

# HB0104S01 compared with HB0104

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inserted text shows text that was not in HB0104 but was inserted into HB0104S01.

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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

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### 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:

- ▶ ~~prohibits an association of unit owners or a homeowner association from adopting~~ limits a homeowners' association's authority to adopt or ~~enforcing~~ enforce a rule that prohibits an owner from making modifications for radon mitigation.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

## HB0104S01 compared with HB0104

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

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

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

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

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

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

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

(ii) differ between residential and nonresidential uses; or

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

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

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

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

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

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

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

## HB0104S01 compared with HB0104

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

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

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

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

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

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

or

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

(A) size and facilities; and

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

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

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

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

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

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

(ii) a service provided to a unit owner;

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

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

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

(b) A rule may prohibit a unit owner from installing a personal security camera in a

## HB0104S01 compared with HB0104

common area not physically connected to the owner's unit.

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

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

(8) (a) A rule may not:

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

(A) a for-sale sign; or

(B) a political sign;

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

(iii) establish design criteria for a political sign.

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

(9) An association of unit owners:

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

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

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

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

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

(i) a local land use ordinance;

(ii) a building code;

(iii) a health code; or

(iv) a fire code.

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

## HB0104S01 compared with HB0104

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

(ii) add more than 20% of the modifications' original cost to the cost of installing the modifications.

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

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

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

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

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

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

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

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

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

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

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

(ii) differ between residential and nonresidential uses; and

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

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

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

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

## HB0104S01 compared with HB0104

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

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

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

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

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

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

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

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

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

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

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

(i) outside a dwelling on:

(A) a lot;

(B) the exterior of the dwelling; or

(C) the front yard of the dwelling; and

(ii) visible from outside the lot.

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

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

## **HB0104S01 compared with HB0104**

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

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

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

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

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

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

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

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

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

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

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

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

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

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

(A) size and facilities; and

(B) fair use of the common areas.

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

## HB0104S01 compared with HB0104

ordinances.

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

- (i) is not normally associated with a project restricted to residential use; or
- (ii) (A) creates monetary costs for the association or other lot owners;
- (B) creates a danger to the health or safety of occupants of other lots;
- (C) generates excessive noise or traffic;
- (D) creates unsightly conditions visible from outside the dwelling;
- (E) creates an unreasonable source of annoyance to persons outside the lot; or
- (F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's dwelling, the common areas, or limited common areas.

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

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

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

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

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

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

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

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

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

(10) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in



## HB0104S01 compared with HB0104

compliance with all rules and other governing documents previously in force.

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

(i) applies during the period of the lot owner's ownership of the lot; and

(ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (10)(a).

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

(a) the project; or

(b) other properties in the vicinity of the project.

(12) A rule or association or board action may not interfere with:

(a) the use or operation of an amenity that the association does not own or control; or

(b) the exercise of a right associated with an easement.

(13) A rule may not divest a lot owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.

(14) Unless otherwise provided in the declaration, an association may by rule:

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

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

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

(ii) a service provided to a lot owner;

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

(d) provide for the indemnification of the association's officers and board consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(15) A rule may not prohibit a lot owner from installing a personal security camera immediately adjacent to the entryway, window, or other outside entry point of the owner's dwelling unit.

(16) (a) An association

shall adopt rules supporting water-efficient landscaping, including allowance for low

## HB0104S01 compared with HB0104

water use on lawns during drought conditions .

(b) A rule may not:

(i) prohibit or restrict the conversion of a grass park strip to water-efficient landscaping

; or

(ii) prohibit low water use on lawns during drought conditions.

(c) An association subject to this chapter and formed before March 5, 2023, shall adopt rules required under Subsection (16)(a) before June 30, 2023.

(17) (a) Except as provided in Subsection (17)(b), a rule may not prohibit the owner of a residential lot from constructing an internal accessory dwelling unit, as defined in Section 10-9a-530, within the owner's residential lot.

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

(i) a local land use ordinance;

(ii) a building code;

(iii) a health code; or

(iv) a fire code.

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

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

(i) a local land use ordinance;

(ii) a building code;

(iii) a health code; or

(iv) a fire code.

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

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

(ii) add more than 20% of the modifications' original cost to the cost of installing the modifications.

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

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

## HB0104S01 compared with HB0104

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

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

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

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

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

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

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.