

HOMEOWNER ASSOCIATION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to condominium owner and homeowner associations.

Highlighted Provisions:

This bill:

▶ prohibits an association from charging a fee for providing information needed for a closing on a sale of a unit or lot, unless provided for in the declaration, limits the amount of the fee, and provides a consequence if an association fails to provide the information within a specified time;

▶ requires associations to register with the Department of Commerce and to submit an updated registration under specified circumstances, and establishes consequences for a failure to register or update a previous registration;

▶ specifies that a lien for nonpayment of assessments arises when a notice of lien is recorded, regardless of when the default occurred; and

▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 57-8-20, as last amended by Laws of Utah 2010, Chapter 309

30 57-8a-203, as enacted by Laws of Utah 2004, Chapter 153

31 ENACTS:

32 57-8-6.3, Utah Code Annotated 1953

33 57-8-13.1, Utah Code Annotated 1953

34 57-8a-105, Utah Code Annotated 1953

35 57-8a-106, Utah Code Annotated 1953



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

38 Section 1. Section 57-8-6.3 is enacted to read:

39 **57-8-6.3. Fee for providing information needed at closing.**

40 (1) Unless specifically authorized in the declaration, an association of unit owners may
41 not charge a fee for providing association ~~H~~→ payoff ←~~H~~ information needed in connection
41a with the closing of
42 a unit owner's sale of the owner's unit.

43 (2) An association of unit owners may not:

44 (a) require a fee described in Subsection (1) that is authorized in the declaration to be
45 paid before closing; or

46 (b) charge the fee if it exceeds \$25.

47 (3) An association of unit owners that fails to provide information described in
48 Subsection (1) within five business days after the closing agent requests the information may
49 not enforce a lien against that unit for money due to the association at closing.

50 Section 2. Section 57-8-13.1 is enacted to read:

51 **57-8-13.1. Registration with Department of Commerce.**

52 (1) As used in this section, "department" means the Department of Commerce created
53 in Section 13-1-2.

54 (2) (a) No later than 90 days after the recording of a declaration, an association of unit
55 owners shall register with the department in the manner established by the department.

56 (b) An association of unit owners existing under a declaration recorded before May 10,
57 2011, shall, no later than July 1, 2011, register with the department in the manner established
58 by the department.

59 (3) The department shall require an association of unit owners registering as required
 60 in this section to provide with each registration:

61 (a) the name and address of the association of unit owners;

62 (b) the name, address, telephone number, and, if applicable, email address of the
 63 president of the association of unit owners;

64 ~~Ĥ→ [(c) the number of condominium units within the association of unit owners;]~~ ←Ĥ and

65 ~~Ĥ→ [(d)]~~ (c) ←Ĥ contact information for the management committee.

66 (4) An association of unit owners that has registered under Subsection (2) shall submit
 67 to the department an updated registration, in the manner established by the department, within
 68 90 days after a change in any of the information provided under Subsection (3).

69 (5) During any period of noncompliance with the registration requirements of
 70 Subsection (2) or the requirement for an updated registration under Subsection (4):

71 (a) a lien for the nonpayment of common expenses may not arise under Section
 72 57-8-20 against any condominium unit; and

73 (b) an association of unit owners may not enforce a previous lien under Section
 74 57-8-20 against any condominium unit.

75 Section 3. Section **57-8-20** is amended to read:

76 **57-8-20. Lien for nonpayment of common expenses.**

77 (1) Every unit owner shall pay his proportionate share of the common expenses.
 78 Payment shall be in the amounts and at the times determined by the management committee in
 79 accordance with the terms of the declaration or the bylaws.

80 (2) (a) An assessment levied against each unit is a debt of the owner at the time the
 81 assessment is made and is collectible as such.

82 (b) The association is entitled to recover all expenses incurred by the association in
 83 collecting any unpaid assessment, including reasonable attorney fees, whether an action is
 84 brought against an owner under Subsection (3), or whether a suit to foreclose the lien upon the
 85 unit is instituted under Subsection (4).

86 (3) Suit to recover a money judgment for any unpaid assessment is maintainable
 87 without foreclosing or waiving the lien securing it. The prevailing party in the action is entitled
 88 to recover its costs of suit and reasonable attorney fees.

89 (4) (a) Subject to Subsection 57-8-37(6), if any unit owner fails or refuses to pay an

90 assessment when due, that amount [~~constitutes~~] becomes a lien on the interest of the owner in
91 the property[~~, and~~] upon the recording of a notice of lien by the manager or management
92 committee [it], regardless of when the default in the payment of the assessment occurred.

93 (b) A lien under Subsection (4)(a) is a lien upon the unit owner's interest in the
94 property prior to all other liens and encumbrances, recorded or unrecorded, except:

95 (i) tax and special assessment liens on the unit in favor of any assessing unit or special
96 improvement district; and

97 (ii) encumbrances on the interest of the unit owner recorded prior to the date such
98 notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

99 [~~(b)~~] (c) The lien for nonpayment of an assessment may be enforced by sale or
100 foreclosure of the unit owner's interest by the manager or management committee. The sale or
101 foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or
102 mortgages or in any other manner permitted by law.

