

HB0401S01 compared with HB0401

~~deleted text~~ shows text that was in HB0401 but was deleted in HB0401S01.

inserted text shows text that was not in HB0401 but was inserted into HB0401S01.

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Representative Cheryl K. Acton proposes the following substitute bill:

HOMEOWNERS ASSOCIATION REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

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 or annually provide the documents via electronic mail; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

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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

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

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

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

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

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

(ii) a copy of the association's:

(A) governing documents;

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

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

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

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

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

(A) approved minutes; and

(B) budget and financial statement.

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

(i) a Social Security number;

(ii) a bank account number; or

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

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

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

(ii) (A) if the association of unit owners contains 20 or more units~~;~~:

(I) make available online the documents described in Subsections (1)(a)(ii)(A) and (1)(a)(iii) to unit owners, free of charge; or

(II) send the documents described in Subsections (1)(a)(ii)(A) and 1(a)(iii) to unit owners~~;~~ free of charge~~;~~ via electronic mail on an annual basis;

(B) regardless of the number of units in the association, if the association of unit owners has an active website, make the documents described in Subsections (1)(a)(ii)(A) [~~through (C)~~] and (1)(a)(iii) available to unit owners, free of charge, through the website; or

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

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

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

~~— (ii) ;~~ may include making documents available through the association's website.

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

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

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

(a) a unit owner shall include:

(i) the association of unit owners' name;

(ii) the unit owner's name;

(iii) the unit owner's property address;

(iv) the unit owner's email address;

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- (v) a description of the documents requested; and
- (vi) any election or request described in Subsection (3)(b); and
- (b) a unit owner may:
 - (i) elect whether to inspect or copy the documents;
 - (ii) if the unit owner elects to copy the documents, request hard copies or electronic scans of the documents; or
 - (iii) subject to Subsection (4), request that:
 - (A) the association of unit owners make the copies or electronic scans of the requested documents;
 - (B) a recognized third party duplicating service make the copies or electronic scans of the requested documents;
 - (C) the unit owner be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents; or
 - (D) the association of unit owners email the requested documents to an email address provided in the request.
- (4) (a) An association of unit owners shall comply with a request described in Subsection (3).
 - (b) If an association of unit owners produces the copies or electronic scans:
 - (i) the copies or electronic scans shall be legible and accurate; and
 - (ii) the unit owner shall pay the association of unit owners the reasonable cost of the copies or electronic scans and for time spent meeting with the unit owner, which may not exceed:
 - (A) the actual cost that the association of unit owners paid to a recognized third party duplicating service to make the copies or electronic scans; or
 - (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.
 - (c) If a unit owner requests a recognized third party duplicating service make the copies or electronic scans:
 - (i) the association of unit owners shall arrange for the delivery and pick up of the original documents; and

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

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

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

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

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

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

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

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

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

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

(i) the unit owner may request:

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

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

(C) any other relief provided by law; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) each record identified in Subsections 16-6a-1601(1) through (5), in accordance with

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Sections 16-6a-1601, 16-6a-1602, 16-6a-1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610; and

(ii) a copy of the association's:

(A) governing documents;

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

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

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

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

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

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

(A) approved minutes; and

(B) budget and financial statement.

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

(i) a Social Security number;

(ii) a bank account number; or

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

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

(i) make documents available to lot owners in accordance with the association's governing documents; and

(ii) (A) if the association contains 20 or more lots~~1,3~~:

(I) make available online the documents described in Subsections (1)(a)(ii)(A) and (1)(a)(iii) to lot owners, free of charge; or

(II) send the documents described in Subsections (1)(a)(ii)(A) and (1)(a)(iii) to lot owners via electronic mail on an annual basis;

~~[(A)]~~ (B) regardless of the number of lots in the association, if the association has an active website, make the documents described in Subsections (1)(a)(ii)(A) ~~[through (C)]~~ and (1)(a)(iii) available to lot owners, free of charge, through the website; or

~~[(B)]~~ (C) if the association does not have an active website and contains fewer than 20 lots, make physical copies of the documents described in Subsections (1)(a)(ii)(A) ~~[through (C)]~~ and (1)(a)(iii) available to lot owners during regular business hours at the association's

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address registered with the Department of Commerce under Section 57-8a-105.

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

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

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

(c) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.

~~(c)~~ (d) If a provision of an association's governing documents conflicts with a provision of this section, the provision of this section governs.

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

(a) a lot owner shall include:

(i) the association's name;

(ii) the lot owner's name;

(iii) the lot owner's property address;

(iv) the lot owner's email address;

(v) a description of the documents requested; and

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

(b) a lot owner may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the lot owner may request:

(A) injunctive relief requiring the association to comply with the provisions of this

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section;

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

(C) any other relief provided by law; and

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

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

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

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

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

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

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

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

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

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

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

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