

HB0155S02 compared with HB0155S01

~~text~~ shows text that was in HB0155S01 but was deleted in HB0155S02.

text shows text that was not in HB0155S01 but was inserted into HB0155S02.

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Representative Cheryl K. Acton proposes the following substitute bill:

HOMEOWNER ASSOCIATION PROVISIONS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends ~~the Condominium Ownership Act and the Community Association Act~~ provisions related to homeowner associations and their governing documents.

Highlighted Provisions:

This bill:

- ▶ imposes certain disclosure requirements before the closing of a sale of homeowner association property to an independent third party;
- ~~amends certain registration requirements to include an electronic version of an association's or an association of unit owners' governing documents;~~
- ▶ requires the Department of Commerce to publish certain educational materials on its website;
- ▶ requires ~~the Department of Commerce to provide links~~ a county recorder to, upon

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request, provide online access to recorded governing documents:

- ▶ prohibits the office of the county recorder of a county from charging a fee for online access to governing documents ~~{on its website}~~; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-21-18.5, as last amended by Laws of Utah 2019, Chapter 302

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

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

ENACTS:

57-8-6.1, Utah Code Annotated 1953

57-8a-105.1, Utah Code Annotated 1953

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

Section 1. Section 17-21-18.5 is amended to read:

17-21-18.5. Fees of county recorder.

- (1) The county recorder shall receive the following fees:
 - (a) for recording any instrument, not otherwise provided for, other than bonds of public officers, \$40;
 - (b) for recording any instrument, including those provided for under Title 70A, Uniform Commercial Code, other than bonds of public officers, and not otherwise provided for, \$40, and if an instrument contains more than 10 descriptions, \$2 for each additional description;
 - (c) for recording mining location notices and affidavits of labor affecting mining claims, \$40; and
 - (d) for an affidavit or proof of labor which contains more than 10 mining claims, \$2 for each additional mining claim.

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(2) (a) Each county recorder shall record the mining rules of the several mining districts in each county without fee.

(b) Certified copies of these records shall be received in all tribunals and before all officers of this state as prima facie evidence of the rules.

(3) The county recorder shall receive the following fees:

(a) subject to Subsection (6), for copies of any record or document, a reasonable fee as determined by the county legislative body;

(b) for each certificate under seal, \$5;

(c) for recording any plat, \$50 for each sheet and \$2 for each lot or unit designation;

(d) for taking and certifying acknowledgments, including seal, \$5 for one name and \$2 for each additional name;

(e) for recording any license issued by the Division of Occupational and Professional Licensing, \$40; and

(f) for recording a federal tax lien, \$40, and for the discharge of the lien, \$40.

(4) A county recorder may not charge more than one recording fee for each instrument, regardless of whether the instrument bears multiple descriptive titles or includes one or more attachments as part of the instrument.

(5) By January 1, 2022, each county shall accept and provide for electronic recording of instruments.

(6) (a) As used in this Subsection (6):

(i) "Association" means the same as that term is defined in Section 57-8a-102;

(ii) "Association of unit owners" means the same as that term is defined in Section 57-8-2; and

(iii) "Governing documents" means the same as that term is defined in:

(A) Section 57-8a-102, for an association; and

(B) Section 57-8-2, for an association of unit owners.

(b) A counter recorder:

(i) shall, upon request, provide online access to the recorded governing documents of an association or an association of unit owners; and

(ii) may not collect a fee for providing access to recorded governing documents as described in this Subsection (6).

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~~[(6)]~~1(7) The county may determine and collect a fee for all services not enumerated in this section.

~~[(7)]~~1(8) A county recorder may not be required to collect a fee for services that are unrelated to the county recorder's office.

Section ~~{1}~~2. Section **57-8-6.1** is enacted to read:

57-8-6.1. Information required before sale to independent third party.

(1) Before the sale of any unit under the jurisdiction of an association of unit owners to an independent third party, the grantor shall provide to the independent third party:

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

(b) a link or other access point to the department's educational materials described in

Subsection 57-8-13.1(6).

(2) The grantor shall provide the information described in Subsection (1) before closing.

(3) The association of unit owners shall, upon request by the grantor, provide to the grantor the information described in Subsection (1).

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

Section ~~{2}~~3. 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;

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(c) the name and address of each manager or 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) an electronic copy of the association of unit owners' governing documents; and~~

~~— [(e)] (f) and~~

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

(4) ~~{(a)}~~ 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).

~~{ — (b) An association of unit owners existing under a declaration recorded before May 12, 2020, shall, before August 10, 2020, submit to the department, in a manner the department establishes, the information required under Subsection (3)(c):~~

~~‡~~ (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):

(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

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unit owners ends a period of noncompliance:

(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 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.

(6) The department shall

~~(a)~~ publish educational materials on the department's website providing, in simple and easy to understand language, a brief overview of state law governing associations of unit owners, including:

~~(i)~~ a description of the rights and responsibilities provided in this chapter to any party under the jurisdiction of an association of unit owners; and

~~(ii)~~ instructions regarding how an association of unit owners may be organized and dismantled in accordance with this chapter ~~;~~ and

~~(b)~~ for each association of unit owners registered in accordance with this section, provide a link on the department's website to the association of unit owners' governing documents.

Section ~~(3)~~ 4. 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.

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(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. ~~[(c)]~~

(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 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) an electronic copy of the association's governing documents; and~~

~~— [(e)] (f); and~~

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

(4) ~~[(a)]~~ 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).

~~{ — (b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 12, 2020, shall, before August 10, 2020, submit to the department, in a manner the department establishes, the information required under Subsection (3)(c):~~

~~‡~~ (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):

(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.

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(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:

(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)(e) or a lien that existed before the period of noncompliance.

(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.

(6) The department shall ~~+~~

~~(a) }~~ publish educational materials on the department's website providing, in simple and easy to understand language, a brief overview of state law governing associations, including:

(~~fi~~a) a description of the rights and responsibilities provided in this chapter to any

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party under the jurisdiction of an association; and

(~~iii~~)^b instructions regarding how an association may be organized and dismantled in accordance with this chapter~~;~~ ^{and}

~~— (b) for each association registered in accordance with this section, provide a link on the department's website to the association's governing documents~~.

Section ~~{4}~~⁵. Section **57-8a-105.1** is enacted to read:

57-8a-105.1. Information required before sale to independent third party.

(1) Before the sale of any lot under the jurisdiction of an association to an independent third party, the grantor shall provide to the independent third party:

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

(b) a link or other access point to the department's educational materials described in

Subsection 57-8a-105(6).

(2) The grantor shall provide the information described in Subsection (1) before closing.

(3) The association shall, upon request by the grantor, provide to the grantor the information described in Subsection (1).

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