies or electronic scans.

331 (c) If a unit owner requests a recognized third party duplicating service make the copies
332 or electronic scans:

333 (i) the association of unit owners shall arrange for the delivery and pick up of the
334 original documents; and

335 (ii) the unit owner shall pay the duplicating service directly.

336 (d) [~~H~~] Subject to Subsection (9), if a unit owner requests to bring imaging equipment
337 to the inspection, the association of unit owners shall provide the necessary space, light, and
338 power for the imaging equipment.

339 (5) If, in response to a unit owner's request to inspect or copy documents, an
340 association of unit owners fails to comply with a provision of this section, the association of
341 unit owners shall pay:

342 (a) the reasonable costs of inspecting and copying the requested documents; [~~and~~]

343 (b) for items described in Subsection (1)(a)(ii), \$25 to the unit owner who made the
344 request for each day the request continues unfulfilled, beginning the sixth day after the day on
345 which the unit owner made the request; and

346 [~~(b)~~] (c) reasonable attorney fees and costs incurred by the unit owner in obtaining the
347 inspection and copies of the requested documents.

348 (6) (a) In addition to any remedy in the association of unit owners' governing
349 documents or as otherwise provided by law, a unit owner may file an action in court under this
350 section if:

351 (i) subject to Subsection (9), an association of unit owners fails to make documents
352 available to the unit owner in accordance with this section, the association of unit owners'

353 governing documents, or as otherwise provided by law; and
354 (ii) the association of unit owners fails to timely comply with a notice described in
355 Subsection (6)(d).

356 (b) In an action described in Subsection (6)(a):
357 (i) the unit owner may request:
358 (A) injunctive relief requiring the association of unit owners to comply with the
359 provisions of this section;
360 (B) \$500 or actual damage, whichever is greater; or
361 (C) any other relief provided by law; and
362 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,
363 including any reasonable attorney fees incurred before the action was filed that relate to the
364 request that is the subject of the action.

365 (c) (i) In an action described in Subsection (6)(a), upon motion by the unit owner,
366 notice to the association of unit owners, and a hearing in which the court finds a likelihood that
367 the association of unit owners failed to comply with a provision of this section, the court shall
368 order the association of unit owners to immediately comply with the provision.

369 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
370 the day on which the unit owner files the motion.

371 (d) At least 10 days before the day on which a unit owner files an action described in
372 Subsection (6)(a), the unit owner shall deliver a written notice to the association of unit owners
373 that states:
374 (i) the unit owner's name, address, telephone number, and email address;
375 (ii) each requirement of this section with which the association of unit owners has
376 failed to comply;
377 (iii) a demand that the association of unit owners comply with each requirement with
378 which the association of unit owners has failed to comply; and
379 (iv) a date by which the association of unit owners shall remedy the association of unit

380 owners' noncompliance that is at least 10 days after the day on which the unit owner delivers
381 the notice to the association of unit owners.

382 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association of unit
383 owners.

384 (b) The provisions of this section apply regardless of any conflicting provision in Title
385 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

386 (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right
387 that the unit owner has under this section.

388 (9) An association of unit owners is not liable for identifying or providing a document
389 in error, if the association of unit owners identified or provided the erroneous document in
390 good faith.

391 Section 5. Section 57-8-59 is enacted to read:

392 **57-8-59. Management committee act for association of unit owners.**

393 Except as limited in the declaration, the association of unit owners bylaws or articles of
394 incorporation, or other provisions of this chapter, a management committee acts in all instances
395 on behalf of the association of unit owners.

396 Section 6. Section 57-8-60 is enacted to read:

397 **57-8-60. Administration of funds.**

398 An association of unit owners:

399 (1) shall keep all of the association of unit owners' funds in an account in the name of
400 the association of unit owners; and

401 (2) may not commingle the association of unit owners' funds with the funds of any
402 other person.

403 Section 7. Section 57-8a-209 is amended to read:

404 **57-8a-209. Rental restrictions.**

405 (1) (a) Subject to Subsections (1)(b), (5), and (6), an association may:

406 (i) create restrictions on the number and term of rentals in an association; or

407 (ii) prohibit rentals in the association.

