

HOMEOWNERS ASSOCIATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends and enacts provisions governing a homeowner association.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ requires each attorney in the Office of the Property Rights Ombudsman (office) to have a background in various laws governing homeowner associations (HOA);
- ▶ amends membership of the Land Use and Eminent Domain Advisory Board;
- ▶ requires the office to provide lot owners and unit owners information on their rights in respect to an HOA;
- ▶ requires the office to provide information on various laws governing an HOA;
- ▶ requires the office to conduct mediation, arbitration, or issue an advisory opinion upon the request of a lot owner, unit owner, or HOA;
- ▶ requires an HOA to notify each unit owner of legal action or state action in which the HOA is involved;
- ▶ requires an HOA to make available certain documents;
- ▶ states that a management company or board, respectively, is responsible for all documents pertaining to the HOA;
- ▶ authorizes a court to award reasonable attorney fees if an HOA fails to adopt a clear dispute resolution process or comply with that process;



- 28 ▶ requires an HOA to inform each unit owner of a request for arbitration or mediation
- 29 filed with the office;
- 30 ▶ requires an HOA to include certain information when recording a lien;
- 31 ▶ enacts provisions governing the presumption of payment to an HOA;
- 32 ▶ enacts provisions stating that the management committee or board, respectively, is a
- 33 fiduciary for the HOA and each unit or lot owner;
- 34 ▶ requires an HOA to provide a recording of management committee or board
- 35 meetings; and
- 36 ▶ makes conforming changes.

37 Money Appropriated in this Bill:

38 None

39 Other Special Clauses:

40 None

41 Utah Code Sections Affected:

42 **AMENDS:**

- 43 **13-43-102**, as enacted by Laws of Utah 2006, Chapter 258
- 44 **13-43-201**, as enacted by Laws of Utah 2006, Chapter 258
- 45 **13-43-202**, as last amended by Laws of Utah 2021, First Special Session, Chapter 3
- 46 **13-43-203**, as last amended by Laws of Utah 2018, Chapter 215
- 47 **13-43-204**, as last amended by Laws of Utah 2018, Chapter 349
- 48 **13-43-205**, as last amended by Laws of Utah 2014, Chapter 59
- 49 **13-43-206**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
- 50 **57-8-17**, as last amended by Laws of Utah 2018, Chapter 395
- 51 **57-8-38**, as last amended by Laws of Utah 2008, Chapter 3
- 52 **57-8-44**, as last amended by Laws of Utah 2014, Chapter 116
- 53 **57-8-57**, as last amended by Laws of Utah 2017, Chapter 131
- 54 **57-8-59**, as enacted by Laws of Utah 2018, Chapter 395
- 55 **57-8a-226**, as last amended by Laws of Utah 2017, Chapters 131 and 284
- 56 **57-8a-227**, as last amended by Laws of Utah 2018, Chapter 395
- 57 **57-8a-301**, as last amended by Laws of Utah 2014, Chapter 116
- 58 **57-8a-501**, as enacted by Laws of Utah 2013, Chapter 152

59 ENACTS:

60 [57-8-10.4](#), Utah Code Annotated 1953

61 [57-8-50.1](#), Utah Code Annotated 1953

62 [57-8a-231](#), Utah Code Annotated 1953

63 [57-8a-232](#), Utah Code Annotated 1953

64 [57-8a-312](#), Utah Code Annotated 1953

65

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

67 Section 1. Section **13-43-102** is amended to read:

68 **13-43-102. Definitions.**

69 As used in this chapter:

70 (1) "Constitutional taking" or "taking" means a governmental action resulting in a
71 taking of real property that requires compensation to the owner of the property under:

72 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

73 (b) Utah Constitution, Article I, Section 22.

74 (2) "Homeowner association" means:

75 (a) an association of unit owners, as defined in Section [57-8-8](#); or

76 (b) a homeowner association, as defined in Section [57-8a-102](#).

77 (3) "Lot" means the same as that term is defined in Section [57-8a-102](#).

78 [~~2~~] (4) "Takings and eminent domain law" means the provisions of the federal and
79 state constitutions, the case law interpreting those provisions, and any relevant statutory
80 provisions that:

81 (a) involve constitutional issues arising from the use or ownership of real property;

82 (b) require a governmental [~~unit~~] body to compensate a real property owner for a
83 constitutional taking; or

84 (c) provide for relocation assistance to those persons who are displaced by the use of
85 eminent domain.

86 (5) "Unit" means the same as that term is defined in Section [57-8-3](#).

87 (6) "Unit owner" means the same as that term is defined in Section [57-8-3](#).

88 Section 2. Section **13-43-201** is amended to read:

89 **13-43-201. Office of the Property Rights Ombudsman.**

90 (1) There is created an Office of the Property Rights Ombudsman in the Department of
91 Commerce.

92 (2) ~~[The]~~ To fill legal positions within the Office of the Property Rights Ombudsman,
93 the executive director of the Department of Commerce, with the concurrence of the Land Use
94 and Eminent Domain Advisory Board created in Section 13-43-202, shall appoint attorneys
95 with background or expertise in:

96 (a) takings[;] law;

97 (b) eminent domain[, and] law;

98 (c) land use law ~~[to fill legal positions within the Office of the Property Rights~~
99 ~~Ombudsman.];~~

100 (d) Title 57, Chapter 8, Condominium Ownership Act;

101 (e) Title 57, Chapter 8a, Community Association Act;

102 (f) Title 57, Chapter 21, Utah Fair Housing Act;

103 (g) The Fair Housing Act, 42 U.S.C. Sec. 3601 et seq.;

104 (h) Section 504 of the Rehabilitation Act of 1973; and

105 (i) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

106 (3) A person appointed under this section is an exempt employee.

107 (4) An attorney appointed under this section is an at-will employee who may be
108 terminated without cause by:

109 (a) the executive director of the Department of Commerce; or

110 (b) an action of the land Use and Eminent Domain Advisory Board.

111 Section 3. Section 13-43-202 is amended to read:

112 **13-43-202. Land Use and Eminent Domain Advisory Board -- Appointment --**
113 **Compensation -- Duties.**

114 (1) There is created the Land Use and Eminent Domain Advisory Board, within the
115 Office of the Property Rights Ombudsman, consisting of the following ~~[seven]~~ nine members:

116 (a) one individual representing special service districts, nominated by the Utah
117 Association of Special Districts;

118 (b) one individual representing municipal government, nominated by the Utah League
119 of Cities and Towns;

120 (c) one individual representing county government, nominated by the Utah Association

121 of Counties;

122 (d) one individual representing the residential construction industry, nominated by the
123 Utah Home Builders Association;

124 (e) one individual representing the real estate industry, nominated by the Utah
125 Association of Realtors;

126 (f) one individual representing the land development community, jointly nominated by
127 the Utah Association of Realtors and the Utah Home Builders Association; ~~[and]~~

128 (g) one individual who:

129 (i) is a citizen with experience in land use issues;

130 (ii) does not hold public office; and

131 (iii) is not currently employed, nor has been employed in the previous 12 months, by
132 any of the entities or industries listed in Subsections (1)(a) through (f)[-];

133 (h) one individual who is a current board member of a homeowner association; and

134 (i) one individual who:

135 (i) is a lot owner or unit owner;

136 (ii) does not hold public office; and

137 (iii) is not employed by or a contractor of a homeowner association.

