

1 **HOMEOWNERS ASSOCIATION REVISIONS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John Knotwell**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to condominium and community associations.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ provides that a condominium or community association shall comply with certain
13 requirements before bringing a legal action against a declarant, a management
14 committee or board of directors, or an employee, an independent contractor, or an
15 agent of the declarant or the management committee or board of directors, related to
16 a period of declarant control or period of administrative control; and

17 ▶ provides that certain provisions regarding open community association board
18 meetings apply during the period of administrative control.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-8a-226**, as enacted by Laws of Utah 2015, Chapter 387

26 ENACTS:

27 **57-8-58**, Utah Code Annotated 1953

28 **57-8a-228**, Utah Code Annotated 1953

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

31 Section 1. Section **57-8-58** is enacted to read:

32 **57-8-58. Liability of declarant or management committee -- Period of declarant**
33 **control.**

34 (1) An association may not, after the period of declarant control, bring a legal action
35 against a declarant, a management committee, or an employee, an independent contractor, or an
36 agent of the declarant or the management committee related to the period of declarant control
37 unless:

38 (a) the legal action is approved in advance at a meeting where owners of at least 51%
39 in aggregate in interest of the undivided ownership of the common areas and facilities are:

40 (i) present; or

41 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or
42 deny the legal action at the meeting;

43 (b) the legal action is approved by vote in person or by proxy of owners of the lesser
44 of:

45 (i) more than 75% in aggregate in interest of the total aggregate interest of the
46 undivided ownership of the common areas and facilities represented by those owners present at
47 the meeting or represented by a proxy as described in Subsection (1)(a); or

48 (ii) more than 51% in aggregate in interest of the undivided ownership of the common
49 areas and facilities;

50 (c) the association provides each unit owner with the items described in Subsection (2);

51 (d) the association establishes the trust described in Subsection (3); and

52 (e) the association first:

53 (i) notifies the person subject to the proposed action of the action and the basis of the
54 association's claim; and

55 (ii) gives the person subject to the proposed action a reasonable opportunity to resolve
56 the dispute that is the basis of the action.

57 (2) Before unit owners in an association may vote to approve an action described in

58 Subsection (1), the association shall provide each unit owner:

59 (a) a written notice that the association is contemplating legal action; and

60 (b) after the association consults with an attorney licensed to practice in the state, a
61 written assessment of:

62 (i) the likelihood that the legal action will succeed;

63 (ii) the likely amount in controversy in the legal action;

64 (iii) the likely cost of resolving the legal action to the association's satisfaction; and

65 (iv) the likely effect the legal action will have on a unit owner's or prospective unit
66 buyer's ability to obtain financing for a unit while the legal action is pending.

67 (3) Before the association commences a legal action described in Subsection (1), the
68 association shall:

69 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,
70 not including attorney fees; and

71 (b) place the amount described in Subsection (3)(a) in a trust that the association may
72 only use to pay the costs to resolve the legal action.

73 (4) This section does not apply to an association that brings a legal action that has an
74 amount in controversy of less than \$75,000.

75 Section 2. Section **57-8a-226** is amended to read:

76 **57-8a-226. Board meetings -- Open meetings.**

77 (1) (a) At least 48 hours before a meeting, the association shall give written notice of
78 the meeting via email to each lot owner who requests notice of a meeting, unless:

79 (i) notice of the meeting is included in a meeting schedule that was previously provided
80 to the lot owner; or

81 (ii) (A) the meeting is to address an emergency; and

82 (B) each board member receives notice of the meeting less than 48 hours before the
83 meeting.

84 (b) A notice described in Subsection (1)(a) shall:

85 (i) be delivered to the lot owner by email, to the email address that the lot owner

86 provides to the board or the association;

87 (ii) state the time and date of the meeting;

88 (iii) state the location of the meeting; and

89 (iv) if a board member may participate by means of electronic communication, provide
90 the information necessary to allow the lot owner to participate by the available means of
91 electronic communication.

92 (2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot
93 owner or the lot owner's representative if the representative is designated in writing.

94 (b) A board may close a meeting to:

95 (i) consult with an attorney for the purpose of obtaining legal advice;

96 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
97 proceedings;

98 (iii) discuss a personnel matter;

99 (iv) discuss a matter relating to contract negotiations, including review of a bid or
100 proposal;

101 (v) discuss a matter that involves an individual if the discussion is likely to cause the
102 individual undue embarrassment or violate the individual's reasonable expectation of privacy;
103 or

104 (vi) discuss a delinquent assessment or fine.