408 (b) An association that creates a rental restriction or prohibition in accordance with
409 Subsection (1)(a) shall create the rental restriction or prohibition in a recorded declaration of
410 covenants, conditions, and restrictions, or by amending the recorded declaration of covenants,
411 conditions, and restrictions.

412 (2) If an association prohibits or imposes restrictions on the number and term of
413 rentals, the restrictions shall include:

414 (a) a provision that requires the association to exempt from the rental restrictions the
415 following lot owner and the lot owner's lot:

416 (i) a lot owner in the military for the period of the lot owner's deployment;

417 (ii) a lot occupied by a lot owner's parent, child, or sibling;

418 (iii) a lot owner whose employer has relocated the lot owner for [~~no less than~~]
419 years or less;

420 (iv) a lot owned by an entity that is occupied by an individual who:

421 (A) has voting rights under the entity's organizing documents; and

422 (B) has a 25% or greater share of ownership, control, and right to profits and losses of
423 the entity; or

424 (v) a lot owned by a trust or other entity created for estate planning purposes if the trust
425 or other estate planning entity was created for:

426 (A) the estate of a current resident of the lot; or

427 (B) the parent, child, or sibling of the current resident of the lot;

428 (b) a provision that allows a lot owner who has a rental in the association before the
429 time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of
430 the county in which the association is located to continue renting until:

431 (i) the lot owner occupies the lot; [~~or~~]

432 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a
433 similar position of ownership or control of an entity or trust that holds an ownership interest in

434 the lot, occupies the lot; [~~and~~] or
435 (iii) the lot is transferred; and
436 (c) a requirement that the association create, by rule or resolution, procedures to:
437 (i) determine and track the number of rentals and lots in the association subject to the
438 provisions described in Subsections (2)(a) and (b); and
439 (ii) ensure consistent administration and enforcement of the rental restrictions.
440 (3) For purposes of Subsection (2)(b)(iii), a transfer occurs when one or more of the
441 following occur:
442 (a) the conveyance, sale, or other transfer of a lot by deed;
443 (b) the granting of a life estate in the lot; or
444 (c) if the lot is owned by a limited liability company, corporation, partnership, or other
445 business entity, the sale or transfer of more than 75% of the business entity's share, stock,
446 membership interests, or partnership interests in a 12-month period.
447 (4) This section does not limit or affect residency age requirements for an association
448 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.
449 3607.
450 (5) A declaration of covenants, conditions, and restrictions or amendments to the
451 declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot
452 from the initial declarant may prohibit or restrict rentals without providing for the exceptions,
453 provisions, and procedures required under Subsection (2).
454 (6) (a) Subsections (1) through (5) do not apply to:
455 (i) an association that contains a time period unit as defined in Section 57-8-3;
456 (ii) any other form of timeshare interest as defined in Section 57-19-2; or
457 (iii) subject to Subsection (6)(b), an association that is formed before May 12, 2009,
458 unless, on or after May 12, 2015, the association:
459 (A) adopts a rental restriction or prohibition; or
460 (B) amends an existing rental restriction or prohibition.

461 (b) An association that adopts a rental restriction or amends an existing rental
462 restriction or prohibition before May 9, 2017, is not required to include the exemption
463 described in Subsection (2)(a)(iv).

464 (7) Notwithstanding this section, an association may restrict or prohibit rentals without
465 an exception described in Subsection (2) if:

466 (a) the restriction or prohibition receives unanimous approval by all lot owners; and

467 (b) when the restriction or prohibition requires an amendment to the association's
468 recorded declaration of covenants, conditions, and restrictions, the association fulfills all other
469 requirements for amending the recorded declaration of covenants, conditions, and restrictions
470 described in the association's governing documents.

471 (8) Except as provided in Subsection (9), an association may not require a lot owner
472 who owns a rental lot to:

473 (a) obtain the association's approval of a prospective renter;

474 (b) give the association:

475 (i) a copy of a rental application;

476 (ii) a copy of a renter's or prospective renter's credit information or credit report;

477 (iii) a copy of a renter's or prospective renter's background check; or

478 (iv) documentation to verify the renter's age; or

479 (c) pay an additional assessment, fine, or fee because the lot is a rental lot.

