

Representative Norman K Thurston proposes the following substitute bill:

PROPERTY OWNER ASSOCIATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill amends provisions of the Condominium Ownership Act and the Community Association Act in relation to radon mitigation.

Highlighted Provisions:

This bill:

▶ limits a homeowners' association's authority to adopt or enforce a rule that prohibits an owner from making modifications for radon mitigation.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-8.1, as last amended by Laws of Utah 2023, Chapter 503

57-8a-218, as last amended by Laws of Utah 2023, Chapter 503

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

Section 1. Section **57-8-8.1** is amended to read:



26 **57-8-8.1. Equal treatment by rules required -- Limits on rules.**

27 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated unit
28 owners similarly.

29 (b) Notwithstanding Subsection (1)(a), a rule may:

30 (i) vary according to the level and type of service that the association of unit owners
31 provides to unit owners;

32 (ii) differ between residential and nonresidential uses; or

33 (iii) for a unit that a unit owner leases for a term of less than 30 days, impose a
34 reasonable limit on the number of individuals that may use the common areas and facilities as
35 the rental unit tenant's guest or as the unit owner's guest.

36 (2) (a) If a unit owner owns a rental unit and is in compliance with the association of
37 unit owners' governing documents and any rule that the association of unit owners adopts under
38 Subsection (4), a rule may not treat the unit owner differently because the unit owner owns a
39 rental unit.

40 (b) Notwithstanding Subsection (2)(a), a rule may:

41 (i) limit or prohibit a rental unit owner from using the common areas and facilities for
42 purposes other than attending an association meeting or managing the rental unit;

43 (ii) if the rental unit owner retains the right to use the association of unit owners'
44 common areas and facilities, even occasionally:

45 (A) charge a rental unit owner a fee to use the common areas and facilities; and

46 (B) for a unit that a unit owner leases for a term of less than 30 days, impose a
47 reasonable limit on the number of individuals that may use the common areas and facilities as
48 the rental unit tenant's guest or as the unit owner's guest; or

49 (iii) include a provision in the association of unit owners' governing documents that:

50 (A) requires each tenant of a rental unit to abide by the terms of the governing
51 documents; and

52 (B) holds the tenant and the rental unit owner jointly and severally liable for a violation
53 of a provision of the governing documents.

54 (3) (a) A rule may not interfere with the freedom of a unit owner to determine the
55 composition of the unit owner's household.

56 (b) Notwithstanding Subsection (3)(a), an association of unit owners may:

57 (i) require that all occupants of a dwelling be members of a single housekeeping unit;

58 or

59 (ii) limit the total number of occupants permitted in each residential dwelling on the
60 basis of the residential dwelling's:

61 (A) size and facilities; and

62 (B) fair use of the common areas and facilities.

63 (4) Unless contrary to a declaration, a rule may require a minimum lease term.

64 (5) Unless otherwise provided in the declaration, an association of unit owners may by
65 rule:

66 (a) regulate the use, maintenance, repair, replacement, and modification of common
67 areas and facilities;

68 (b) impose and receive any payment, fee, or charge for:

69 (i) the use, rental, or operation of the common areas, except limited common areas and
70 facilities; and

71 (ii) a service provided to a unit owner;

72 (c) impose a charge for a late payment of an assessment; or

73 (d) provide for the indemnification of the association of unit owners' officers and
74 management committee consistent with Title 16, Chapter 6a, Utah Revised Nonprofit
75 Corporation Act.

76 (6) (a) Except as provided in Subsection (6)(b), a rule may not prohibit a unit owner
77 from installing a personal security camera immediately adjacent to the entryway, window, or
78 other outside entry point of the owner's condominium unit.

79 (b) A rule may prohibit a unit owner from installing a personal security camera in a
80 common area not physically connected to the owner's unit.

81 (7) (a) A rule may not abridge the right of a unit owner to display a religious or holiday
82 sign, symbol, or decoration inside the owner's condominium unit.

83 (b) An association may adopt a reasonable time, place, and manner restriction with
84 respect to a display that is visible from the exterior of a unit.

85 (8) (a) A rule may not:

86 (i) prohibit a unit owner from displaying in a window of the owner's condominium
87 unit:

88 (A) a for-sale sign; or

89 (B) a political sign;

90 (ii) regulate the content of a political sign; or

91 (iii) establish design criteria for a political sign.