138 (2) After receiving nominations, the governor shall appoint members to the board.

139 (3) The term of office of each member is four years, except that the governor shall
140 appoint three of the members of the board to an initial two-year term.

141 (4) Each mid-term vacancy shall be filled for the unexpired term in the same manner as
142 an appointment under Subsections (1) and (2).

143 (5) (a) Board members shall elect a chair from their number and establish rules for the
144 organization and operation of the board.

145 (b) ~~[Five]~~ Seven members of the board constitute a quorum for the conduct of the
146 board's business.

147 (c) The affirmative vote of ~~[five]~~ seven members is required to constitute the decision
148 of the board on any matter.

149 (6) A member may not receive compensation or benefits for the member's service, but
150 may receive per diem and travel expenses in accordance with:

151 (a) Section [63A-3-106](#);

- 152 (b) Section 63A-3-107; and
- 153 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 154 63A-3-107.
- 155 (7) A member need not give a bond for the performance of official duties.
- 156 (8) The Office of the Property Rights Ombudsman shall provide staff to the board.
- 157 (9) The board shall:
 - 158 (a) receive reports from the Office of the Property Rights Ombudsman that are
 - 159 requested by the board;
 - 160 (b) establish rules of conduct and performance for the Office of the Property Rights
 - 161 Ombudsman;
 - 162 (c) receive donations or contributions from any source for the Office of the Property
 - 163 Rights Ombudsman's benefit;
 - 164 (d) subject to any restriction placed on a donation or contribution received under
 - 165 Subsection (9)(c), authorize the expenditure of donations or contributions for the Office of the
 - 166 Property Rights Ombudsman's benefit;
 - 167 (e) receive budget recommendations from the Office of the Property Rights
 - 168 Ombudsman; and
 - 169 (f) revise budget recommendations received under Subsection (9)(e).
- 170 (10) The board shall maintain a resource list of qualified arbitrators and mediators who
- 171 may be appointed under Section 13-43-204 and qualified persons who may be appointed to
- 172 render advisory opinions under Section 13-43-205.

173 Section 4. Section 13-43-203 is amended to read:

174 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

175 (1) The Office of the Property Rights Ombudsman shall:

176 (a) develop and maintain expertise in and understanding of:

177 (i) takings[;] law;

178 (ii) eminent domain[, and] law;

179 (iii) land use law;

180 (iv) Title 57, Chapter 8, Condominium Ownership Act;

181 (v) Title 57, Chapter 8a, Community Association Act;

182 (vi) Title 57, Chapter 21, Utah Fair Housing Act;

- 183 (vii) The Fair Housing Act, 42 U.S.C. Sec. 3601 et seq.;
184 (viii) Section 504 of the Rehabilitation Act of 1973; and
185 (ix) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.;
186 (b) clearly identify the specific information that is prepared for distribution to property
187 owners whose land is being acquired under the provisions of Section [78B-6-505](#);
188 (c) assist state agencies and local governments in developing the guidelines required by
189 Title 63L, Chapter 4, Constitutional Takings Issues Act;
190 (d) at the request of a state agency or local government, assist the state agency or local
191 government, in analyzing actions with potential takings implications or other land use issues;
192 (e) advise real property owners who:
193 (i) have a legitimate potential or actual takings claim against a state or local
194 government entity or have questions about takings, eminent domain, and land use law; [~~or~~]
195 (ii) own a parcel of property that is landlocked, as to the owner's rights and options
196 with respect to obtaining access to a public street;
197 (iii) are lot owners as to the owners' rights in respect to a homeowner association; or
198 (iv) are unit owners as to the unit owners' rights in respect to a homeowner association;
199 (f) identify state or local government actions that have potential takings implications
200 and, if appropriate, advise those state or local government entities about those implications;
201 (g) provide information to private citizens, civic groups, government entities, and other
202 interested parties about takings, eminent domain, [~~and~~] land use law and their rights, including
203 a right to just compensation, and responsibilities under the takings, eminent domain, or land
204 use laws through seminars and publications, and by other appropriate means;
205 (h) provide uniform information to private citizens, unit owners, lot owners,
206 homeowner associations, and other interested parties about rights and responsibilities
207 regarding:
208 (i) the application and compliance with governing documents, as defined in Section
209 [57-8-3](#) or [57-8a-102](#), respectively;
210 (ii) Title 57, Chapter 21, Utah Fair Housing Act;
211 (iii) The Fair Housing Act, 42 U.S.C. 3601 et seq.;
212 (iv) Section 504 of the Rehabilitation Act of 1973;
213 (v) the foreclosure process for failure to pay an assessment, as defined in Section

214 [57-8-3](#) or [57-8a-102](#), respectively; and

215 (vi) failure to comply with the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692

216 et seq.;

217 ~~[(h)]~~ (i) (i) provide the information described in Section [78B-6-505](#) on the Office of the
218 Property Rights Ombudsman's website in a form that is easily accessible; and

219 ~~[(h)]~~ (ii) ensure that the information is current; and

220 ~~[(i)-(j)]~~ (j) (i) provide education and training regarding:

221 (A) the drafting and application of land use laws and regulations; ~~[and]~~

222 (B) land use dispute resolution; and

223 (C) mitigating and resolving disputes involving issues described in Subsection (1)(h);

224 and

225 (ii) use any money transmitted in accordance with Subsection [15A-1-209\(5\)](#) to pay for
226 any expenses required to provide the education and training described in Subsection (1)(i)(i),
227 including grants to a land use training organization that:

228 (A) the Land Use and Eminent Domain Advisory Board, created in Section [13-43-202](#),
229 selects and proposes; and

230 (B) the property rights ombudsman and the executive director of the Department of
231 Commerce jointly approve.

232 (2) (a) Neither the Office of the Property Rights Ombudsman nor its individual
233 attorneys may represent private parties, state agencies, local governments, a homeowner
234 association, lot owner, unit owner, or any other individual or entity in a legal action that arises
235 from or relates to a matter addressed in this chapter.

236 (b) An action by an attorney employed by the Office of the Property Rights
237 Ombudsman, by a neutral third party acting as mediator or arbitrator under Section [13-43-204](#),
238 or by a neutral third party rendering an advisory opinion under Section [13-43-205](#) or
239 [13-43-206](#), taken within the scope of the duties set forth in this chapter, does not create an
240 attorney-client relationship between the Office of the Property Rights Ombudsman, or the
241 office's attorneys or appointees, and an individual or entity.

242 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
243 party rendering an advisory opinion under Section [13-43-205](#) or [13-43-206](#), may be compelled
244 to testify in a civil action filed concerning the subject matter of any review, mediation, or

245 arbitration by, or arranged through, the office.

