

ASSOCIATION LIEN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill amends provisions in Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act, which relate to liens against a unit or a lot.

Highlighted Provisions:

This bill:

- ▶ clarifies the circumstances under which an association of unit owners or an association has a lien against a unit or a lot for an unpaid fine; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-37, as enacted by Laws of Utah 2001, Chapter 317

57-8-44, as last amended by Laws of Utah 2013, Chapter 95

57-8a-301, as last amended by Laws of Utah 2013, Chapter 95



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

Section 1. Section **57-8-37** is amended to read:

57-8-37. Fines.

(1) (a) If authorized in the declaration, bylaws, or association rules, the management committee of a residential condominium project may assess a fine against a unit owner after the requirements of Subsection (2) have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws.

(b) The management committee of a nonresidential condominium project may not assess a fine against a unit owner.

(2) Before assessing a fine under Subsection (1), the management committee shall give notice to the unit owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or association rules, which shall be at least 48 hours.

(3) (a) A fine assessed under Subsection (1) shall:

(i) be made only for a violation of a rule or regulation which is specifically listed in the declaration, bylaws, or association rules as an offense which is subject to a fine;

(ii) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500; and

(iii) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

(b) Cumulative fines for a continuing violation may not exceed \$500 per month.

(4) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(5) A unit owner may appeal a fine issued under Subsection (1) by initiating a civil action within 180 days after:

(a) a hearing has been held and a final decision has been rendered by the management

59 committee under Subsection (4); or

60 (b) the time to request an informal hearing under Subsection (4) has expired without
61 the unit owner making such a request.

62 ~~[(6) A fine assessed under Subsection (1) which remains unpaid after the time for
63 appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the
64 property in accordance with the same standards as a lien for the nonpayment of common
65 expenses under Section 57-8-20.]~~

66 Section 2. Section 57-8-44 is amended to read:

67 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
68 **collection.**

69 (1) (a) Except as provided in Section 57-8-13.1, an association of unit owners has a
70 lien on a unit for:

71 (i) an assessment;

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

74 (A) court costs and reasonable attorney fees;

75 (B) late charges;

76 (C) interest; and

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

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

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

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

85 (b) The recording of a declaration constitutes record notice and perfection of a lien
86 described in Subsection (1)(a).

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

- 90 (3) An unpaid assessment or fine accrues interest at the rate provided:
91 (a) in Subsection 15-1-1(2); or
92 (b) in the governing documents, if the governing documents provide for a different
93 interest rate.
- 94 (4) A lien under this section has priority over each other lien and encumbrance on a
95 unit except:
96 (a) a lien or encumbrance recorded before the declaration is recorded;
97 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
98 that is recorded before a recorded notice of lien by or on behalf of the association of unit
99 owners; or
100 (c) a lien for real estate taxes or other governmental assessments or charges against the
101 unit.
- 102 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
103 Exemptions Act.
- 104 (6) Unless the declaration provides otherwise, if two or more associations of unit
105 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
106 when the liens are created.
- 107 Section 3. Section 57-8a-301 is amended to read:
108 **57-8a-301. Lien in favor of association for assessments and costs of collection.**
- 109 (1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:
110 (i) an assessment;
111 (ii) except as provided in the declaration, fees, charges, and costs associated with
112 collecting an unpaid assessment, including:
113 (A) court costs and reasonable attorney fees;
114 (B) late charges;
115 (C) interest; and
116 (D) any other amount that the association is entitled to recover under the declaration,
117 this chapter, or an administrative or judicial decision; and
118 (iii) a fine that the association imposes against the owner of the lot in accordance with
119 Section 57-8a-208.
- 120 (b) The recording of a declaration constitutes record notice and perfection of a lien

121 described in Subsection (1)(a).

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

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

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

127 (b) in the declaration, if the declaration provides for a different interest rate.

128 (4) A lien under this section has priority over each other lien and encumbrance on a lot
129 except:

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

131 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
132 is recorded before a recorded notice of lien by or on behalf of the association; or

133 (c) a lien for real estate taxes or other governmental assessments or charges against the
134 lot.

135 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
136 Exemptions Act.

137 (6) Unless the declaration provides otherwise, if two or more associations have liens
138 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
139 created.

Legislative Review Note
as of 11-20-13 3:13 PM

Office of Legislative Research and General Counsel