92 (b) Notwithstanding Subsection (8)(a), a rule may reasonably regulate the size and
 93 time, place, and manner of posting a for-sale sign or a political sign.

94 (9) An association of unit owners:

95 (a) shall adopt rules supporting water-efficient landscaping, including allowance for
 96 low water use on lawns during drought conditions; and

97 (b) may not prohibit or restrict the conversion of a grass park strip to water-efficient
 98 landscaping.

99 (10) A rule may restrict a sex offender from accessing a protected area that is
 100 maintained, operated, or owned by the association, subject to the exceptions described in
 101 Subsection 77-27-21.7(3).

102 (11) (a) Except as provided in this Subsection (11), a rule may not prohibit a unit
 103 owner from making modifications, consistent with industry standards, for radon mitigation.

104 (b) Subsection (11)(a) does not apply if the modifications would violate:

105 (i) a local land use ordinance;

106 (ii) a building code;

107 (iii) a health code; or

108 (iv) a fire code.

109 (c) A rule governing the placement or external appearance of modifications ~~§~~ → [for radon
 110 mitigation does not apply to a unit owner's modifications if the rule would] may apply to
 110a modifications for radon mitigation unless the rule would ~~§~~ :

111 (i) unreasonably interfere with the modifications' functionality; or

112 (ii) add more than ~~§~~ → [20%] 40% ~~←§~~ of the modifications' original cost to the cost of
 112a installing the
 113 modifications.

114 (d) A rule may require that a unit owner making modifications related to radon
 115 mitigation:

116 (i) demonstrate or provide proof of radon contamination; and

117 (ii) provide proof that the modifications and any related construction will be performed
 118 by a licensed person.

119 ~~[(11)]~~ (12) A rule shall be reasonable.

120 ~~[(12)]~~ (13) A declaration, or an amendment to a declaration, may vary any of the
121 requirements of Subsections (1) through (5), except Subsection (1)(b)(ii).

122 ~~[(13)]~~ (14) This section applies to an association of unit owners regardless of when the
123 association of unit owners is created.

124 Section 2. Section **57-8a-218** is amended to read:

125 **57-8a-218. Equal treatment by rules required -- Limits on association rules and**
126 **design criteria.**

127 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot
128 owners similarly.

129 (b) Notwithstanding Subsection (1)(a), a rule may:

130 (i) vary according to the level and type of service that the association provides to lot
131 owners;

132 (ii) differ between residential and nonresidential uses; and

133 (iii) for a lot that an owner leases for a term of less than 30 days, impose a reasonable
134 limit on the number of individuals who may use the common areas and facilities as guests of
135 the lot tenant or lot owner.

136 (2) (a) If a lot owner owns a rental lot and is in compliance with the association's
137 governing documents and any rule that the association adopts under Subsection (4), a rule may
138 not treat the lot owner differently because the lot owner owns a rental lot.

139 (b) Notwithstanding Subsection (2)(a), a rule may:

140 (i) limit or prohibit a rental lot owner from using the common areas for purposes other
141 than attending an association meeting or managing the rental lot;

142 (ii) if the rental lot owner retains the right to use the association's common areas, even
143 occasionally:

144 (A) charge a rental lot owner a fee to use the common areas; or

145 (B) for a lot that an owner leases for a term of less than 30 days, impose a reasonable
146 limit on the number of individuals who may use the common areas and facilities as guests of
147 the lot tenant or lot owner; or

148 (iii) include a provision in the association's governing documents that:

149 (A) requires each tenant of a rental lot to abide by the terms of the governing

150 documents; and

151 (B) holds the tenant and the rental lot owner jointly and severally liable for a violation
152 of a provision of the governing documents.

153 (3) (a) A rule criterion may not abridge the rights of a lot owner to display a religious
154 or holiday sign, symbol, or decoration:

155 (i) inside a dwelling on a lot; or

156 (ii) outside a dwelling on:

157 (A) a lot;

158 (B) the exterior of the dwelling, unless the association has an ownership interest in, or
159 a maintenance, repair, or replacement obligation for, the exterior; or

160 (C) the front yard of the dwelling, unless the association has an ownership interest in,
161 or a maintenance, repair, or replacement obligation for, the yard.