480 (9) (a) A lot owner who owns a rental lot shall give an association the documents
481 described in Subsection (8)(b) if the lot owner is required to provide the documents by court
482 order or as part of discovery under the Utah Rules of Civil Procedure.

483 (b) If an association's declaration of covenants, conditions, and restrictions lawfully
484 prohibits or restricts occupancy of the lots by a certain class of individuals, the association may
485 require a lot owner who owns a rental lot to give the association the information described in
486 Subsection (8)(b), if:

487 (i) the information helps the association determine whether the renter's occupancy of

488 the lot complies with the association's declaration of covenants, conditions, and restrictions;
489 and

490 (ii) the association uses the information to determine whether the renter's occupancy of
491 the lot complies with the association's declaration of covenants, conditions, and restrictions.

492 (10) The provisions of Subsections (8) and (9) apply to an association regardless of
493 when the association is created.

494 Section 8. Section **57-8a-211** is amended to read:

495 **57-8a-211. Reserve analysis -- Reserve fund.**

496 (1) As used in this section:

497 (a) "Reserve analysis" means an analysis to determine:

498 (i) the need for a reserve fund to accumulate reserve funds; and

499 (ii) the appropriate amount of any reserve fund.

500 (b) "Reserve fund line item" means the line item in an association's annual budget that
501 identifies the amount to be placed into a reserve fund.

502 (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring
503 common areas and facilities that have a useful life of three years or more and a remaining
504 useful life of less than 30 years, if the cost cannot reasonably be funded from the general
505 budget or other funds of the association.

506 (2) Except as otherwise provided in the governing documents, a board shall:

507 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

508 (b) review and, if necessary, update a previously conducted reserve analysis no less
509 frequently than every three years.

510 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
511 organization, as determined by the board, to conduct the reserve analysis.

512 (4) A reserve fund analysis shall include:

513 (a) a list of the components identified in the reserve analysis that will reasonably
514 require reserve funds;

515 (b) a statement of the probable remaining useful life, as of the date of the reserve
516 analysis, of each component identified in the reserve analysis;

517 (c) an estimate of the cost to repair, replace, or restore each component identified in the
518 reserve analysis;

519 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
520 cost to repair, replace, or restore each component identified in the reserve analysis during the
521 component's useful life and at the end of the component's useful life; and

522 (e) a reserve funding plan that recommends how the association may fund the annual
523 contribution described in Subsection (4)(d).

524 (5) An association shall:

525 (a) annually provide lot owners a summary of the most recent reserve analysis or
526 update; and

527 (b) provide a copy of the complete reserve analysis or update to a lot owner who
528 requests a copy.

529 (6) In formulating [its] the association's budget each year, an association shall include a
530 reserve fund line item in:

531 (a) an amount the board determines, based on the reserve analysis, to be prudent; or

532 (b) an amount required by the governing documents, if the governing documents
533 require an amount higher than the amount determined under Subsection (6)(a).

534 (7) (a) Within 45 days after the day on which an association adopts [its] the
535 association's annual budget, the lot owners may veto the reserve fund line item by a 51% vote
536 of the allocated voting interests in the association at a special meeting called by the lot owners
537 for the purpose of voting whether to veto a reserve fund line item.

538 (b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve
539 fund line item exists in a previously approved annual budget of the association that was not
540 vetoed, the association shall fund the reserve account in accordance with that prior reserve fund
541 line item.

542 (8) (a) Subject to Subsection (8)(b), if an association does not comply with the
543 requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance
544 within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:

545 (i) injunctive relief requiring the association to comply with the requirements of
546 Subsection (5), (6), or (7);

547 (ii) \$500 or the lot owner's actual damages, whichever is greater;

548 (iii) any other remedy provided by law; and

549 (iv) reasonable costs and attorney fees.

550 (b) No fewer than 90 days before the day on which a lot owner files a complaint under
551 Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to
552 the association.

553 (c) A notice under Subsection (8)(b) shall state:

554 (i) the requirement in Subsection (5), (6), or (7) with which the association has failed to
555 comply;

556 (ii) a demand that the association come into compliance with the requirements; and

557 (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the
558 notice, by which the association shall remedy its noncompliance.