246 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
247 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
248 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

249 (b) Subsection (4)(a) does not apply to:

250 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

251 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,
252 Chapter 11, Utah Uniform Arbitration Act;

253 (iii) actions for de novo review of an arbitration award or issue brought under the
254 authority of Subsection 13-43-204~~(3)~~(4)(a)(i); or

255 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

256 Section 5. Section 13-43-204 is amended to read:

257 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
258 **of disputes.**

259 (1) If requested by the private property owner, or in the case of a water conveyance
260 facility either the private property owner or the facility owner of the water conveyance facility,
261 and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or
262 conduct or arrange arbitration for:

263 (a) a dispute between the owner and a government entity or other type of condemning
264 entity:

265 (i) involving taking or eminent domain issues;

266 (ii) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,
267 Eminent Domain; or

268 (iii) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
269 Assistance Act; or

270 (b) the private property owner and the facility owner of a water conveyance facility as
271 described in Section 73-1-15.5 regarding:

272 (i) the relocation of the water conveyance facility; or

273 (ii) a modification to the method of water delivery of the water conveyance facility.

274 (2) If requested by a lot owner, unit owner, or homeowner association, the Office of the
275 Property Rights Ombudsman shall mediate, conduct or arrange arbitration for, disputes

276 pertaining to an association and related to:

277 (a) failure to comply with governing documents, as defined Section 57-8-3 or
278 57-8a-102, respectively;

279 (b) failure to comply with:

280 (i) Title 57, Chapter 21, Utah Fair Housing Act;

281 (ii) The Fair Housing Act, 42 U.S.C. 3601 et seq.; or

282 (iii) Section 504 of the Rehabilitation Act of 1973;

283 (c) the amount of an assessment, if a notice of default is recorded against a lot owner or
284 unit owner for failure to pay the assessment; or

285 (d) failure to comply with the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692
286 et seq.

287 ~~[(2)]~~ (3) (a) If arbitration or mediation is requested by a private property owner under
288 this section, Section 57-12-14, or 78B-6-522, or either the private property owner or the facility
289 owner of a water conveyance facility under Section 73-1-15.5, and arranged by the Office of
290 the Property Rights Ombudsman, the parties shall participate in the mediation or arbitration as
291 if the matter were ordered to mediation or arbitration by a court.

292 (b) If a lot owner or unit owner and homeowner association agree to arbitration or
293 mediation under this section, the parties shall participate in the mediation or arbitration as if the
294 matter were ordered to mediation or arbitration by a court.

295 ~~[(3)]~~ (4) (a) (i) In conducting or arranging for arbitration under Subsection (1) or (2),
296 the Office of the Property Rights Ombudsman shall follow the procedures and requirements of
297 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

298 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
299 parties shall treat the matter as if:

300 (A) it were ordered to arbitration by a court; and

301 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
302 provided for in this section was appointed as arbitrator by the court.

303 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
304 arbitrated is not already the subject of legal action, the district court having jurisdiction over
305 the county where the private property involved in the dispute is located is the court referred to
306 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

307 (iv) An arbitration award under this chapter may not be vacated under the provisions of
308 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the
309 parties.

310 (b) The Office of the Property Rights Ombudsman shall issue a written statement
311 declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of
312 the Property Rights Ombudsman:

313 (i) the issues are not ripe for review;

314 (ii) assuming the alleged facts are true, no cause of action exists under United States or
315 Utah law;

316 (iii) all issues raised are beyond the scope of the Office of the Property Rights
317 Ombudsman's statutory duty to review; or

318 (iv) the mediation or arbitration is otherwise not appropriate.

319 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
320 arbitrate a dispute when:

321 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
322 arbitrator and agrees to pay for the services of another arbitrator;

323 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
324 reason other than those stated in Subsection [~~(3)~~] (4)(b) and one or both parties are willing to
325 pay for the services of another arbitrator; or

326 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
327 appoint another person to arbitrate the dispute with no charge to the parties for the services of
328 the appointed arbitrator.

329 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
330 Ombudsman shall appoint an arbitrator who is agreeable to:

331 (A) both parties; or

332 (B) the Office of the Property Rights Ombudsman and the party paying for the
333 arbitrator.

334 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
335 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

336 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
337 expenses incurred in the performance of the arbitrator's duties at the rates established by the

338 Division of Finance under Sections 63A-3-106 and 63A-3-107.

339 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
340 regulations, and rules of Utah and the United States in conducting the arbitration and in
341 determining the award.

342 (e) (i) The property owner and government entity, or other condemning entity, may
343 agree in advance of arbitration that the arbitration is binding and that no de novo review may
344 occur.

345 (ii) The private property owner and facility owner of a water conveyance facility, as
346 described in Section 73-1-15.5, may agree in advance of arbitration that the arbitration is
347 binding and that no de novo review may occur.

348 (iii) A lot owner or unit owner and a homeowner association may agree in advance of
349 arbitration that the arbitration is binding and that no de novo review may occur.

350 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
351 necessary before bringing legal action to adjudicate any claim.

352 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
353 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
354 administrative remedies or as a bar to bringing legal action.

355 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative
356 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

357 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
358 Subsection ~~[(3)(e)]~~ (4)(e), any party to the arbitration may submit the dispute, the award, or any
359 issue upon which the award is based, to the district court for review by trial de novo.

360 ~~[(4)]~~ (5) The filing with the Office of the Property Rights Ombudsman of a request for
361 mediation or arbitration of a constitutional taking issue does not stay:

- 362 (a) a county or municipal land use decision;
- 363 (b) a land use appeal authority decision; or
- 364 (c) the occupancy of the property.

365 ~~[(5)]~~ (6) A member of the Office of the Property Rights Ombudsman, or an arbitrator
366 appointed by the office, may not be compelled to testify in a civil action filed concerning the
367 subject matter of any review, mediation, or arbitration by the Office of the Property Rights
368 Ombudsman.

369 Section 6. Section 13-43-205 is amended to read:

370 **13-43-205. Advisory opinion.**

371 (1) A local government, private entity, lot owner, unit owner, homeowner association,
372 or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written
373 advisory opinion:

374 (a) from a neutral third party to determine compliance with:

375 (i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;

376 (ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; [~~and~~]

377 (iii) Title 11, Chapter 36a, Impact Fees Act; [~~and~~] or

378 (iv) as it applies to a lot owner, unit owner, or homeowner association:

379 (A) Title 57, Chapter 8, Condominium Ownership Act;

380 (B) Title 57, Chapter 8a, Community Association Act;

381 (C) Title 57, Chapter 21, Utah Fair Housing Act;

382 (D) The Fair Housing Act, 42 U.S.C. 3601 et seq.;

383 (E) Section 504 of the Rehabilitation Act of 1973; or

384 (F) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.; and

385 (b) at any time before:

386 (i) a final decision on a land use application by a local appeal authority under Title 11,
387 Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;

388 (ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a,
389 Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated
390 to hear the issue that is the subject of the request for an advisory opinion; or

391 (iii) the enactment of an impact fee, if the request for an advisory opinion is a request
392 to review and comment on a proposed impact fee facilities plan or a proposed impact fee
393 analysis as defined in Section 11-36a-102.