162 (b) Notwithstanding Subsection (3)(a), the association may adopt a reasonable time,
163 place, and manner restriction with respect to a display that is:

164 (i) outside a dwelling on:

165 (A) a lot;

166 (B) the exterior of the dwelling; or

167 (C) the front yard of the dwelling; and

168 (ii) visible from outside the lot.

169 (4) (a) A rule may not prohibit a lot owner from displaying a political sign:

170 (i) inside a dwelling on a lot; or

171 (ii) outside a dwelling on:

172 (A) a lot;

173 (B) the exterior of the dwelling, regardless of whether the association has an ownership
174 interest in the exterior; or

175 (C) the front yard of the dwelling, regardless of whether the association has an
176 ownership interest in the yard.

177 (b) A rule may not regulate the content of a political sign.

178 (c) Notwithstanding Subsection (4)(a), a rule may reasonably regulate the time, place,
179 and manner of posting a political sign.

180 (d) An association design provision may not establish design criteria for a political

181 sign.

182 (5) (a) A rule may not prohibit a lot owner from displaying a for-sale sign:

183 (i) inside a dwelling on a lot; or

184 (ii) outside a dwelling on:

185 (A) a lot;

186 (B) the exterior of the dwelling, regardless of whether the association has an ownership
187 interest in the exterior; or

188 (C) the front yard of the dwelling, regardless of whether the association has an
189 ownership interest in the yard.

190 (b) Notwithstanding Subsection (5)(a), a rule may reasonably regulate the time, place,
191 and manner of posting a for-sale sign.

192 (6) (a) A rule may not interfere with the freedom of a lot owner to determine the
193 composition of the lot owner's household.

194 (b) Notwithstanding Subsection (6)(a), an association may:

195 (i) require that all occupants of a dwelling be members of a single housekeeping unit;
196 or

197 (ii) limit the total number of occupants permitted in each residential dwelling on the
198 basis of the residential dwelling's:

199 (A) size and facilities; and

200 (B) fair use of the common areas.

201 (7) (a) A rule may not interfere with a reasonable activity of a lot owner within the
202 confines of a dwelling or lot, including backyard landscaping or amenities, to the extent that
203 the activity is in compliance with local laws and ordinances, including nuisance laws and
204 ordinances.

205 (b) Notwithstanding Subsection (7)(a), a rule may prohibit an activity within the
206 confines of a dwelling or lot, including backyard landscaping or amenities, if the activity:

207 (i) is not normally associated with a project restricted to residential use; or

208 (ii) (A) creates monetary costs for the association or other lot owners;

209 (B) creates a danger to the health or safety of occupants of other lots;

210 (C) generates excessive noise or traffic;

211 (D) creates unsightly conditions visible from outside the dwelling;

212 (E) creates an unreasonable source of annoyance to persons outside the lot; or
213 (F) if there are attached dwellings, creates the potential for smoke to enter another lot
214 owner's dwelling, the common areas, or limited common areas.

215 (c) If permitted by law, an association may adopt rules described in Subsection (7)(b)
216 that affect the use of or behavior inside the dwelling.

217 (8) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written
218 objection to the board, alter the allocation of financial burdens among the various lots.

219 (b) Notwithstanding Subsection (8)(a), an association may:

- 220 (i) change the common areas available to a lot owner;
- 221 (ii) adopt generally applicable rules for the use of common areas; or
- 222 (iii) deny use privileges to a lot owner who:
 - 223 (A) is delinquent in paying assessments;
 - 224 (B) abuses the common areas; or
 - 225 (C) violates the governing documents.

226 (c) This Subsection (8) does not permit a rule that:

- 227 (i) alters the method of levying assessments; or
- 228 (ii) increases the amount of assessments as provided in the declaration.

229 (9) (a) Subject to Subsection (9)(b), a rule may not:

- 230 (i) prohibit the transfer of a lot; or
- 231 (ii) require the consent of the association or board to transfer a lot.

232 (b) Unless contrary to a declaration, a rule may require a minimum lease term.

233 (10) (a) A rule may not require a lot owner to dispose of personal property that was in
234 or on a lot before the adoption of the rule or design criteria if the personal property was in
235 compliance with all rules and other governing documents previously in force.