103 [~~(c)~~] (d) In any foreclosure or sale, the unit owner shall pay the costs and expenses of
104 such proceedings and reasonable attorney fees. If so provided in the declaration or bylaws, in
105 the case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in
106 the foreclosure action may require the appointment of a receiver to collect the rental without
107 regard to the value of the mortgage security.

108 [~~(d)~~] (e) Unless otherwise provided in the declaration, the manager or management
109 committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey
110 the unit.

111 (5) (a) When authorized in the declaration, bylaws, or rules adopted by the
112 management committee, if the owner fails or refuses to pay any assessment when due, the
113 management committee may, after giving notice and an opportunity to be heard in accordance
114 with Subsection (5)(b):

115 (i) terminate an owner's right to receive utility services paid as a common expense; and

116 (ii) terminate an owner's right of access and use of recreational facilities.

117 (b) Before terminating utility services or right of access and use of recreational
118 facilities under Subsection (5)(a), the manager or management committee shall give written
119 notice to the unit owner in the manner provided in the declaration, bylaws, or association rules.
120 The notice shall state:

121 (i) utility services or right of access and use of recreational facilities will be terminated
122 if payment of the assessment is not received within the time provided in the declaration,
123 bylaws, or association rules, which time shall be stated and be at least 48 hours;

124 (ii) the amount of the assessment due, including any interest or late payment fee; and

125 (iii) the right to request a hearing under Subsection (5)(c).

126 (c) A unit owner who is given notice under Subsection (5)(b) may request an informal
127 hearing to dispute the assessment by submitting a written request to the management
128 committee within 14 days from the date the notice is received.

129 (i) The hearing shall be conducted in accordance with the standards provided in the
130 declaration, bylaws, or association rules.

131 (ii) If a hearing is requested, utility services or right of access and use or recreational
132 facilities may not be terminated until after the hearing has been conducted and a final decision
133 has been entered.

134 (d) Upon payment of the assessment due, including any interest or late payment fee, the
135 manager or management committee shall immediately take action to reinstate the terminated
136 utility services to the unit.

137 (e) The remedies provided in this Subsection (5) shall only apply to residential
138 condominium units.

139 (6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the
140 unit fails to pay any assessment for a period of more than 60 days after it is due and payable,
141 the management committee, upon compliance with this Subsection (6)(a), may demand the
142 tenant to pay to the association all future lease payments due the owner, commencing with the
143 next monthly or other periodic payment, until the amount due to the association is paid.

144 (b) The manager or management committee must give the unit owner written notice, in
145 accordance with the declaration, bylaws, or association rules, of its intent to demand full
146 payment from the tenant. This notice shall:

147 (i) provide notice to the tenant that full payment of remaining lease payments will
148 commence with the next monthly or other periodic payment unless the assessment is received
149 within the time period provided in the declaration, bylaws, or association rules;

150 (ii) state the amount of the assessment due, including any interest or late payment fee;

151 (iii) state that any costs of collection, not to exceed \$150, and other assessments that

152 become due may be added to the total amount due; and

153 (iv) provide the requirements and rights described in Subsections (6)(b) through (f).

154 (c) If the unit owner fails to pay the amount of the assessment due by the date specified
155 in the notice, the manager or management committee may deliver written notice to the tenant,
156 in accordance with the declaration, bylaws, or association rules, that demands future payments
157 due to the owner be paid to the association pursuant to Subsection (6)(d). A copy of the notice
158 must be mailed to the unit owner. The notice provided to the tenant must state:

159 (i) that due to the owner's failure to pay the assessment within the time period allowed,
160 the owner has been notified of the management committee's intent to collect all lease payments
161 due to the association pursuant to Subsection (6)(a);

162 (ii) that until notification by the association that the assessment due, including any
163 interest or late payment fee, has been paid, all future lease payments due to the owner are to be
164 paid to the association; and

165 (iii) payment by the tenant to the association in compliance with this Subsection (6)
166 will not constitute a default under the terms of the lease agreement. If payment is in
167 compliance with this Subsection (6) suit or other action may not be initiated by the owner
168 against the tenant for failure to pay.

169 (d) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited in
170 a separate account and disbursed to the association until the assessment due, together with any
171 cost of administration which may not exceed \$25, is paid in full. Any remaining balance must
172 be paid to the owner within five business days of payment in full to the association.

173 (e) Within five business days of payment in full of the assessment, including any
174 interest or late payment fee, the manager or management committee must notify the tenant in
175 writing that future lease payments are no longer due to the association. A copy of this
176 notification must be mailed to the unit owner.

177 (f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive
178 occupancy of a unit by any person or persons, other than the unit owner, for which the unit
179 owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

180 (7) (a) The manager or management committee shall, upon the written request of any
181 unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement
182 indicating any unpaid assessments with respect to the unit covered by the request. This written

183 statement of unpaid assessments is conclusive upon the remaining unit owners and upon the
 184 manager and management committee in favor of all persons who rely on the written statement
 185 in good faith.