559 (d) In a case filed under Subsection (8)(a), a court may order an association to produce
560 the summary of the reserve analysis or the complete reserve analysis on an expedited basis and
561 at the association's expense.

562 (9) (a) [A] Unless a majority of association members vote to approve the use of reserve
563 fund money for that purpose, a board may not use money in a reserve fund:

564 (i) for daily maintenance expenses[~~unless a majority of association members vote to~~
565 ~~approve the use of reserve fund money for that purpose]; or~~

566 (ii) for any purpose other than the purpose for which the reserve fund was established.

567 (b) A board shall maintain a reserve fund separate from other association funds.

568 (c) This Subsection (9) may not be construed to limit a board from prudently investing

569 money in a reserve fund, subject to any investment constraints imposed by the governing
570 documents.

571 (10) Subsections (2) through (9) do not apply to an association during the period of
572 administrative control.

573 (11) For a project whose initial declaration of covenants, conditions, and restrictions is
574 recorded on or after May 12, 2015, during the period of administrative control, for any property
575 that the declarant sells to a third party, the declarant shall give the third party:

576 (a) a copy of the association's governing documents; and

577 (b) a copy of the association's most recent financial statement that includes any reserve
578 funds held by the association or by a subsidiary of the association.

579 (12) Except as otherwise provided in this section, this section applies to each
580 association, regardless of when the association was created.

581 Section 9. Section **57-8a-212.5** is enacted to read:

582 **57-8a-212.5. Compliance with governing documents.**

583 Subject to reasonable compliance therewith by the board, each lot owner shall
584 reasonably comply with the governing documents, as the governing documents may be lawfully
585 amended from time to time, and failure to comply shall be ground for an action to recover sums
586 due for damages or injunctive relief or both, maintainable by the board on behalf of the lot
587 owners, or in a proper case, by an aggrieved lot owner.

588 Section 10. Section **57-8a-227** is amended to read:

589 **57-8a-227. Records -- Availability for examination.**

590 (1) (a) Subject to Subsection (1)(b), an association shall keep and make documents
591 available to lot owners in accordance with Sections 16-6a-1601 through 1603, 16-6a-1605,
592 16-6a-1606, and 16-6a-1610[;]:

593 (i) regardless of whether the association is incorporated under Title 16, Chapter 6a,
594 Utah Revised Nonprofit Corporation Act[;]; and

595 (ii) including keeping and making available to lot owners a copy of the association's:

596 (A) declaration and bylaws;
597 (B) most recent approved minutes; and
598 (C) most recent budget and financial statement.
599 (b) An association may redact the following information from any document the
600 association produces for inspection or copying:
601 (i) a Social Security number;
602 (ii) a bank account number; or
603 (iii) any communication subject to attorney-client privilege.
604 (2) (a) In addition to the requirements described in Subsection (1), an association shall:
605 (i) make documents available to lot owners in accordance with the association's
606 governing documents[-]; and
607 (ii) (A) if the association has an active website, make the documents described in
608 Subsection (1)(a)(ii) available to lot owners, free of charge, through the website; or
609 (B) if the association does not have an active website, make physical copies of the
610 documents described in Subsection (1)(a)(ii) available to lot owners during regular business
611 hours at the association's address registered with the Department of Commerce under Section
612 [57-8a-105](#).
613 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section [57-19-2](#).
614 ~~(b)~~ (c) If a provision of an association's governing documents conflicts with a
615 provision of this section, the provision of this section governs.
616 (3) In a written request to inspect or copy documents[-]:
617 (a) a lot owner shall include:
618 (i) the association's name;
619 (ii) the lot owner's name;
620 (iii) the lot owner's property address;
621 (iv) the lot owner's email address;
622 (v) a description of the documents requested; and