236 (b) The exemption in Subsection (10)(a):

- 237 (i) applies during the period of the lot owner's ownership of the lot; and
- 238 (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of
239 the rule described in Subsection (10)(a).

240 (11) A rule or action by the association or action by the board may not unreasonably
241 impede a declarant's ability to satisfy existing development financing for community
242 improvements and right to develop:

- 243 (a) the project; or
- 244 (b) other properties in the vicinity of the project.
- 245 (12) A rule or association or board action may not interfere with:
- 246 (a) the use or operation of an amenity that the association does not own or control; or
- 247 (b) the exercise of a right associated with an easement.
- 248 (13) A rule may not divest a lot owner of the right to proceed in accordance with a
- 249 completed application for design review, or to proceed in accordance with another approval
- 250 process, under the terms of the governing documents in existence at the time the completed
- 251 application was submitted by the owner for review.
- 252 (14) Unless otherwise provided in the declaration, an association may by rule:
- 253 (a) regulate the use, maintenance, repair, replacement, and modification of common
- 254 areas;
- 255 (b) impose and receive any payment, fee, or charge for:
- 256 (i) the use, rental, or operation of the common areas, except limited common areas; and
- 257 (ii) a service provided to a lot owner;
- 258 (c) impose a charge for a late payment of an assessment; or
- 259 (d) provide for the indemnification of the association's officers and board consistent
- 260 with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- 261 (15) A rule may not prohibit a lot owner from installing a personal security camera
- 262 immediately adjacent to the entryway, window, or other outside entry point of the owner's
- 263 dwelling unit.
- 264 (16) (a) An association
- 265 shall adopt rules supporting water-efficient landscaping, including allowance for low
- 266 water use on lawns during drought conditions .
- 267 (b) A rule may not:
- 268 (i) prohibit or restrict the conversion of a grass park strip to water-efficient landscaping
- 269 ; or
- 270 (ii) prohibit low water use on lawns during drought conditions.
- 271 (c) An association subject to this chapter and formed before March 5, 2023, shall adopt
- 272 rules required under Subsection (16)(a) before June 30, 2023.
- 273 (17) (a) Except as provided in Subsection (17)(b), a rule may not prohibit the owner of

274 a residential lot from constructing an internal accessory dwelling unit, as defined in Section
275 10-9a-530, within the owner's residential lot.

276 (b) Subsection (17)(a) does not apply if the construction would violate:

277 (i) a local land use ordinance;

278 (ii) a building code;

279 (iii) a health code; or

280 (iv) a fire code.

281 (18) (a) Except as provided in Subsection (18)(b), a rule may not prohibit the owner of
282 a residential lot from making modifications, consistent with industry standards, for radon
283 mitigation.

284 (b) Subsection (18)(a) does not apply if the modifications would violate:

285 (i) a local land use ordinance;

286 (ii) a building code;

287 (iii) a health code; or

288 (iv) a fire code.

289 (c) A rule governing the placement or external appearance of modifications for radon
290 mitigation does not apply to a lot owner's modifications if the rule would:

291 (i) unreasonably interfere with the modifications' functionality; or

292 (ii) add more than $\hat{S} \rightarrow [20\%]$ **40%** $\leftarrow \hat{S}$ of the modifications' original cost to the cost of
292a installing the
293 modifications.

294 (d) A rule may require that a lot owner making modifications related to radon
295 mitigation:

296 (i) demonstrate or provide proof of radon contamination; and

297 (ii) provide proof that the modifications and any related construction will be performed
298 by a licensed person.

299 ~~[(18)]~~ (19) A rule may restrict a sex offender from accessing a protected area that is
300 maintained, operated, or owned by the association, subject to the exceptions described in
301 Subsection 77-27-21.7(3).

302 ~~[(19)]~~ (20) A rule shall be reasonable.

303 ~~[(20)]~~ (21) A declaration, or an amendment to a declaration, may vary any of the
304 requirements of Subsections (1), (2), (6), and (8) through (14), except Subsection (1)(b)(ii).

305 [~~(21)~~] (22) A rule may not be inconsistent with a provision of the association's
306 declaration, bylaws, or articles of incorporation.

307 [~~(22)~~] (23) This section applies to an association regardless of when the association is
308 created.

309 Section 3. **Effective date.**

310 This bill takes effect on May 1, 2024.