394 (2) A private property owner may, in accordance with Section 13-43-206, request a
395 written advisory opinion from a neutral third party to determine if a condemning entity:

396 (a) is in occupancy of the owner's property;

397 (b) is occupying the property:

398 (i) for a public use authorized by law; and

399 (ii) without colorable legal or equitable authority; and

400 (c) continues to occupy the property without the owner's consent, the occupancy would
401 constitute a taking of private property for a public use without just compensation.

402 (3) An advisory opinion issued under Subsection (2) may justify an award of attorney
403 fees against a condemning entity in accordance with Section 13-43-206 only if the court finds
404 that the condemning entity:

405 (a) does not have a colorable claim or defense for the entity's actions; and

406 (b) continued occupancy without payment of just compensation and in disregard of the
407 advisory opinion.

408 (4) If a unit owner or lot owner, or homeowner association, requests an advisory
409 opinion, the Office of the Property Rights Ombudsman may not proceed with issuing an
410 advisory opinion or appointing a neutral third party to issue an advisory opinion unless each
411 party:

412 (a) voluntarily participates; and

413 (b) (i) agrees to stay any proceeding filed previous to the request for an advisory
414 opinion or during the process of issuing the advisory opinion, until the advisory opinion is
415 issued; and

416 (ii) agrees to waive any statute of limitation or other deadlines to initiate legal
417 proceedings until the advisory opinion is issued.

418 Section 7. Section 13-43-206 is amended to read:

419 **13-43-206. Advisory opinion -- Process.**

420 (1) A request for an advisory opinion under Section 13-43-205 shall be:

421 (a) filed with the Office of the Property Rights Ombudsman; and

422 (b) accompanied by a filing fee of \$150.

423 (2) The Office of the Property Rights Ombudsman may establish policies providing for
424 partial fee waivers for a person who is financially unable to pay the entire fee.

425 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
426 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
427 advisory opinion.

428 (4) The Office of the Property Rights Ombudsman shall:

429 (a) deliver notice of the request to opposing parties indicated in the request;

430 (b) inquire of all parties if there are other necessary parties to the dispute; and

431 (c) deliver notice to all necessary parties.

432 (5) If a governmental entity is an opposing party, the Office of the Property Rights
433 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

434 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
435 parties can agree to a neutral third party to issue an advisory opinion.

436 (b) If no agreement can be reached within four business days after notice is delivered
437 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
438 appoint a neutral third party to issue an advisory opinion.

439 (7) All parties that are the subject of the request for advisory opinion shall:

440 (a) share equally in the cost of the advisory opinion; and

441 (b) provide financial assurance for payment that the neutral third party requires.

442 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
443 and shall promptly:

444 (a) seek a response from all necessary parties to the issues raised in the request for
445 advisory opinion;

446 (b) investigate and consider all responses; and

447 (c) issue a written advisory opinion within 15 business days after the appointment of
448 the neutral third party under Subsection (6)(b), unless:

449 (i) the parties agree to extend the deadline; or

450 (ii) the neutral third party determines that the matter is complex and requires additional
451 time to render an opinion, which may not exceed 30 calendar days.

452 (9) An advisory opinion shall include a statement of the facts and law supporting the
453 opinion's conclusions.

454 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
455 Ombudsman shall be delivered as soon as practicable to all necessary parties.

456 (b) A copy of the advisory opinion shall be delivered to the government entity in the
457 manner provided for in Section 63G-7-401.

458 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
459 not binding on any party to, nor admissible as evidence in, a dispute involving:

460 (a) land use law except as provided in Subsection (12)[-]; or

461 (b) a homeowner association.

462 (12) Subject to Subsection (13), if a dispute involving land use law results in the
463 issuance of an advisory opinion described in this section, if the same issue that is the subject of
464 the advisory opinion is subsequently litigated on the same facts and circumstances at issue in
465 the advisory opinion, and if the relevant issue is resolved consistent with the advisory opinion,
466 the substantially prevailing party on that cause of action may collect:

467 (a) reasonable attorney fees and court costs pertaining to the development of that cause
468 of action from the date of the delivery of the advisory opinion to the date of the court's
469 resolution; and

470 (b) subject to Subsection (13), if the court finds that the opposing party knowingly and
471 intentionally violated the law governing that cause of action, a civil penalty of \$250 per day:

472 (i) beginning on the later of:

473 (A) 30 days after the day on which the advisory opinion was delivered; or

474 (B) the day on which the action was filed; and

475 (ii) ending the day on which the court enters a final judgment.

476 (13) (a) Subsection (12) does not apply unless the resolution described in Subsection
477 (12) is final.

478 (b) A court may not impose a civil penalty under Subsection (12)(b) against or in favor
479 of a party other than the land use applicant or a government entity.

480 (14) In addition to any amounts awarded under Subsection (12), if the dispute
481 described in Subsection (12) in whole or in part concerns an impact fee, and if the result of the
482 litigation requires that the political subdivision or private entity refund the impact fee in
483 accordance with Section 11-36a-603, the political subdivision or private entity shall refund the
484 impact fee in an amount that is based on the difference between the impact fee paid and what
485 the impact fee should have been if the political subdivision or private entity had correctly
486 calculated the impact fee.

487 (15) Nothing in this section is intended to create any new cause of action under land
488 use law.

489 (16) Unless filed by the local government, a request for an advisory opinion under
490 Section 13-43-205 does not stay the progress of a land use application, the effect of a land use
491 decision, or the condemning entity's occupancy of a property.

492 Section 8. Section 57-8-10.4 is enacted to read:

493 **57-8-10.4. Notice of legal action.**

494 (1) Subject to Subsection (2), if an association is a party to a legal action or a complaint
495 filed with a state agency, the association shall:

496 (a) notify each unit owner no later than 30 days after the day the association is served
497 in a legal action, initiates a legal action, or receives notice of a complaint from a state agency;
498 and

499 (b) allow a unit owner to review any documents related to the legal action or
500 complaint.

501 (2) Subsection (1) does not apply to an action filed by the association to collect an
502 assessment unless a unit owner files a counter suit.

503 (3) If the association fails to notify a unit owner in accordance with Subsection (1)(a),
504 the association is, based upon a finding by the court, liable for:

505 (a) any cost associated with efforts to obtain information described in Subsection
506 (1)(b); and

507 (b) any damages related to the failure to give notice, including consequential damages
508 or reasonable attorney fees associated with:

509 (i) a property; or

510 (ii) decisions or actions by a unit owner or property purchaser that could have been
511 different had the unit owner or purchaser known about ongoing litigation or possible liabilities.

512 Section 9. Section **57-8-17** is amended to read:

513 **57-8-17. Records -- Availability for examination.**

514 (1) (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make
515 documents available to unit owners in accordance with Sections **16-6a-1601** through **1603**,
516 **16-6a-1605**, **16-6a-1606**, and **16-6a-1610**:

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

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

521 (A) declaration and bylaws;

522 (B) most recent approved minutes; and

523 (C) most recent budget and financial statement.

