

HB0454S01 compared with HB0454

~~{deleted text}~~ shows text that was in HB0454 but was deleted in HB0454S01.

Inserted text shows text that was not in HB0454 but was inserted into HB0454S01.

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 Gage Froerer proposes the following substitute bill:

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}~~ of the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ enacts provisions regarding a management committee that imposes sanctions or pursuing legal action;
- ▶ establishes that a management committee acts for an association of unit owners;
- ▶ regulates how an association of unit owners and an association may handle association funds;
- ▶ amends provisions regarding a management committee and a board's use of money in a reserve fund;

HB0454S01 compared with HB0454

- ▶ amends provisions related to rental restrictions;
- ▶ enacts provisions requiring a lot owner to comply with the governing documents of an association;
- ▶ 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:

None

Utah Code Sections Affected:

AMENDS:

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

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

57-8-17, as repealed and reenacted by Laws of Utah 2015, Chapter 325

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

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

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

ENACTS:

57-8-10.7, Utah Code Annotated 1953

57-8-59, Utah Code Annotated 1953

57-8-60, Utah Code Annotated 1953

HB0454S01 compared with HB0454

57-8a-212.5, Utah Code Annotated 1953

57-8a-230, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

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

- (i) the need for a reserve fund to accumulate reserve funds; and
- (ii) the appropriate amount of any reserve fund.

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

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

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

- (a) cause a reserve analysis to be conducted no less frequently than every six years; and
- (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.

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

(4) A reserve fund analysis shall include:

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

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

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

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

HB0454S01 compared with HB0454

cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and

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

(5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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

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

(iii) any other remedy provided by law; and

HB0454S01 compared with HB0454

(iv) reasonable costs and attorney fees.

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

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

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

(ii) a demand that the association of unit owners come into compliance with the requirements; and

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

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

(9) (a) ~~[A] Unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose, a~~ management committee may not use money in a reserve fund:

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

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

(b) A management committee shall maintain a reserve fund separate from other funds of the association of unit owners.

(c) This Subsection (9) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

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

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

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

HB0454S01 compared with HB0454

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

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

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

57-8-10.1. Rental restrictions.

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

- (i) create restrictions on the number and term of rentals in a condominium project; or
- (ii) prohibit rentals in the condominium project.

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

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

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

- (i) a unit owner in the military for the period of the unit owner's deployment;
- (ii) a unit occupied by a unit owner's parent, child, or sibling;
- (iii) a unit owner whose employer has relocated the unit owner for ~~no less than~~ two

years or less; ~~{ }~~

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

- (A) has voting rights under the entity's organizing documents; and
- (B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

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

- (A) a current resident of the unit; or
- (B) the parent, child, or sibling of the current resident of the unit;

(b) a provision that allows a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (1)(a) is recorded with the county

HB0454S01 compared with HB0454

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

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

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; ~~[and]~~ or

(iii) the unit is transferred; and

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

(i) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (2)(a) and (b); and

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

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

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

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

(c) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

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

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

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

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

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

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

(A) adopts a rental restriction or prohibition; or

HB0454S01 compared with HB0454

(B) amends an existing rental restriction or prohibition.

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

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

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

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

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

(a) obtain the association of unit owners' approval of a prospective renter;

(b) give the association of unit owners:

(i) a copy of a rental application;

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

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

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

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

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

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

(i) the information helps the association of unit owners determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration; and

(ii) the association of unit owners uses the information to determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration.

(10) The provisions of Subsections (8) and (9) apply to an association of unit owners

HB0454S01 compared with HB0454

regardless of when the association of unit owners is created.

Section ~~{1}~~3. Section ~~{57-8-17}~~57-8-10.7 is ~~{amended}~~enacted to read:

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

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

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

(ii) whether to pursue a claim for an unpaid assessment.

(b) The association of unit owners may not be required to take enforcement action if the management committee determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:

(i) the association of unit owners' legal position does not justify taking any or further enforcement action;

(ii) the covenant, restriction, or rule in the governing documents is likely to be construed as inconsistent with current law;

(iii) (A) a technical violation has or may have occurred; and

(B) the violation is not material as to a reasonable person or does not justify expending the association of unit owners' resources; or

(iv) it is not in the association of unit owners' best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(2) Subject to Subsection (3), if the management committee decides under Subsection (1)(b) to forego enforcement, the association of unit owners is not prevented from later taking enforcement action.

(3) The management committee may not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

(4) This section does not govern whether the association of unit owners' action in enforcing a provision of the governing documents constitutes a waiver or modification of that provision.

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

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

HB0454S01 compared with HB0454

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

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

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

(A) declaration and bylaws;

(B) most recent approved minutes; and

(C) most recent budget and financial statement.