105 (3) (a) At each meeting, the board shall provide each lot owner a reasonable
106 opportunity to offer comments.

107 (b) The board may limit the comments described in Subsection (3)(a) to one specific
108 time period during the meeting.

109 (4) A board member may not avoid or obstruct the requirements of this section.

110 (5) Nothing in this section shall affect the validity or enforceability of an action of a
111 board.

112 (6) (a) [The] Except as provided in Subsection (6)(b), the provisions of this section do
113 not apply during the period of administrative control.

114 (b) During the period of administrative control, the association shall hold a meeting
115 that complies with Subsections (1) through (3):

116 (i) at least once each year; and

117 (ii) each time the association:

118 (A) increases a fee; or

119 (B) raises an assessment.

120 (7) The provisions of this section apply regardless of when the association's first
121 governing document was recorded.

122 (8) (a) Subject to Subsection (8)(d), if an association fails to comply with a provision of
123 Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period
124 described in Subsection (8)(d), a lot owner may file an action in court for:

125 (i) injunctive relief requiring the association to comply with the provisions of
126 Subsections (1) through (4);

127 (ii) \$500 or actual damages, whichever is greater; or

128 (iii) any other relief provided by law.

129 (b) In an action described in Subsection (8)(a), the court may award costs and
130 reasonable attorney fees to the prevailing party.

131 (c) Upon motion from the lot owner, notice to the association, and a hearing in which
132 the court finds a likelihood that the association has failed to comply with a provision of
133 Subsections (1) through (4), the court may order the association to immediately comply with
134 the provisions of Subsections (1) through (4).

135 (d) At least 90 days before the day on which a lot owner files an action described in
136 Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:

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

138 (ii) each requirement of Subsections (1) through (4) with which the association has
139 failed to comply;

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

142 (iv) a date by which the association shall remedy the association's noncompliance that
143 is at least 90 days after the day on which the lot owner delivers the notice to the association.

144 Section 3. Section 57-8a-228 is enacted to read:

145 **57-8a-228. Liability of declarant or board of directors -- Period of administrative**
146 **control.**

147 (1) An association may not, after the period of administrative control, bring a legal
148 action against a declarant, a board of directors, or an employee, an independent contractor, or
149 the agent of the declarant or the previous board of directors related to the period of
150 administrative control unless:

151 (a) the legal action is approved in advance at a meeting where owners of at least 51%
152 of the allocated voting interests of the lot owners in the association are:

153 (i) present; or

154 (ii) represented by a proxy specifically assigned for the purpose of voting to approve or
155 deny the legal action at the meeting;

156 (b) the legal action is approved by vote in person or by proxy of owners of the lesser
157 of:

158 (i) more than 75% of the allocated voting interests of the lot owners present at the
159 meeting or represented by a proxy as described in Subsection (1)(a); or

160 (ii) more than 51% of the allocated voting interests of the lot owners in the association;

161 (c) the association provides each lot owner with the items described in Subsection (2);

162 (d) the association establishes the trust described in Subsection (3); and

163 (e) the association first:

164 (i) notifies the person subject to the proposed legal action of the legal action and basis
165 of the association's claim; and

166 (ii) gives the person subject to the claim a reasonable opportunity to resolve the dispute
167 that is the basis of the proposed legal action.

168 (2) Before lot owners in an association may vote to approve an action described in
169 Subsection (1), the association shall provide each lot owner:

- 170 (a) a written notice that the association is contemplating legal action; and
171 (b) after the association consults with an attorney licensed to practice in the state, a
172 written assessment of:
173 (i) the likelihood that the legal action will succeed;
174 (ii) the likely amount in controversy in the legal action;
175 (iii) the likely cost of resolving the legal action to the association's satisfaction; and
176 (iv) the likely effect the legal action will have on a lot owner's or prospective lot
177 buyer's ability to obtain financing for a lot while the legal action is pending.
178 (3) Before the association commences a legal action described in Subsection (1), the
179 association shall:
180 (a) allocate an amount equal to 10% of the cost estimated to resolve the legal action,
181 not including attorney fees; and
182 (b) place the amount described in Subsection (3)(a) in a trust that the association may
183 only use to pay the costs to resolve the legal action.
184 (4) This section does not apply to an association that brings a legal action that has an
185 amount in controversy of less than \$75,000.