- 524 (b) An association of unit owners may redact the following information from any
525 document the association of unit owners produces for inspection or copying:
- 526 (i) a [~~Social Security~~] social security number;
- 527 (ii) a bank account number; or
- 528 (iii) any communication subject to attorney-client privilege.
- 529 (2) (a) In addition to the requirements described in Subsection (1), an association of
530 unit owners shall:
- 531 (i) make the following documents available to unit owner:
- 532 (A) a notice of a violation by the requesting unit owner; or
- 533 (B) any document pertaining to the requesting unit owner's unit;
- 534 ~~[(i)]~~ (ii) make documents available to unit owners in accordance with the association of
535 unit owners' governing documents; and
- 536 ~~[(i)]~~ (iii) (A) if the association of unit owners has an active website, make the
537 documents described in Subsection (1)(a)(ii) available to unit owners, free of charge, through
538 the website; or
- 539 (B) if the association of unit owners does not have an active website, make physical
540 copies of the documents described in Subsection (1)(a)(ii) available to unit owners during
541 regular business hours at the association of unit owners' address registered with the Department
542 of Commerce under Section [57-8-13.1](#).
- 543 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section [57-19-2](#).
- 544 (c) If a provision of an association of unit owners' governing documents conflicts with
545 a provision of this section, the provision of this section governs.
- 546 (3) In a written request to inspect or copy documents:
- 547 (a) a unit owner shall include:
- 548 (i) the association of unit owners' name;
- 549 (ii) the unit owner's name;
- 550 (iii) the unit owner's property address;
- 551 (iv) the unit owner's email address;
- 552 (v) a description of the documents requested; and
- 553 (vi) any election or request described in Subsection (3)(b); and
- 554 (b) a unit owner may:

- 555 (i) elect whether to inspect or copy the documents;
- 556 (ii) if the unit owner elects to copy the documents, request hard copies or electronic
557 scans of the documents; or
- 558 (iii) subject to Subsection (4), request that:
 - 559 (A) the association of unit owners make the copies or electronic scans of the requested
560 documents;
 - 561 (B) a recognized third party duplicating service make the copies or electronic scans of
562 the requested documents;
 - 563 (C) the unit owner be allowed to bring any necessary imaging equipment to the place
564 of inspection and make copies or electronic scans of the documents while inspecting the
565 documents; or
 - 566 (D) the association of unit owners email the requested documents to an email address
567 provided in the request.
- 568 (4) (a) An association of unit owners shall comply with a request described in
569 Subsection (3).
 - 570 (b) If an association of unit owners produces the copies or electronic scans:
 - 571 (i) the copies or electronic scans shall be legible and accurate; and
 - 572 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
573 copies or electronic scans and for time spent meeting with the unit owner, which may not
574 exceed:
 - 575 (A) the actual cost that the association of unit owners paid to a recognized third party
576 duplicating service to make the copies or electronic scans; or
 - 577 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's
578 time making the copies or electronic scans.
 - 579 (c) If a unit owner requests a recognized third party duplicating service make the copies
580 or electronic scans:
 - 581 (i) the association of unit owners shall arrange for the delivery and pick up of the
582 original documents; and
 - 583 (ii) the unit owner shall pay the duplicating service directly.
 - 584 (d) Subject to Subsection (9), if a unit owner requests to bring imaging equipment to
585 the inspection, the association of unit owners shall provide the necessary space, light, and

586 power for the imaging equipment.

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

590 (a) the reasonable costs of inspecting and copying the requested documents;

591 (b) for items described in Subsection (1)(a)(ii), [~~\$25~~] \$50 to the unit owner who made
592 the request for each day the request continues unfulfilled, beginning the sixth day after the day
593 on which the unit owner made the request; and

594 (c) reasonable attorney fees and costs incurred by the unit owner in obtaining the
595 inspection and copies of the requested documents.

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

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

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

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

605 (i) the unit owner may request:

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

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

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

610 (ii) the court shall award:

611 (A) costs and reasonable attorney fees to the prevailing party, including any reasonable
612 attorney fees incurred before the action was filed that relate to the request that is the subject of
613 the action[-]; and

614 (B) if a unit owner is the prevailing party, costs and fines described in Subsections
615 (5)(a) and (b).

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

617 notice to the association of unit owners, and a hearing in which the court finds a likelihood that
618 the association of unit owners failed to comply with a provision of this section, the court shall
619 order the association of unit owners to immediately comply with the provision.

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

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

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

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

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

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

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

635 (b) The provisions of this section apply regardless of any conflicting provision in Title
636 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

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

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

642 (10) (a) A management committee or the committee's agent is responsible for all
643 contracts, governing documents, and any other document pertaining to the association, a unit,
644 or a unit owner's interests and rights.

645 (b) If a management committee fails to produce a document described in Subsection
646 (10)(a), and failure of production of the document is at issue in subsequent litigation, the
647 association shall pay any damages or reasonable attorney fees awarded by a court.

648 Section 10. Section **57-8-38** is amended to read:

649 **57-8-38. Dispute resolution -- Notice.**

650 (1) The declaration, bylaws, or association rules may provide that disputes between the
651 parties shall be submitted to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform
652 Arbitration Act.

653 (2) If the declaration, bylaws, or association rules do not provide a clear dispute
654 resolution process, or an association does not strictly comply with the adopted dispute
655 resolution process, a court may award reasonable attorney fees to a unit owner.

656 (3) (a) If agreed to by both parties, the parties may seek arbitration or mediation in
657 accordance with Section [13-43-204](#).

658 (b) An association, or the association's agent, shall notify each unit owner:

659 (i) of a request for arbitration or mediation in accordance with Section [13-43-204](#);

660 (ii) no later than 30 days after the day on which the request is submitted by the
661 association or the association is notified by the Office of the Property Rights Ombudsman of a
662 request; and

663 (iii) of the substance of the request.

664 Section 11. Section **57-8-44** is amended to read:

665 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
666 **collection.**

667 (1) (a) Except as provided in Section [57-8-13.1](#), an association of unit owners has a
668 lien on a unit for:

669 (i) an assessment;

670 (ii) except as provided in the declaration, fees, charges, and costs associated with
671 collecting an unpaid assessment, including:

672 (A) court costs and reasonable attorney fees;

673 (B) late charges;

674 (C) interest; and

675 (D) any other amount that the association of unit owners is entitled to recover under the
676 declaration, this chapter, or an administrative or judicial decision; and

677 (iii) a fine that the association of unit owners imposes against a unit owner in
678 accordance with Section [57-8-37](#), if:

679 (A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit
680 owner did not file an appeal; or

681 (B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and the district
682 court issued a final order upholding a fine imposed under Subsection 57-8-37(1).

683 (b) ~~[The]~~ Subject to Subsection (1)(c), recording of a declaration constitutes record
684 notice and perfection of a lien described in Subsection (1)(a).