623 (vi) any election or request described in Subsection (3)(b); and
624 (b) a lot owner may:
625 ~~[(a)]~~ (i) elect whether to inspect or copy the documents;
626 ~~[(b)]~~ (ii) if the lot owner elects to copy the documents, request hard copies or electronic
627 scans of the documents; or
628 ~~[(c)]~~ (iii) subject to Subsection (4), request that:
629 ~~[(i)]~~ (A) the association make the copies or electronic scans of the requested
630 documents;
631 ~~[(ii)]~~ (B) a recognized third party duplicating service make the copies or electronic
632 scans of the requested documents; [or]
633 ~~[(iii)]~~ (C) the lot owner be allowed to bring any necessary imaging equipment to the
634 place of inspection and make copies or electronic scans of the documents while inspecting the
635 documents[-]; or
636 (D) the association email the requested documents to an email address provided in the
637 request.
638 (4) (a) An association shall comply with a request described in Subsection (3).
639 (b) If an association produces the copies or electronic scans:
640 (i) the copies or electronic scans shall be legible and accurate; and
641 (ii) the lot owner shall pay the association the reasonable cost of the copies or
642 electronic scans and for time spent meeting with the lot owner, which may not exceed:
643 (A) the actual cost that the association paid to a recognized third party duplicating
644 service to make the copies or electronic scans; or
645 (B) ~~[if an employee, manager, or other agent of the association makes the copies or~~
646 ~~electronic scans;]~~ 10 cents per page and \$15 per hour for the employee's, manager's, or other
647 agent's time ~~[making the copies or electronic scans]~~.
648 (c) If a lot owner requests a recognized third party duplicating service make the copies
649 or electronic scans:

650 (i) the association shall arrange for the delivery and pick up of the original documents;
651 and

652 (ii) the lot owner shall pay the duplicating service directly.

653 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
654 shall provide the necessary space, light, and power for the imaging equipment.

655 (5) [~~H~~] Subject to Subsection (9), if, in response to a lot owner's request to inspect or
656 copy documents, an association fails to comply with a provision of this section, the association
657 shall pay:

658 (a) the reasonable costs of inspecting and copying the requested documents; [~~and~~]

659 (b) for items described in Subsection (1)(a)(ii), \$25 to the lot owner who made the
660 request for each day the request continues unfulfilled, beginning the sixth day after the day on
661 which the lot owner made the request; and

662 [~~(b)~~] (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the
663 inspection and copies of the requested documents.

664 (6) (a) In addition to any remedy in the association's governing documents or otherwise
665 provided by law, a lot owner may file an action in court under this section if:

666 (i) subject to Subsection (9), an association fails to make documents available to the lot
667 owner in accordance with this section, the association's governing documents, or as otherwise
668 provided by law; and

669 (ii) the association fails to timely comply with a notice described in Subsection (6)(d).

670 (b) In an action described in Subsection (6)(a):

671 (i) the lot owner may request:

672 (A) injunctive relief requiring the association to comply with the provisions of this
673 section;

674 (B) \$500 or actual damage, whichever is greater; or

675 (C) any other relief provided by law; and

676 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,

677 including any reasonable attorney fees incurred before the action was filed that relate to the
678 request that is the subject of the action.

679 (c) (i) In an action described in Subsection (6)(a), upon motion by the lot owner, notice
680 to the association, and a hearing in which the court finds a likelihood that the association failed
681 to comply with a provision of this section, the court shall order the association to immediately
682 comply with the provision.

683 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
684 the day on which the lot owner files the motion.

685 (d) At least 10 days before the day on which a lot owner files an action described in
686 Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

- 687 (i) the lot owner's name, address, telephone number, and email address;
688 (ii) each requirement of this section with which the association has failed to comply;
689 (iii) a demand that the association comply with each requirement with which the
690 association has failed to comply; and

691 (iv) a date by which the association shall remedy the association's noncompliance that
692 is at least 10 days after the day on which the lot owner delivers the notice to the association.

693 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association.

694 (b) The provisions of this section apply regardless of any conflicting provision in Title
695 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

696 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that
697 the lot owner has under this section.

698 (9) An association is not liable for identifying or providing a document in error, if the
699 association identified or provided the erroneous document in good faith.

700 Section 11. Section **57-8a-230** is enacted to read:

701 **57-8a-230. Administration of funds.**

702 An association:

703 (1) shall keep all of the association's funds in an account in the name of the association;

704 and

705 (2) may not commingle the association's funds with the funds of any other person.