186 (b) Unless the manager or management committee complies with the request for a
 187 statement of any unpaid assessments within 10 days, all unpaid assessments which became due
 188 prior to the date the request was made are subordinate to the lien held by the person requesting
 189 the statement.

190 (8) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due
 191 with respect to the unit. Upon payment, the encumbrancer has a lien on the unit for the
 192 amounts paid.

193 (9) Remedies provided in this section, by law, or in equity are not considered to be
 194 mutually exclusive.

195 Section 4. Section **57-8a-105** is enacted to read:

196 **57-8a-105. Registration with Department of Commerce.**

197 (1) As used in this section, "department" means the Department of Commerce created
 198 in Section 13-1-2.

199 (2) (a) No later than 90 days after the recording of a declaration of covenants,
 200 conditions, and restrictions establishing an association, the association shall register with the
 201 department in the manner established by the department.

202 (b) An association existing under a declaration of covenants, conditions, and
 203 restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the
 204 department in the manner established by the department.

205 (3) The department shall require an association registering as required in this section to
 206 provide with each registration:

207 (a) the name and address of the association;

208 (b) the name, address, telephone number, and, if applicable, email address of the chair
 209 of the association board;

210 ~~H→~~ [(c) ~~the number of lots within the association;~~] ~~←H~~ and

211 ~~H→~~ [(d)] (c) ~~←H~~ contact information for the manager.

212 (4) An association that has registered under Subsection (2) shall submit to the
 213 department an updated registration, in the manner established by the department, within 90

214 days after a change in any of the information provided under Subsection (3).

215 (5) During any period of noncompliance with the registration requirements of
216 Subsection (2) or the requirement for an updated registration under Subsection (4):

217 (a) a lien for the nonpayment of an assessment may not arise under Section 57-8a-203
218 against any lot; and

219 (b) an association may not enforce a previous lien under Section 57-8a-203 against any
220 lot.

221 Section 5. Section **57-8a-106** is enacted to read:

222 **57-8a-106. Fee for providing information needed at closing.**

223 (1) Unless specifically authorized in the declaration of covenants, conditions, and
224 restrictions, an association may not charge a fee for providing association ~~Ĥ~~→ **payoff** ←~~Ĥ~~
224a information needed
225 in connection with the closing of a lot owner's sale of the owner's lot.

226 (2) An association may not:

227 (a) require a fee described in Subsection (1) that is authorized in the declaration of
228 covenants, conditions, and restrictions to be paid before closing; or

229 (b) charge the fee if it exceeds \$25.

230 (3) An association that fails to provide information described in Subsection (1) within
231 five business days after the closing agent requests the information may not enforce a lien
232 against that unit for money due to the association at closing.

233 Section 6. Section **57-8a-203** is amended to read:

234 **57-8a-203. Unpaid assessment -- Lien -- Foreclosure.**

235 (1) (a) If an owner fails or refuses to pay an assessment when due, that amount
236 [~~constitutes~~] becomes a lien on the interest of the owner in the property[~~-(b) Upon~~] upon the
237 recording of a notice of lien by the manager or board of directors, [~~a~~] regardless of when the
238 default in the payment of the assessment occurred.

239 (b) A lien described in Subsection (1)(a) is a lien on the unit owner's interest in the
240 property prior to all other liens and encumbrances, recorded or unrecorded, except:

241 (i) tax and special assessment liens on the unit in favor of any assessing lot or special
242 improvement district; and

243 (ii) encumbrances on the interest of the lot owner:

244 (A) recorded prior to the date of the recording of notice of lien described in Subsection

- 245 (1)[(b)](a); and
246 (B) that by law would be a lien prior to subsequently recorded encumbrances.
247 (2) (a) The manager or board of directors may enforce a lien described in Subsection
248 (1) by sale or foreclosure of the owner's interest.
249 (b) The sale or foreclosure described in Subsection (2)(a) shall be conducted in the
250 same manner as foreclosures in:
251 (i) mortgages; or
252 (ii) any other manner permitted by law.
253 (3) In a sale or foreclosure described in Subsection (2)(a), the owner shall pay:
254 (a) the costs and expenses of the proceedings; and
255 (b) reasonable attorney fees.
256 (4) Unless otherwise provided in the declaration, the manager or board of directors
257 may:
258 (a) bid at a sale or foreclosure described in Subsection (2)(a); and
259 (b) hold, lease, mortgage, or convey the lot that is subject to the lien.

Legislative Review Note
as of 1-26-11 6:13 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 104

SHORT TITLE: Homeowner Association Amendments

SPONSOR: Webb, R. C.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation will increase annual revenue and expenditures for the Department of Commerce by \$70,100 (plus \$9,600 in one-time revenues and expenditures in FY 2012).

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
Commerce Service Fund	\$0	\$70,100	\$70,100
Commerce Service, One-time	\$0	\$9,600	\$0
Total Revenue	\$0	\$79,700	\$70,100
Expenditure:			
Commerce Service Fund	\$0	\$70,100	\$70,100
Commerce Service, One-time	\$0	\$9,600	\$0
Total Expenditure	\$0	\$79,700	\$70,100
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Homeowners associations will incur the cost of the filing fee.