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

(i) a Social Security number;

(ii) a bank account number; or

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

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

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

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

or

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

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

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

(a) a unit owner shall include:

(i) the association of unit owners' name;

HB0454S01 compared with HB0454

(ii) the unit owner's name;

(iii) the unit owner's property address;

(iv) the unit owner's email address;

(v) a description of the documents requested; and

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

(b) a unit owner may:

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

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

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

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

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

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

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

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

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

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

(ii) the unit owner shall pay the association of unit owners the reasonable cost of the copies or electronic scans and for time spent meeting with the unit owner, which may not exceed:

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

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

HB0454S01 compared with HB0454

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

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

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

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

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

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

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

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

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

(i) subject to Subsection (9), an association of unit owners fails to make documents available to the unit owner in accordance with this section, the association of unit owners' governing documents, or as otherwise provided by law; and

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

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

(i) the unit owner may request:

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

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

(C) any other relief provided by law; and

HB0454S01 compared with HB0454

(ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.

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

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

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

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

(ii) each requirement of this section with which the association of unit owners has failed to comply;

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

(iv) a date by which the association of unit owners shall remedy the association of unit owners' noncompliance that is at least 10 days after the day on which the unit owner delivers the notice to the association of unit owners.

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

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

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

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

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

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

HB0454S01 compared with HB0454

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

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

57-8-60. Administration of funds.

An association of unit owners:

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

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

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

57-8a-209. Rental restrictions.

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

- (i) create restrictions on the number and term of rentals in an association; or
- (ii) prohibit rentals in the association.

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

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

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

- (i) a lot owner in the military for the period of the lot owner's deployment;
- (ii) a lot occupied by a lot owner's parent, child, or sibling;
- (iii) a lot owner whose employer has relocated the lot owner for ~~no less than~~ two years or less; ~~††~~

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

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

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

HB0454S01 compared with HB0454

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

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

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

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

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

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; ~~[and]~~ or

(iii) the lot is transferred; and

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (2)(a) and (b); and

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

(3) For purposes of Subsection (2)(b)~~(iii)~~, a transfer occurs when one or more of the following occur:

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

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

(c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

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

(5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2).

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

HB0454S01 compared with HB0454

- (i) an association that contains a time period unit as defined in Section 57-8-3;
- (ii) any other form of timeshare interest as defined in Section 57-19-2; or
- (iii) subject to Subsection (6)(b), an association that is formed before May 12, 2009,

unless, on or after May 12, 2015, the association:

- (A) adopts a rental restriction or prohibition; or
- (B) amends an existing rental restriction or prohibition.

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

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

- (a) the restriction or prohibition receives unanimous approval by all lot owners; and
- (b) when the restriction or prohibition requires an amendment to the association's recorded declaration of covenants, conditions, and restrictions, the association fulfills all other requirements for amending the recorded declaration of covenants, conditions, and restrictions described in the association's governing documents.

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

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

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

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

HB0454S01 compared with HB0454

Subsection (8)(b), if:

(i) the information helps the association determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions; and

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

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

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

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

(1) As used in this section:

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

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

(ii) the appropriate amount of any reserve fund.

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

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

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

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

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

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

(4) A reserve fund analysis shall include:

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

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

HB0454S01 compared with HB0454

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

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

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

(5) An association shall:

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

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

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

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

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

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

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

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

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

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

HB0454S01 compared with HB0454

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

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

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

(c) This Subsection (9) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.

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

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

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

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

HB0454S01 compared with HB0454

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

Section ~~{2}9~~. Section ~~{57-8a-227}~~57-8a-212.5 is ~~{amended}~~enacted to read:

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

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

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

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

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

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

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

(A) declaration and bylaws;

(B) most recent approved minutes; and

(C) most recent budget and financial statement.

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

(i) a Social Security number;

(ii) a bank account number; or

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

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

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

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

(B) if the association does not have an active website, make physical copies of the

HB0454S01 compared with HB0454

documents described in Subsection (1)(a)(ii) available to lot owners during regular business hours at the association's address registered with the Department of Commerce under Section 57-8a-105.

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

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

(a) a lot owner shall include:

(i) the association's name;

(ii) the lot owner's name;

(iii) the lot owner's property address;

(iv) the lot owner's email address;

(v) a description of the documents requested; and

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

(b) a lot owner may:

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

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

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

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

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

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

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

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

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

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

(ii) the lot owner shall pay the association the reasonable cost of the copies or

HB0454S01 compared with HB0454

electronic scans and for time spent meeting with the lot owner, which may not exceed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the lot owner may request:

(A) injunctive relief requiring the association to comply with the provisions of this

HB0454S01 compared with HB0454

section;

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

(C) any other relief provided by law; and

(ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.

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

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

(d) At least 10 days before the day on which a lot owner files an action described in Subsection (6)(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 this section 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 10 days after the day on which the lot owner delivers the notice to the association.

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

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

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

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

†

HB0454S01 compared with HB0454

Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 11. Section 57-8a-230 is enacted to read:

57-8a-230. Administration of funds.

An association:

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

and

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