

## HB0329S02 compared with HB0329S01

~~{deleted text}~~ shows text that was in HB0329S01 but was deleted in HB0329S02.

Inserted text shows text that was not in HB0329S01 but was inserted into HB0329S02.

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Representative Carol Spackman Moss proposes the following substitute bill:

### HOMEOWNER ASSOCIATION PROVISIONS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carol Spackman Moss**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends the Condominium Ownership Act and the Community Association Act.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the enforcement of a lien during a period of noncompliance with registration requirements;
- ▶ ~~{amends and consolidates}~~repeals provisions regarding ~~{providing}~~ statements of unpaid assessments ~~{and}~~;
- ▶ amends provisions regarding payoff information;
- ▶ creates a statute of repose for certain claims; and

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- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

57-8-6.3, as enacted by Laws of Utah 2011, Chapter 255

57-8-13.1, as last amended by Laws of Utah 2013, Chapter 95

~~{ 57-8-54, as enacted by Laws of Utah 2011, Chapter 355~~

‡ 57-8a-105, as last amended by Laws of Utah 2013, Chapter 95

57-8a-106, as last amended by Laws of Utah 2012, Chapter 369

57-8a-217, as last amended by Laws of Utah 2015, Chapter 325

#### REPEALS:

~~{57-8a-311}~~57-8-54, as enacted by Laws of Utah 2011, Chapter 355

#### ~~{REPEALS:~~

~~— 57-8-6.3, as enacted by Laws of Utah 2011, Chapter 255~~

~~— 57-8a-106, as last amended by Laws of Utah 2012, Chapter 369~~

‡ 57-8a-206, as enacted by Laws of Utah 2004, Chapter 153

57-8a-311, as enacted by Laws of Utah 2011, Chapter 355

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

Section 1. Section 57-8-6.3 is amended to read:

57-8-6.3. ~~{Fee for providing payoff}~~Payoff information ~~{needed at closing}~~;

#### Applicability.

~~[(1) Unless specifically authorized in the declaration, bylaws, or rules, an association of unit owners may not charge a fee for providing association payoff information needed in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit.]~~

~~[(2) An association of unit owners may not:]~~

~~[(a) require a fee described in Subsection (1) that is authorized in the declaration;~~

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~~bylaws, or rules to be paid before closing; or~~

~~[(b) charge the fee if it exceeds \$50.]~~

~~[(3)(a) An association of unit owners that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.]~~

~~[(b) A request under Subsection (3)(a) is not effective unless the request:~~

~~1]~~

(1) A manager or management committee shall provide payoff information with respect to a unit owner's unit upon:

(a) a written request that:

(i) is conveyed ~~[in writing]~~ to the primary contact person designated under Subsection 57-8-13.1(3)(d);

(ii) contains:

(A) the name, telephone number, and address of the person making the request; and

(B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the unit for which the payoff information is requested~~;~~

~~[-]; and~~

(b) except as provided in Subsection (3), payment of a reasonable fee not to exceed \$50.

(2) If a unit owner makes a written request as described in Subsection (1) and the association of unit owners has referred the unit owner's delinquent account to a third party for collection, the association of unit owners may require that the unit owner obtain from the third party the amount of fees and costs owed or incurred on the unit owner's delinquent account that the association of unit owners referred to the third party.

(3) If a closing agent makes a written request for payoff information in accordance with Subsection (1) in connection with the closing of a unit owner's financing, refinancing, or sale of the unit owner's unit:

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(a) the association of unit owners may not require the fee described in Subsection (1)(b) to be paid before providing the payoff information; and

(b) if the association of unit owners fails to provide the payoff information within 10 business days after the day on which the closing agent requests the information, the association may not enforce a lien against that unit for money due to the association at that closing.

(4) This section applies to each association of unit owners, regardless of when the association of unit owners is formed.

Section ~~11~~2. Section **57-8-13.1** is amended to read:

### **57-8-13.1. Registration with Department of Commerce.**

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration, an association of unit owners shall register with the department in the manner established by the department.

(b) An association of unit owners existing under a declaration recorded before May 10, 2011, shall [~~no later than July 1, 2011,~~] register with the department in the manner established by the department.

(3) The department shall require an association of unit owners registering as required in this section to provide with each registration:

(a) the name and address of the association of unit owners;

(b) the name, address, telephone number, and, if applicable, email address of the president of the association of unit owners;

(c) the name and address of each management committee member;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit; and

(e) a registration fee not to exceed \$37.