685 (c) (i) If an association records a lien against a unit owner, the association shall include
686 at the time the lien is recorded a statement testifying that the association has complied with
687 state law and the association's rules, bylaws, or policies governing collection of an assessment.

688 (ii) If an association fails to comply with state law or the association's rules, bylaws, or
689 policies governing collection of an assessment:

690 (A) a lien against the unit owner described in Subsection (1)(c)(i) is not perfected and
691 void; and

692 (B) a court may, against the association or the association's agent, issue a finding of
693 perjury or award fines, reasonable attorney fees, or other damages.

694 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
695 is for the full amount of the assessment from the time the first installment is due, unless the
696 association of unit owners otherwise provides in a notice of assessment.

697 (3) An unpaid assessment or fine accrues interest at the rate provided:

698 (a) in Subsection 15-1-1(2); or

699 (b) in the governing documents, if the governing documents provide for a different
700 interest rate.

701 (4) A lien under this section has priority over each other lien and encumbrance on a
702 unit except:

703 (a) a lien or encumbrance recorded before the declaration is recorded;

704 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
705 that is recorded before a recorded notice of lien by or on behalf of the association of unit
706 owners; or

707 (c) a lien for real estate taxes or other governmental assessments or charges against the
708 unit.

709 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah

710 Exemptions Act.

711 (6) Unless the declaration provides otherwise, if two or more associations of unit
712 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
713 when the liens are created.

714 Section 12. Section **57-8-50.1** is enacted to read:

715 **57-8-50.1. Presumption of payment.**

716 (1) If a person mails a payment, in any form, for an assessment to the management
717 committee or the management committee's agent, the payment is presumed received within five
718 days after the date of postmark.

719 (2) The presumption in Subsection (1) is rebuttable.

720 (3) Notwithstanding Subsection (2), it is insufficient evidence to rebut the presumption
721 described in Subsection (1) that the management committee's or the management committee's
722 agent's practice is to only receive or inspect mail on certain dates.

723 Section 13. Section **57-8-57** is amended to read:

724 **57-8-57. Management committee meetings -- Open meetings.**

725 (1) Except for an action taken without a meeting in accordance with Section
726 **16-6a-813**, a management committee may take action only at a management committee
727 meeting.

728 (2) (a) At least 48 hours before a management committee meeting, the association of
729 unit owners shall give written notice of the management committee meeting via email to each
730 unit owner who requests notice of a management committee meeting, unless:

731 (i) notice of the management committee meeting is included in a meeting schedule that
732 was previously provided to the unit owner; or

733 (ii) (A) the management committee meeting is to address an emergency; and

734 (B) each management committee member receives notice of the management
735 committee meeting less than 48 hours before the management committee meeting.

736 (b) A notice described in Subsection (2)(a) shall:

737 (i) be delivered to the unit owner by email, to the email address that the unit owner
738 provides to the management committee or the association of unit owners;

739 (ii) state the time and date of the management committee meeting;

740 (iii) state the location of the management committee meeting; and

741 (iv) if a management committee member may participate by means of electronic
742 communication, provide the information necessary to allow the unit owner to participate by the
743 available means of electronic communication.

744 (3) (a) Except as provided in Subsection (3)(b), a management committee meeting
745 shall be open to each unit owner or the unit owner's representative if the representative is
746 designated in writing.

747 (b) A management committee may close a management committee meeting to:

748 (i) consult with an attorney for the purpose of obtaining legal advice;

749 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
750 proceedings;

751 (iii) discuss a personnel matter;

752 (iv) discuss a matter relating to contract negotiations, including review of a bid or
753 proposal;

754 (v) discuss a matter that involves an individual if the discussion is likely to cause the
755 individual undue embarrassment or violate the individual's reasonable expectation of privacy;
756 or

757 (vi) discuss a delinquent assessment or fine.

758 (4) (a) At each management committee meeting, the management committee shall
759 provide each unit owner a reasonable opportunity to offer comments.

760 (b) The management committee may limit the comments described in Subsection (4)(a)
761 to one specific time period during the meeting.

762 (5) A management committee member may not avoid or obstruct the requirements of
763 this section.

764 (6) (a) Except for a meeting described in Subsection (3)(b), the management committee
765 shall record each management committee meeting.

766 (b) In an association with:

767 (i) fewer than 50 units, the management committee shall make the recording described
768 in Subsection (6)(a) available upon request; and

769 (ii) 50 units or more, the management committee shall post the recording described in
770 Subsection (6)(a) on the association website.

771 ~~[(6)]~~ (7) Nothing in this section shall affect the validity or enforceability of an action of

772 a management committee.

773 ~~[(7)]~~ (8) The provisions of this section do not apply during the period of administrative
774 control.

775 ~~[(8)]~~ (9) The provisions of this section apply regardless of when the condominium
776 project's initial declaration was recorded.

777 ~~[(9)]~~ (10) (a) Subject to Subsection ~~[(9)]~~ (10)(d), if an association of unit owners fails
778 to comply with a provision of Subsections (1) through ~~[(5)]~~ (6) and fails to remedy the
779 noncompliance during the 90-day period described in Subsection ~~[(9)]~~ (10)(d), a unit owner
780 may file an action in court for:

781 (i) injunctive relief requiring the association of unit owners to comply with the
782 provisions of Subsections (1) through ~~[(5)]~~ (6);

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

784 (iii) any other relief provided by law.

785 (b) In an action described in Subsection ~~[(9)]~~ (10)(a), the court may award costs and
786 reasonable attorney fees to the prevailing party.

787 (c) Upon motion from the unit owner, notice to the association of unit owners, and a
788 hearing in which the court finds a likelihood that the association of unit owners has failed to
789 comply with a provision of Subsections (1) through ~~[(5)]~~ (6), the court may order the
790 association of unit owners to immediately comply with the provisions of Subsections (1)
791 through ~~[(5)]~~ (6).

792 (d) At least 90 days before the day on which a unit owner files an action described in
793 Subsection ~~[(9)]~~ (10)(a), the unit owner shall deliver a written notice to the association of unit
794 owners that states:

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

796 (ii) each requirement of Subsections (1) through ~~[(5)]~~ (6) with which the association of
797 unit owners has failed to comply;

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

800 (iv) a date by which the association of unit owners shall remedy the association of unit
801 owners' noncompliance that is at least 90 days after the day on which the unit owner delivers
802 the notice to the association of unit owners.

803 Section 14. Section **57-8-59** is amended to read:

804 **57-8-59. Management committee act for association of unit owners -- Fiduciary**
805 **duty.**

806 (1) [Except] Subject to Subsection (2) and except as limited in the declaration, the
807 association of unit owners bylaws or articles of incorporation, or other provisions of this
808 chapter, a management committee acts in all instances on behalf of the association of unit
809 owners.

810 (2) The management committee:

811 (a) is a fiduciary for the association and each unit owner; and

812 (b) may not delegate the management committee's fiduciary duty or limit fiduciary
813 duties in the declaration, bylaws, or rules.

