

**HOMEOWNERS ASSOCIATION REQUIREMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Cheryl K. Acton**

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

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**LONG TITLE**

**General Description:**

This bill amends provisions related to owners' access to association documents.

**Highlighted Provisions:**

This bill:

- ▶ requires an association of unit owners and a community association to maintain certain records for a period of two years;
- ▶ requires certain associations of unit owners and community associations to make available certain association documents online; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**57-8-17**, as last amended by Laws of Utah 2022, Chapter 439

**57-8a-227**, as last amended by Laws of Utah 2022, Chapter 439

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

Section 1. Section **57-8-17** is amended to read:



28 **57-8-17. Records -- Availability for examination.**

29 (1) (a) Subject to Subsection (1)(b) and regardless of whether the association of unit  
30 owners is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an  
31 association of unit owners shall keep and make available to unit owners:

32 (i) each record identified in Subsections 16-6a-1601(1) through (5), in accordance with  
33 Sections 16-6a-1601, 16-6a-1602, 16-6a-1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610; ~~and~~

34 (ii) a copy of the association's:

35 (A) governing documents;

36 ~~[(B) most recent approved minutes;]~~

37 ~~[(C) most recent budget and financial statement;]~~

38 ~~[(D)]~~ (B) most recent reserve analysis; and

39 ~~[(E)]~~ (C) certificate of insurance for each insurance policy the association of unit  
40 owners holds[-]; and

41 (iii) the following documents that are in the association's possession on May 3, 2023,  
42 or created on or after May 3, 2023, for at least two years after the day on which the document is  
43 created:

44 (A) approved minutes; and

45 (B) budget and financial statement.

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

48 (i) a Social Security number;

49 (ii) a bank account number; or

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

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

53 (i) make documents available to unit owners in accordance with the association of unit  
54 owners' governing documents; and

55 (ii) (A) if the association of unit owners contains 20 or more units, make available  
56 online the documents described in Subsections (1)(a)(ii)(A) and 1(a)(iii) to unit owners, free of  
57 charge;

58 (B) regardless of the number of units in the association, if the association of unit

59 owners has an active website, make the documents described in Subsections (1)(a)(ii)(A)  
 60 [~~through (C)~~] and (1)(a)(iii) available to unit owners, free of charge, through the website; or  
 61 [~~(B)~~] (C) if the association of unit owners does not have an active website and contains  
 62 fewer than 20 units, make physical copies of the documents described in Subsections  
 63 (1)(a)(ii)(A) [~~through (C)~~] and (1)(a)(iii) available to unit owners during regular business hours  
 64 at the association of unit owners' address registered with the Department of Commerce under  
 65 Section 57-8-13.1.

66 (b) For purposes of Subsection (2)(a)(ii)(A), making documents available online:

67 (i) does not include delivery via electronic mail; and

68 (ii) may include making documents available through the association's website.

69 [~~(b)~~] (c) Subsection (2)(a)(ii) does not apply to an association as defined in Section  
 70 57-19-2.

71 [~~(c)~~] (d) If a provision of an association of unit owners' governing documents conflicts  
 72 with a provision of this section, the provision of this section governs.

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

74 (a) a unit owner shall include:

75 (i) the association of unit owners' name;

76 (ii) the unit owner's name;

77 (iii) the unit owner's property address;

78 (iv) the unit owner's email address;

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

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

81 (b) a unit owner may:

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

83 (ii) if the unit owner elects to copy the documents, request hard copies or electronic  
 84 scans of the documents; or

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

86 (A) the association of unit owners make the copies or electronic scans of the requested  
 87 documents;

88 (B) a recognized third party duplicating service make the copies or electronic scans of  
 89 the requested documents;

90 (C) the unit owner be allowed to bring any necessary imaging equipment to the place  
91 of inspection and make copies or electronic scans of the documents while inspecting the  
92 documents; or

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

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

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

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

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

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

104 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's  
105 time making the copies or electronic scans.

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

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

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

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

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

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

118 (b) for items described in Subsections (1)(a)(ii)(A) [~~through (C)~~] and (1)(a)(iii), \$25 to  
119 the unit owner who made the request for each day the request continues unfulfilled, beginning  
120 the sixth day after the day on which the unit owner made the request; and

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

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

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

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

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

132 (i) the unit owner may request:

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

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

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

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

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

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

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

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

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

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

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

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

159 (b) The provisions of this section apply regardless of any conflicting provision in Title  
160 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

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

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

166 Section 2. Section 57-8a-227 is amended to read:

167 **57-8a-227. Records -- Availability for examination.**

168 (1) (a) Subject to Subsection (1)(b) and regardless of whether the association is  
169 incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an  
170 association shall keep and make available to lot owners:

171 (i) each record identified in Subsections 16-6a-1601(1) through (5), in accordance with  
172 Sections 16-6a-1601, 16-6a-1602, 16-6a-1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610; and

173 (ii) a copy of the association's:

174 (A) governing documents;

175 [~~(B) most recent approved minutes;~~]

176 [~~(C) most recent budget and financial statement;~~]

177 [~~(D)~~] (B) most recent reserve analysis; and

178 [~~(E)~~] (C) certificate of insurance for each insurance policy the association holds[-]; and