(4) An association of unit owners that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

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(5) (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4)[:], an association of unit owners may not enforce a lien that arose under Section 57-8-44.

~~[(i) a lien may not arise under Section 57-8-44; and]~~

~~[(ii) an association of unit owners may not enforce an existing lien that arose under Section 57-8-44.]~~

(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association of unit owners that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association of unit owners that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association of unit owners ends a period of noncompliance[:], the association of unit owners may enforce a lien that arose under Section 57-8-44.

~~[(i) a lien may arise under Section 57-8-44 for any event that:]~~

~~[(A) occurred during the period of noncompliance; and]~~

~~[(B) would have given rise to a lien under Section 57-8-44 had the association of unit owners been in compliance with the registration requirements described in this section; and]~~

~~[(ii) an association of unit owners may enforce a lien described in Subsection (5)(e) or a lien that existed before the period of noncompliance.]~~

(f) If an owner's unit is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):

(i) a lien that arose under Section 57-8-44 before the conveyance of the unit became final is extinguished when the conveyance of the unit becomes final; and

(ii) an event that occurred before the conveyance of the unit became final, and that would have given rise to a lien under Section 57-8-44 had the association of unit owners been

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in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8-44 if the conveyance of the unit becomes final before the association of unit owners ends the period of noncompliance.

~~{ Section 2. Section 57-8-54 is amended to read:~~

~~57-8-54. Statement from manager or management committee of unpaid assessment -- Payoff information from manager or management committee ==~~  
**Applicability:**

~~(1) (a) A manager or management committee shall issue a written statement indicating any unpaid assessment with respect to a unit owner's unit upon:~~

~~[(a)] (i) a written request by the unit owner or the unit owner's agent; and~~

~~[(b)] (ii) payment of a reasonable fee not to exceed \$25.~~

~~(b) A manager or management committee shall provide payoff information with respect to a unit owner's unit upon:~~

~~(i) a written request that:~~

~~(A) is conveyed to the primary contact person designated under Subsection 57-8-13.1(3)(d);~~

~~(B) contains the name, telephone number and address of the person making the request and the facsimile number or email address for delivery of the payoff information; and~~

~~(C) is accompanied by a written consent for the release of the payoff information identifying the person requesting the information as a person to whom the payoff information may be released and signed and dated by an owner of the unit for which the payoff information is requested; and~~

~~(ii) subject to Subsection (3), payment of a reasonable fee not to exceed \$50.~~

~~(2) If a unit owner makes a written request as described in Subsection (1) and the association of unit owners has referred the unit owner's delinquent account to a third party for collection, the association of unit owners may:~~

~~(a) in the association's response to the request, include the amount of fees and costs from the unit owner's delinquent account that the association referred to the third party; or~~

~~(b) require that the unit owner obtain the amount of fees and costs that the association referred to the third party directly from the third party.~~

~~(3) If a closing agent makes a written request for payoff information in accordance with~~

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~~Subsection (1)(b) in connection with the closing of a unit owner's financing, refinancing, or sale of the unit owner's unit:~~

~~—— (a) the association of unit owners may not require the fee described in Subsection (1)(b)(ii) to be paid before providing the payoff information; and~~

~~—— (b) if the association of unit owners fails to provide the payoff information within 10 business days after the closing agent requests the information, the association may not enforce a lien against that unit for money due to the association at that closing until the association provides the information.~~

~~—— [(2)] (4) A written statement under Subsection (1) is conclusive in favor of a person who reasonably relies on the written statement in good faith.~~

~~—— (5) This section applies to each association of unit owners, regardless of when the association of unit owners is formed.~~

‡ Section 3. Section **57-8a-105** is amended to read:

### **57-8a-105. Registration with Department of Commerce.**

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall [~~no later than July 1, 2011,~~] register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that

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a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4)[:], an association may not enforce a lien that arose under Section 57-8a-301.

~~[(i) a lien may not arise under Section 57-8a-301; and]~~

~~[(ii) an association may not enforce an existing lien that arose under Section 57-8a-301.]~~

(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association ends a period of noncompliance[:], the association may enforce a lien that arose under Section 57-8a-301.

