

HOMEOWNERS ASSOCIATION MODIFICATIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to a homeowners association's sharing of documents.

Highlighted Provisions:

This bill:

▸ requires an association of unit owners and an association to make certain documents available to unit and lot owners:

• free of charge, through the association of unit owners' or association's website;
or

• at the association of unit owners' or association's address;

▸ requires a unit or lot owner to include certain information in a written request for documentation;

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

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

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **57-8-17**, as repealed and reenacted by Laws of Utah 2015, Chapter 325

32 **57-8a-227**, as enacted by Laws of Utah 2015, Chapter 325



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

35 Section 1. Section **57-8-17** is amended to read:

36 **57-8-17. Records -- Availability for examination.**

37 (1) (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make
38 documents available to unit owners in accordance with Sections **16-6a-1601** through 1603,
39 **16-6a-1605**, **16-6a-1606**, and **16-6a-1610**[~~;~~];

40 (i) regardless of whether the association of unit owners is incorporated under Title 16,
41 Chapter 6a, Utah Revised Nonprofit Corporation Act[~~;~~]; and

42 (ii) including keeping and making available to unit owners a copy of the association of
43 unit owners':

44 (A) declaration and bylaws;

45 (B) most recent approved minutes; and

46 (C) most recent budget and financial statement.

47 (b) An association of unit owners may redact the following information from any
48 document the association of unit owners produces for inspection or copying:

49 (i) a Social Security number;

50 (ii) a bank account number; or

51 (iii) any communication subject to attorney-client privilege.

52 (2) (a) In addition to the requirements described in Subsection (1), an association of
53 unit owners shall:

54 (i) make documents available to unit owners in accordance with the association of unit
55 owners' governing documents[~~;~~]; and

56 (ii) (A) if the association of unit owners has an active website, make the documents
57 described in Subsection (1)(a)(ii) available to unit owners, free of charge, through the website;

58 or

59 (B) if the association of unit owners does not have an active website, make physical
60 copies of the documents described in Subsection (1)(a)(ii) available to unit owners during
61 regular business hours at the association of unit owners' address registered with the Department
62 of Commerce under Section 57-8-13.1.

63 (b) If a provision of an association of unit owners' governing documents conflicts with
64 a provision of this section, the provision of this section governs.

65 (3) In a written request to inspect or copy documents[-];

66 (a) a unit owner shall include:

67 (i) the association of unit owners' name;

68 (ii) the unit owner's name;

69 (iii) the unit owner's property address;

70 (iv) the unit owner's email address;

71 (v) a description of the documents requested; and

72 (vi) any election or request described in Subsection (3)(b); and

73 (b) a unit owner may:

74 [~~(a)~~] (i) elect whether to inspect or copy the documents;

75 [~~(b)~~] (ii) if the unit owner elects to copy the documents, request hard copies or
76 electronic scans of the documents; or

77 [~~(c)~~] (iii) subject to Subsection (4), request that:

78 [~~(i)~~] (A) the association of unit owners make the copies or electronic scans of the
79 requested documents;

80 [~~(ii)~~] (B) a recognized third party duplicating service make the copies or electronic
81 scans of the requested documents; [~~or~~]

82 [~~(iii)~~] (C) the unit owner be allowed to bring any necessary imaging equipment to the
83 place of inspection and make copies or electronic scans of the documents while inspecting the
84 documents[-]; or

85 (D) the association of unit owners email the requested documents to an email address
86 provided in the request.

87 (4) (a) An association of unit owners shall comply with a request described in
88 Subsection (3).

89 (b) If an association of unit owners produces the copies or electronic scans:

- 90 (i) the copies or electronic scans shall be legible and accurate; and
- 91 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
- 92 copies or electronic scans, which may not exceed:
 - 93 (A) the actual cost that the association of unit owners paid to a recognized third party
 - 94 duplicating service to make the copies or electronic scans; or
 - 95 (B) if an employee, manager, or other agent of the association of unit owners makes the
 - 96 copies or electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or
 - 97 other agent's time making the copies or electronic scans.
- 98 (c) If a unit owner requests a recognized third party duplicating service make the copies
- 99 or electronic scans:
 - 100 (i) the association of unit owners shall arrange for the delivery and pick up of the
 - 101 original documents; and
 - 102 (ii) the unit owner shall pay the duplicating service directly.
- 103 (d) ~~[Hf]~~ Subject to Subsection (9), if a unit owner requests to bring imaging equipment
- 104 to the inspection, the association of unit owners shall provide the necessary space, light, and
- 105 power for the imaging equipment.
- 106 (5) If, in response to a unit owner's request to inspect or copy documents, an
- 107 association of unit owners fails to comply with a provision of this section, the association of
- 108 unit owners shall pay:
 - 109 (a) the reasonable costs of inspecting and copying the requested documents; ~~[and]~~
 - 110 (b) \$25 to the unit owner who made the request for each day the request continues
 - 111 unfulfilled, beginning the sixth day after the day on which the unit owner made the request; and
 - 112 ~~[(b)]~~ (c) reasonable attorney fees and costs incurred by the unit owner in obtaining the
 - 113 inspection and copies of the requested documents.
- 114 (6) (a) In addition to any remedy in the association of unit owners' governing
- 115 documents or as otherwise provided by law, a unit owner may file an action in court under this
- 116 section if:
 - 117 (i) subject to Subsection (9), an association of unit owners fails to make documents
 - 118 available to the unit owner in accordance with this section, the association of unit owners'
 - 119 governing documents, or as otherwise provided by law; and
 - 120 (ii) the association of unit owners fails to timely comply with a notice described in

121 Subsection (6)(d).

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

123 (i) the unit owner may request:

124 (A) injunctive relief requiring the association of unit owners to comply with the

125 provisions of this section;

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

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

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

129 including any reasonable attorney fees incurred before the action was filed that relate to the

130 request that is the subject of the action.