814 Section 15. Section **57-8a-226** is amended to read:

815 **57-8a-226. Board meetings -- Open board meetings.**

816 (1) Except for an action taken without a meeting in accordance with Section
817 **16-6a-813**, a board may take action only at a board meeting.

818 (2) (a) At least 48 hours before a board meeting, the association shall give written
819 notice of the board meeting via email to each lot owner who requests notice of a board
820 meeting, unless:

821 (i) notice of the board meeting is included in a board meeting schedule that was
822 previously provided to the lot owner; or

823 (ii) (A) the board meeting is to address an emergency; and

824 (B) each board member receives notice of the board meeting less than 48 hours before
825 the board meeting.

826 (b) A notice described in Subsection (2)(a) shall:

827 (i) be delivered to the lot owner by email, to the email address that the lot owner
828 provides to the board or the association;

829 (ii) state the time and date of the board meeting;

830 (iii) state the location of the board meeting; and

831 (iv) if a board member may participate by means of electronic communication, provide
832 the information necessary to allow the lot owner to participate by the available means of
833 electronic communication.

834 (3) (a) Except as provided in Subsection (3)(b), a board meeting shall be open to each
835 lot owner or the lot owner's representative if the representative is designated in writing.

836 (b) A board may close a board meeting to:

837 (i) consult with an attorney for the purpose of obtaining legal advice;

838 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
839 proceedings;

840 (iii) discuss a personnel matter;

841 (iv) discuss a matter relating to contract negotiations, including review of a bid or
842 proposal;

843 (v) discuss a matter that involves an individual if the discussion is likely to cause the
844 individual undue embarrassment or violate the individual's reasonable expectation of privacy;
845 or

846 (vi) discuss a delinquent assessment or fine.

847 (c) Any matter discussed at a board meeting closed pursuant to Subsection (3)(b)(ii) is
848 not subject to discovery in a civil action in a state court under the Utah Rules of Civil
849 Procedure.

850 (4) (a) At each board meeting, the board shall provide each lot owner a reasonable
851 opportunity to offer comments.

852 (b) The board may limit the comments described in Subsection (4)(a) to one specific
853 time period during the board meeting.

854 (5) A board member may not avoid or obstruct the requirements of this section.

855 (6) (a) Except for a meeting described in Subsection (3)(b), the board shall record each
856 management committee meeting.

857 (b) In an association with:

858 (i) fewer than 50 lots, the board shall make the recording described in Subsection (6)(a)
859 available upon request; and

860 (ii) 50 units or more, the board shall post the recording described in Subsection (6)(a)
861 on the association website.

862 ~~[(6)]~~ (7) Nothing in this section shall affect the validity or enforceability of an action of
863 a board.

864 ~~[(7)]~~ (8) (a) Except as provided in Subsection ~~[(7)]~~ (8)(b), the provisions of this section

865 do not apply during the period of administrative control.

866 (b) During the period of administrative control, the association shall hold a meeting
867 that complies with Subsections (1) through ~~(5)~~ (6):

868 (i) at least once each year; and

869 (ii) each time the association:

870 (A) increases a fee; or

871 (B) raises an assessment.

872 ~~(8)~~ (9) The provisions of this section apply regardless of when the association's first
873 governing document was recorded.

874 ~~(9)~~ (10) (a) Subject to Subsection ~~(9)~~ (10)(d), if an association fails to comply with a
875 provision of Subsections (1) through ~~(5)~~ (6) and fails to remedy the noncompliance during the
876 90-day period described in Subsection ~~(9)~~ (10)(d), a lot owner may file an action in court for:

877 (i) injunctive relief requiring the association to comply with the provisions of
878 Subsections (1) through ~~(5)~~ (6);

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

880 (iii) any other relief provided by law.

881 (b) In an action described in Subsection ~~(9)~~ (10)(a), the court may award costs and
882 reasonable attorney fees to the prevailing party.

883 (c) Upon motion from the lot owner, notice to the association, and a hearing in which
884 the court finds a likelihood that the association has failed to comply with a provision of
885 Subsections (1) through ~~(5)~~ (6), the court may order the association to immediately comply
886 with the provisions of Subsections (1) through ~~(5)~~ (6).

887 (d) At least 90 days before the day on which a lot owner files an action described in
888 Subsection ~~(9)~~ (10)(a), the lot owner shall deliver a written notice to the association that
889 states:

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

891 (ii) each requirement of Subsections (1) through ~~(5)~~ (6) with which the association
892 has failed to comply;

893 (iii) a demand that the association comply with each requirement with which the
894 association has failed to comply; and

895 (iv) a date by which the association shall remedy the association's noncompliance that

896 is at least 90 days after the day on which the lot owner delivers the notice to the association.

897 Section 16. Section **57-8a-227** is amended to read:

898 **57-8a-227. Records -- Availability for examination.**

899 (1) (a) Subject to Subsection (1)(b), an association shall keep and make documents
900 available to lot owners in accordance with Sections [16-6a-1601](#) through 1603, [16-6a-1605](#),
901 [16-6a-1606](#), and [16-6a-1610](#):

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

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

905 (A) declaration and bylaws;

906 (B) most recent approved minutes; and

907 (C) most recent budget and financial statement.

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

910 (i) a [~~Social Security~~] social security number;

911 (ii) a bank account number; or

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

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

914 (i) make the following documents available to a lot owner:

915 (A) a notice of a violation by the requesting lot owner; or

916 (B) any document pertaining to the requesting lot owner's unit;

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

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

921 (B) if the association does not have an active website, make physical copies of the
922 documents described in Subsection (1)(a)(ii) available to lot owners during regular business
923 hours at the association's address registered with the Department of Commerce under Section
924 [57-8a-105](#).

925 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section [57-19-2](#).

926 (c) If a provision of an association's governing documents conflicts with a provision of

927 this section, the provision of this section governs.

928 (3) In a written request to inspect or copy documents:

929 (a) a lot owner shall include:

930 (i) the association's name;

931 (ii) the lot owner's name;

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

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

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

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

936 (b) a lot owner may:

937 (i) elect whether to inspect or copy the documents;

938 (ii) if the lot owner elects to copy the documents, request hard copies or electronic

939 scans of the documents; or

940 (iii) subject to Subsection (4), request that:

941 (A) the association make the copies or electronic scans of the requested documents;

942 (B) a recognized third party duplicating service make the copies or electronic scans of

943 the requested documents;

944 (C) the lot owner be allowed to bring any necessary imaging equipment to the place of

945 inspection and make copies or electronic scans of the documents while inspecting the

946 documents; or

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

948 request.

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

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

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

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

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

954 (A) the actual cost that the association paid to a recognized third party duplicating

955 service to make the copies or electronic scans; or

956 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's

957 time.

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

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

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

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

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

968 (a) the reasonable costs of inspecting and copying the requested documents;

969 (b) for items described in Subsection (1)(a)(ii), [~~\$25~~] \$50 to the lot owner who made
970 the request for each day the request continues unfulfilled, beginning the sixth day after the day
971 on which the lot owner made the request; and

972 (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the
973 inspection and copies of the requested documents.