~~[(i) a lien may arise under Section 57-8a-301 for any event that:]~~

~~[(A) occurred during the period of noncompliance; and]~~

~~[(B) would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements described in this section; and]~~

~~[(ii) an association may enforce a lien described in Subsection (5)(c) or a lien that existed before the period of noncompliance.]~~



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(f) If an owner's residential lot is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):

(i) a lien that arose under Section 57-8a-301 before the conveyance of the residential lot became final is extinguished when the conveyance of the residential lot becomes final; and

(ii) an event that occurred before the conveyance of the residential lot became final, and that would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8a-301 if the conveyance of the residential lot becomes final before the association ends the period of noncompliance.

Section 4. Section 57-8a-106 is amended to read:

**57-8a-106. ~~{Fee for providing payoff; Payoff information {needed at closing}}--~~**

### Applicability.

~~[(1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, an association may not charge a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.]~~

~~[(2) An association may not:]~~

~~[(a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or]~~

~~[(b) charge the fee if it exceeds \$50.]~~

~~[(3) (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.]~~

~~[(b) A request under Subsection (3)(a) is not effective unless the request: {~~

~~}]~~

(1) An association's manager or board shall provide payoff information with respect to a lot owner's lot upon:

(a) a written request that:

(i) is conveyed ~~[in writing]~~ to the primary contact person designated under Subsection 57-8a-105(3)(d);

(ii) contains:

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- (A) the name, telephone number, and address of the person making the request; and
- (B) the facsimile number or email address for delivery of the payoff information; and
- (iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the lot for which the payoff information is requested~~†~~.

~~†~~[-]; and

(b) except as provided in Subsection (3), payment of a reasonable fee not to exceed \$50.

(2) If a lot owner makes a written request as described in Subsection (1) and the association has referred the lot owner's delinquent account to a third party for collection, the association may require that the lot owner obtain from the third party the amount of fees and costs owed or incurred on the lot owner's delinquent account that the association referred to the third party.

(3) If a closing agent makes a written request for payoff information in accordance with Subsection (1) in connection with the closing of a lot owner's financing, refinancing, or sale of the lot owner's lot:

(a) the association may not require the fee described in Subsection (1)(b) to be paid before providing the payoff information; and

(b) if the association fails to provide the payoff information within 10 business days after the day on which the closing agent requests the information, the association may not enforce a lien against that lot for money due to the association at that closing.

(4) This section applies to each association, regardless of when the association is formed.

Section ~~{4}~~5. Section **57-8a-217** is amended to read:

**57-8a-217. Association rules -- Requirements and limitations relating to board's action on rules -- Vote of disapproval -- Statute of repose.**

(1) As used in this section:

(a) "Rule" means an association's policy, guideline, restriction, procedure, or regulation that:

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(i) is not in the association's articles of incorporation or other similar entity-formation document, declaration, bylaw, or plat; and

(ii) governs the conduct of persons or the use, quality, type, design, or appearance of real or personal property.

(b) "Rule" does not include the board's internal business operating procedures.

~~[(+)]~~ (2) (a) Subject to Subsection ~~[(+)]~~ (2)(b), a board may adopt, amend, modify, cancel, limit, create exceptions to, or expand~~[-, or enforce]~~ the rules ~~[and design criteria]~~ of the association.

(b) A board's action under Subsection ~~[(+)]~~ (2)(a) is subject to:

(i) this section;

(ii) any limitation that the declaration imposes on the authority stated in Subsection ~~[(+)]~~ (2)(a);

(iii) the limitation on rules in Sections 57-8a-218 and 57-8a-219;

(iv) the board's duty to exercise business judgment on behalf of:

(A) the association; and

(B) the lot owners in the association; and

(v) the right of the lot owners or declarant to disapprove the action under Subsection ~~[(+)]~~ (5).

~~[(2)]~~ (3) Except as provided in Subsection ~~[(3)]~~ (4), before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules ~~[and design criteria]~~ of the association, the board shall:

(a) at least 15 days before the day on which the board ~~[will meet]~~ meets to consider a change to a rule ~~[or design criterion]~~, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is considering a change to a rule ~~[or design criterion]~~;

(b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection ~~[(+)]~~ (2)(a); and

(c) deliver a copy of the change in the rules ~~[or design criteria]~~ approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the ~~[date of the board meeting]~~ day on which the board meets.

