

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: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ repeals provisions regarding statements of unpaid assessments;
- ▶ amends provisions regarding payoff information;
- ▶ creates a statute of repose for certain claims; and
- ▶ 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

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



26 **57-8a-217**, as last amended by Laws of Utah 2015, Chapter 325

27 REPEALS:

28 **57-8-54**, as enacted by Laws of Utah 2011, Chapter 355

29 **57-8a-206**, as enacted by Laws of Utah 2004, Chapter 153

30 **57-8a-311**, as enacted by Laws of Utah 2011, Chapter 355



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

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

33 **57-8-6.3. Payoff information -- Applicability.**

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

37 (2) An association of unit owners may not:

38 (a) require a fee described in Subsection (1) that is authorized in the declaration,
39 bylaws, or rules to be paid before closing; or

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

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

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

45 (i) is conveyed in writing to the primary contact person designated under Subsection
46 **57-8-13.1(3)(d)**;

47 (ii) contains:

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

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

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

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

53 (B) signed and dated by an owner of the unit for which the payoff information is
54 requested.

55 (4) If a closing agent makes a written request as described in Subsection (3) and the

57 association of unit owners has referred the unit owner's delinquent account to a third party for
 58 collection, the association of unit owners may require that the closing agent obtain from the
 59 third party the amount of fees and costs owed or incurred on the unit owner's delinquent
 60 account that the association of unit owners referred to the third party.

61 (5) Payoff information described in Subsection (1) is conclusive in favor of a person
 62 who relies on the payoff information in good faith.

63 [~~4~~] (6) This section applies to each association of unit owners, regardless of when the
 64 association of unit owners is formed.

65 Section 2. Section **57-8a-106** is amended to read:

66 **57-8a-106. Payoff information -- Applicability.**

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

71 (2) An association may not:

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

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

75 (3) (a) An association that fails to provide information described in Subsection (1)
 76 within five business days after the day on which the closing agent requests the information may
 77 not enforce a lien against that unit for money due to the association at closing.

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

79 (i) is conveyed in writing to the primary contact person designated under Subsection
 80 **57-8a-105(3)(d)**;

81 (ii) contains:

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

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

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

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

87 (B) signed and dated by an owner of the lot for which the payoff information is

88 requested.

89 (4) If a closing agent makes a written request as described in Subsection (3) and the
90 association has referred the lot owner's delinquent account to a third party for collection, the
91 association may require that the closing agent obtain from the third party the amount of fees
92 and costs owed or incurred on the lot owner's delinquent account that the association referred
93 to the third party.

94 (5) Payoff information described in Subsection (1) is conclusive in favor of a person
95 who relies on the payoff information in good faith.

96 [~~4~~] (6) This section applies to each association, regardless of when the association is
97 formed.

98 Section 3. Section 57-8a-217 is amended to read:

99 **57-8a-217. Requirements and limitations relating to board's action on rules --**

100 **Vote of disapproval.**

101 (1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit,
102 create exceptions to, expand, or enforce the rules and design criteria of the association.

103 (b) A board's action under Subsection (1)(a) is subject to:

104 (i) this section;

105 (ii) any limitation that the declaration imposes on the authority stated in Subsection

106 (1)(a);

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

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

109 (A) the association; and

110 (B) the lot owners in the association; and

111 (v) the right of the lot owners or declarant to disapprove the action under Subsection

112 (4).

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

116 (a) at least 15 days before the day on which the board [~~will meet~~] meets to consider a
117 change to a rule or design criterion, deliver notice to lot owners, as provided in Section

118 57-8a-214, that the board is considering a change to a rule or design criterion;

119 (b) provide an open forum at the board meeting giving lot owners an opportunity to be
120 heard at the board meeting before the board takes action under Subsection (1)(a); and

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

124 (3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving
125 notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common
126 area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

127 (b) The board shall provide notice under Subsection (2) to the lot owners of a rule
128 adopted under Subsection (3)(a).

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

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

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

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

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

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

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

142 (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the
143 board's action is:

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

145 (ii) subject to the outcome of the meeting.

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

149 (7) A person may not commence an action against an association or a member of the

150 association's board for failing to comply with Subsection (2) more than 18 months after the day
151 on which the meeting in which the board action described in Subsection (2) occurs.

152 Section 4. **Repealer.**

153 This bill repeals:

154 Section **57-8-54, Statement from manager or management committee of unpaid**
155 **assessment.**

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

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