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

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

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

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

981 (i) the lot owner may request:

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

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

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

986 (ii) the court shall award:

987 (A) costs and reasonable attorney fees to the prevailing party, including any reasonable
988 attorney fees incurred before the action was filed that relate to the request that is the subject of

989 the action[-]; and

990 (B) if the lot owner is the prevailing party, costs and fines described in Subsections
991 (5)(a) and (b).

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

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

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

1000 (i) the lot owner's name, address, telephone number, and email address;

1001 (ii) each requirement of this section with which the association has failed to comply;

1002 (iii) a demand that the association comply with each requirement with which the
1003 association has failed to comply; and

1004 (iv) a date by which the association shall remedy the association's noncompliance that
1005 is at least 10 days after the day on which the lot owner delivers the notice to the association.

1006 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association.

1007 (b) The provisions of this section apply regardless of any conflicting provision in Title
1008 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

1009 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that
1010 the lot owner has under this section.

1011 (9) An association is not liable for identifying or providing a document in error, if the
1012 association identified or provided the erroneous document in good faith.

1013 (10) (a) The board of directors or the board's agent is responsible for all contracts,
1014 governing documents, and any other document pertaining to the association, a lot, or a lot
1015 owner's interests and rights.

1016 (b) If a board of directors fails to produce a document described in Subsection (10)(a),
1017 and failure to produce the document is at issue in subsequent litigation, the association shall
1018 pay any damages or reasonable attorney fees awarded by a court.

1019 Section 17. Section 57-8a-231 is enacted to read:

1020 **57-8a-231. Notice of legal action.**

1021 (1) Subject to Subsection (2) if an association is a party to a legal action or a complaint
1022 filed with a state agency, the association shall:

1023 (a) notify each lot owner no later than 30 days after the day the association is served in
1024 a legal action, initiates a legal action, or receives notice of a complaint from a state agency; and

1025 (b) allow a lot owner to review any documents related to the legal action or complaint.

1026 (2) Subsection (1) does not apply to an action filed by the association to collect an
1027 assessment unless the lot owner files a counter suit.

1028 (3) If the association fails to notify a lot owner in accordance with Subsection (1)(a),
1029 the association is liable for:

1030 (a) any cost associated with efforts to obtain information described in Subsection
1031 (1)(b); and

1032 (b) any damages related to the failure to give notice, including consequential damages
1033 or attorney fees associated with:

1034 (i) a property; or

1035 (ii) decisions or actions by a unit owner or property purchaser that could have been
1036 different had the lot owner or purchaser known about ongoing litigation or possible liabilities.

1037 Section 18. Section **57-8a-232** is enacted to read:

1038 **57-8a-232. Dispute resolution -- Notice.**

1039 (1) If the declaration, bylaws, or association rules do not provide a clear dispute
1040 resolution process, or an association does not strictly comply with the adopted dispute
1041 resolution process, a court may award reasonable attorney fees to a lot owner.

1042 (2) (a) If agreed to by both parties, the parties may seek arbitration or mediation in
1043 accordance with Section [13-43-204](#).

1044 (b) An association, or the association's agent, shall notify each lot owner:

1045 (i) of a request for arbitration or mediation in accordance with Section [13-43-204](#);

1046 (ii) no later than 30 days after the day on which the request is submitted by the
1047 association or the association is notified by the Office of the Property Rights Ombudsman of a
1048 request; and

1049 (iii) of the substance of the request.

1050 Section 19. Section **57-8a-301** is amended to read:

- 1051 **57-8a-301. Lien in favor of association for assessments and costs of collection.**
- 1052 (1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:
- 1053 (i) an assessment;
- 1054 (ii) except as provided in the declaration, fees, charges, and costs associated with
- 1055 collecting an unpaid assessment, including:
- 1056 (A) court costs and reasonable attorney fees;
- 1057 (B) late charges;
- 1058 (C) interest; and
- 1059 (D) any other amount that the association is entitled to recover under the declaration,
- 1060 this chapter, or an administrative or judicial decision; and
- 1061 (iii) a fine that the association imposes against a lot owner in accordance with Section
- 1062 57-8a-208, if:
- 1063 (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot
- 1064 owner did not file an appeal; or
- 1065 (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district
- 1066 court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).
- 1067 (b) ~~[The]~~ Subject to Subsection (1)(c), recording of a declaration constitutes record
- 1068 notice and perfection of a lien described in Subsection (1)(a).
- 1069 (c) (i) If an association records a lien against a lot owner, the association shall include
- 1070 at the time the lien is recorded a statement testifying that the association has complied with
- 1071 state law and the association's rules, bylaws, or policies governing collection of an assessment.
- 1072 (ii) If an association fails to comply with state law or the association's rules, bylaws, or
- 1073 policies governing collection of an assessment:
- 1074 (A) a lien against the lot owner described in Subsection (1)(c)(i) is not perfected and
- 1075 void; and
- 1076 (B) a court may, against the association or the association's agent, issue a finding of
- 1077 perjury or award fines, reasonable attorney fees, or other damages.
- 1078 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
- 1079 is for the full amount of the assessment from the time the first installment is due, unless the
- 1080 association otherwise provides in a notice of assessment.
- 1081 (3) An unpaid assessment or fine accrues interest at the rate provided:

- 1082 (a) in Subsection 15-1-1(2); or
1083 (b) in the declaration, if the declaration provides for a different interest rate.
1084 (4) A lien under this section has priority over each other lien and encumbrance on a lot
1085 except:
1086 (a) a lien or encumbrance recorded before the declaration is recorded;
1087 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
1088 is recorded before a recorded notice of lien by or on behalf of the association; or
1089 (c) a lien for real estate taxes or other governmental assessments or charges against the
1090 lot.
1091 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
1092 Exemptions Act.
1093 (6) Unless the declaration provides otherwise, if two or more associations have liens
1094 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
1095 created.

1096 Section 20. Section 57-8a-312 is enacted to read:

1097 **57-8a-312. Presumption of payment.**

1098 (1) If a person mails a payment, in any form, for an assessment to the association or the
1099 association's agent, the payment is presumed received within five days after the date of
1100 postmark.

1101 (2) The presumption in Subsection (1) is rebuttable.

1102 (3) Notwithstanding Subsection (2), it is insufficient evidence to rebut the presumption
1103 described in Subsection (1) that the association's or the association's agent's practice is to only
1104 receive or inspect mail on certain dates.

1105 Section 21. Section 57-8a-501 is amended to read:

1106 **57-8a-501. Board acts for association.**

1107 (1) Except as limited in a declaration, the association bylaws, or other provisions of
1108 this chapter, a board acts in all instances on behalf of the association.

1109 (2) The board of directors:

1110 (a) is a fiduciary for the association and each lot owner; and

1111 (b) may not delegate the board of director's fiduciary duty or limit fiduciary duties in
1112 the declaration, bylaws, or rules.