~~[(3)]~~ (4) (a) Subject to Subsection ~~[(3)]~~ (4)(b), a board may adopt a rule without first giving notice to the lot owners under Subsection ~~[(2)]~~ (3) if there is an imminent risk of harm

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to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

(b) The board shall provide notice under Subsection ~~[(2)]~~ (3) to the lot owners of a rule adopted under Subsection ~~[(3)]~~ (4)(a).

~~[(4)]~~ (5) A board action in accordance with Subsections ~~[(1)]~~ (2), ~~[(2)]~~ (3), and ~~[(3)]~~ (4) is disapproved if within 60 days after the ~~[date]~~ day of the board meeting where the action was taken:

(a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests of the lot owners in the association; and

(ii) the vote is taken at a special meeting called for that purpose by the lot owners under the declaration, articles, or bylaws; or

(b) (i) the declarant delivers to the board a writing of disapproval; and

(ii) (A) the declarant is within the period of administrative control; or

(B) for an expandable project, the declarant has the right to add real estate to the project.

~~[(5)]~~ (6) (a) The board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition, in the same manner as the declaration, articles, or bylaws provide for a special meeting, for the meeting to be held.

(b) Upon the board receiving a petition under Subsection ~~[(5)]~~ (6)(a), the effect of the board's action is:

(i) stayed until after the meeting is held; and

(ii) subject to the outcome of the meeting.

~~[(6)]~~ (7) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under this section if the declaration reserves to the declarant the right to exempt the declarant.

(8) A person may not commence an action against an association or a member of the association's board for failing to comply with Subsection (3) more than 18 months after the day on which the meeting in which the board action described in Subsection (3) occurs.

~~{ Section 5. Section 57-8a-311 is amended to read:~~

~~57-8a-311. Statement from association's manager or board of unpaid assessment -- Payoff information from association's manager or board -- Applicability.~~

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~~—— (1) (a) An association's manager or board shall issue a written statement indicating any unpaid assessment with respect to a lot owner's lot upon:~~

~~—— [(a)] (i) a written request by the lot owner or the lot owner's agent; and~~

~~—— [(b)] (ii) payment of a reasonable fee not to exceed \$25.~~

~~—— (b) An association's manager or board shall provide payoff information with respect to a lot owner's lot upon:~~

~~—— (i) a written request that:~~

~~—— (A) is conveyed to the primary contact person designated under Subsection 57-8a-105(3)(d);~~

~~—— (B) contains the name, telephone number, and address of the person making the request and the facsimile number or email address for delivery of the payoff information; and~~

~~—— (C) is accompanied by a written consent for the release of the payoff information identifying the person requesting the information as a person to whom the payoff information may be released and signed and dated by an owner of the lot for which the payoff information is requested; and~~

~~—— (ii) subject to Subsection (3), payment of a reasonable fee not to exceed \$50.~~

~~—— (2) If a lot owner makes a written request as described in Subsection (1) and the association has referred the lot owner's delinquent account to a third party for collection, the association may:~~

~~—— (a) in the association's response to the request, include the amount of fees and costs from the lot owner's delinquent account that the association referred to the third party; or~~

~~—— (b) require that the lot owner obtain the amount of fees and costs that the association referred to the third party directly from the third party.~~

~~—— (3) If a closing agent makes a written request for payoff information in accordance with Subsection (1)(b) in connection with the closing of a lot owner's financing, refinancing, or sale of the lot owner's lot:~~

~~—— (a) the association may not require the fee described in Subsection (1)(b)(ii) to be paid before providing the payoff information; and~~

~~—— (b) if the association fails to provide the payoff information within 10 business days after the closing agent requests the information, the association may not enforce a lien against that lot for money due to the association at that closing until the association provides the~~

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information:

~~— [(2)] (4) A written statement under Subsection (1) is conclusive in favor of a person who reasonably relies on the written statement in good faith.~~

~~— (5) This section applies to each association, regardless of when the association is formed.~~

‡ Section 6. **Repealer.**

This bill repeals:

Section ~~{57-8-6.3, Fee for providing payoff information needed at closing.~~

~~— Section 57-8a-106, Fee for providing payoff information needed at closing}~~ 57-8-54,

Statement from manager or management committee of unpaid assessment.

Section 57-8a-206, **Written statement of unpaid assessment.**

Section 57-8a-311, Statement from association's manager or board of unpaid assessment.