179 (iii) the following documents that are in the association's possession on May 3, 2023,

180 or created on or after May 3, 2023, for at least two years after the day on which the document is  
181 created:

182 (A) approved minutes; and

- 183 (B) budget and financial statement.
- 184 (b) An association may redact the following information from any document the  
185 association produces for inspection or copying:
- 186 (i) a Social Security number;
- 187 (ii) a bank account number; or
- 188 (iii) any communication subject to attorney-client privilege.
- 189 (2) (a) In addition to the requirements described in Subsection (1), an association shall:
- 190 (i) make documents available to lot owners in accordance with the association's  
191 governing documents; and
- 192 (ii) (A) if the association contains 20 or more lots, make available online the  
193 documents described in Subsections (1)(a)(ii)(A) and (1)(a)(iii) to lot owners, free of charge;  
194 ~~[(A)]~~ (B) regardless of the number of lots in the association, if the association has an  
195 active website, make the documents described in Subsections (1)(a)(ii)(A) ~~[through (C)]~~ and  
196 (1)(a)(iii) available to lot owners, free of charge, through the website; or
- 197 ~~[(B)]~~ (C) if the association does not have an active website and contains fewer than 20  
198 lots, make physical copies of the documents described in Subsections (1)(a)(ii)(A) [through  
199 ~~(C)] and (1)(a)(iii) available to lot owners during regular business hours at the association's  
200 address registered with the Department of Commerce under Section 57-8a-105.~~
- 201 (b) For purposes of Subsection (2)(a)(ii), making documents available online:
- 202 (i) does not include delivery via electronic mail; and
- 203 (ii) may include making documents available through the association's website.
- 204 (c) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.
- 205 ~~[(c)]~~ (d) If a provision of an association's governing documents conflicts with a  
206 provision of this section, the provision of this section governs.
- 207 (3) In a written request to inspect or copy documents:
- 208 (a) a lot owner shall include:
- 209 (i) the association's name;
- 210 (ii) the lot owner's name;
- 211 (iii) the lot owner's property address;
- 212 (iv) the lot owner's email address;
- 213 (v) a description of the documents requested; and

- 214 (vi) any election or request described in Subsection (3)(b); and
- 215 (b) a lot owner may:
  - 216 (i) elect whether to inspect or copy the documents;
  - 217 (ii) if the lot owner elects to copy the documents, request hard copies or electronic
  - 218 scans of the documents; or
  - 219 (iii) subject to Subsection (4), request that:
    - 220 (A) the association make the copies or electronic scans of the requested documents;
    - 221 (B) a recognized third party duplicating service make the copies or electronic scans of
    - 222 the requested documents;
    - 223 (C) the lot owner be allowed to bring any necessary imaging equipment to the place of
    - 224 inspection and make copies or electronic scans of the documents while inspecting the
    - 225 documents; or
    - 226 (D) the association email the requested documents to an email address provided in the
    - 227 request.
- 228 (4) (a) An association shall comply with a request described in Subsection (3).
- 229 (b) If an association produces the copies or electronic scans:
  - 230 (i) the copies or electronic scans shall be legible and accurate; and
  - 231 (ii) the lot owner shall pay the association the reasonable cost of the copies or
  - 232 electronic scans and for time spent meeting with the lot owner, which may not exceed:
    - 233 (A) the actual cost that the association paid to a recognized third party duplicating
    - 234 service to make the copies or electronic scans; or
    - 235 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's
    - 236 time.
  - 237 (c) If a lot owner requests a recognized third party duplicating service make the copies
  - 238 or electronic scans:
    - 239 (i) the association shall arrange for the delivery and pick up of the original documents;
    - 240 and
    - 241 (ii) the lot owner shall pay the duplicating service directly.
    - 242 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
    - 243 shall provide the necessary space, light, and power for the imaging equipment.
    - 244 (5) Subject to Subsection (9), if, in response to a lot owner's request to inspect or copy



245 documents, an association fails to comply with a provision of this section, the association shall  
246 pay:

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

248 (b) for items described in Subsections (1)(a)(ii)(A) [~~through (C)~~] and (1)(a)(iii), \$25 to  
249 the lot owner who made the request for each day the request continues unfulfilled, beginning  
250 the sixth day after the day on which the lot owner made the request; and

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

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

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

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

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

260 (i) the lot owner may request:

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

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

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

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

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

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

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

- 276 (i) the lot owner's name, address, telephone number, and email address;
- 277 (ii) each requirement of this section with which the association has failed to comply;
- 278 (iii) a demand that the association comply with each requirement with which the
- 279 association has failed to comply; and
- 280 (iv) a date by which the association shall remedy the association's noncompliance that
- 281 is at least 10 days after the day on which the lot owner delivers the notice to the association.
- 282 (7) (a) The provisions of Section [16-6a-1604](#) do not apply to an association.
- 283 (b) The provisions of this section apply regardless of any conflicting provision in Title
- 284 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 285 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that
- 286 the lot owner has under this section.
- 287 (9) An association is not liable for identifying or providing a document in error, if the
- 288 association identified or provided the erroneous document in good faith.