131 (c) (i) In an action described in Subsection (6)(a), upon motion by the unit owner,

132 notice to the association of unit owners, and a hearing in which the court finds a likelihood that

133 the association of unit owners failed to comply with a provision of this section, the court shall

134 order the association of unit owners to immediately comply with the provision.

135 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after

136 the day on which the unit owner files the motion.

137 (d) At least 10 days before the day on which a unit owner files an action described in

138 Subsection (6)(a), the unit owner shall deliver a written notice to the association of unit owners

139 that states:

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

141 (ii) each requirement of this section with which the association of unit owners has

142 failed to comply;

143 (iii) a demand that the association of unit owners comply with each requirement with

144 which the association of unit owners has failed to comply; and

145 (iv) a date by which the association of unit owners shall remedy the association of unit

146 owners' noncompliance that is at least 10 days after the day on which the unit owner delivers

147 the notice to the association of unit owners.

148 (7) (a) The provisions of Section [16-6a-1604](#) do not apply to an association of unit

149 owners.

150 (b) The provisions of this section apply regardless of any conflicting provision in Title

151 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

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

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

157 Section 2. Section **57-8a-227** is amended to read:

158 **57-8a-227. Records -- Availability for examination.**

159 (1) (a) Subject to Subsection (1)(b), an association shall keep and make documents
160 available to lot owners in accordance with Sections [16-6a-1601](#) through 1603, [16-6a-1605](#),
161 [16-6a-1606](#), and [16-6a-1610](#)[;]:

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

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

165 (A) declaration and bylaws;

166 (B) most recent approved minutes; and

167 (C) most recent budget and financial statement.

168 (b) An association may redact the following information from any document the
169 association produces for inspection or copying:

170 (i) a Social Security number;

171 (ii) a bank account number; or

172 (iii) any communication subject to attorney-client privilege.

173 (2) (a) In addition to the requirements described in Subsection (1), an association shall:

174 (i) make documents available to lot owners in accordance with the association's
175 governing documents[-]; and

176 (ii) (A) if the association has an active website, make the documents described in
177 Subsection (1)(a)(ii) available to lot owners, free of charge, through the website; or

178 (B) if the association does not have an active website, make physical copies of the
179 documents described in Subsection (1)(a)(ii) available to lot owners during regular business
180 hours at the association's address registered with the Department of Commerce under Section
181 [57-8a-105](#).

182 (b) If a provision of an association's governing documents conflicts with a provision of

183 this section, the provision of this section governs.

184 (3) In a written request to inspect or copy documents~~[-]~~;

185 (a) a lot owner shall include:

186 (i) the association's name;

187 (ii) the lot owner's name;

188 (iii) the lot owner's property address;

189 (iv) the lot owner's email address;

190 (v) a description of the documents requested; and

191 (vi) any election or request described in Subsection (3)(b); and

192 (b) a lot owner may:

193 ~~[(a)]~~ (i) elect whether to inspect or copy the documents;

194 ~~[(b)]~~ (ii) if the lot owner elects to copy the documents, request hard copies or electronic
195 scans of the documents; or

196 ~~[(c)]~~ (iii) subject to Subsection (4), request that:

197 ~~[(i)]~~ (A) the association make the copies or electronic scans of the requested
198 documents;

199 ~~[(ii)]~~ (B) a recognized third party duplicating service make the copies or electronic
200 scans of the requested documents; ~~or~~

201 ~~[(iii)]~~ (C) the lot owner be allowed to bring any necessary imaging equipment to the
202 place of inspection and make copies or electronic scans of the documents while inspecting the
203 documents~~[-]~~; or

204 (D) the association email the requested documents to an email address provided in the
205 request.

206 (4) (a) An association shall comply with a request described in Subsection (3).

207 (b) If an association produces the copies or electronic scans:

208 (i) the copies or electronic scans shall be legible and accurate; and

209 (ii) the lot owner shall pay the association the reasonable cost of the copies or
210 electronic scans, which may not exceed:

211 (A) the actual cost that the association paid to a recognized third party duplicating
212 service to make the copies or electronic scans; or

213 (B) if an employee, manager, or other agent of the association makes the copies or

214 electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or other
215 agent's time making the copies or electronic scans.

216 (c) If a lot owner requests a recognized third party duplicating service make the copies
217 or electronic scans:

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

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

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

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

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

227 (b) \$25 to the lot owner who made the request for each day the request continues
228 unfulfilled, beginning the sixth day after the day on which the lot owner made the request; and

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

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

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

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

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

238 (i) the lot owner may request:

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

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

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

243 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,
244 including any reasonable attorney fees incurred before the action was filed that relate to the

245 request that is the subject of the action.

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

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

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

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

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

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

261 (b) The provisions of this section apply regardless of any conflicting provision in Title
262 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

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

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

Legislative Review Note
Office of Legislative Research and General Counsel