

**UTAH CONDOMINIUM ACT
2011 STATUORY CHANGES**

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

(1) Unless specifically authorized in the declaration, bylaws, or rules, an association of unit owners may not charge a fee for providing association payoff information needed in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit.

(2) An association of unit owners may not:

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

(b) charge the fee if it exceeds \$50.

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

(b) A request under Subsection (3)(a) is not effective unless the request:

(i) is conveyed in writing to the primary contact person designated under Subsection **57-8-13.1(3)(d)**;

(ii) contains:

(A) the name, telephone number, and address of the person making the request; and

(B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the unit for which the payoff information is requested.

(4) This section applies to each association of unit owners, regardless of when the association of unit owners is formed.

57-8-7.5. Reserve analysis -- Reserve fund.

(1) As used in this section, "reserve analysis" means an analysis to determine:

(a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and

(b) the appropriate amount of any reserve fund.

(2) Except as otherwise provided in the declaration, a management committee shall:

(a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every five years; and

(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and

(b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every two years.

(3) The management committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the management committee, to conduct the reserve analysis.

(4) (a) A management committee may not use money in a reserve fund:

(i) for daily maintenance expenses, unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose; or

(ii) for any purpose other than the purpose for which the reserve fund was established.

(b) A management committee shall maintain a reserve fund separate from other funds of the association of unit owners.

(c) This Subsection (4) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

(5) Subsections (2), (3), (4), and (6) do not apply to an association of unit owners during the period of declarant management.

(6) An association of unit owners shall:

(a) annually, at the annual meeting of unit owners or at a special meeting of unit owners:

(i) present the reserve study; and

(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount;

(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and indicate in the minutes any decision relating to funding a reserve fund.

(7) This section applies to each association of unit owners, regardless of when the association of unit owners was created.

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

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

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

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

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

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

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

(c) the name and address of each management committee member;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit; and

(e) a registration fee not to exceed \$37.

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

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

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

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

57-8-17. Records of receipts and expenditures -- Availability for examination.

(1) As used in this section, "management committee" includes, during the period of control described in Subsection 57-8-16.5(1):

(a) the declarant; or

(b) the managing agent or other person selected by the declarant to exercise powers and responsibilities otherwise assigned by the declaration or this chapter to the unit owners' association, its officers, or the management committee, if the declarant has selected a managing agent or other person to exercise those powers and responsibilities.

(2) The manager or management committee shall:

(a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred; and

(b) make those records available for examination by any unit owner at convenient hours of weekdays no later than 14 days after the unit owner makes a written request to examine the records.

57-8-42. Fair and reasonable notice.

(1) Notice that an association of unit owners provides by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, whether or not the association of unit owners is a nonprofit corporation.

(2) Notice that an association of unit owners provides by a method not referred to in Subsection (1), including a method described in Subsection (3), constitutes fair and reasonable notice if:

(a) the method is authorized in the declaration, articles, bylaws, or rules; and

(b) considering all the circumstances, the notice is fair and reasonable.

(3) (a) If provided in the declaration, articles, bylaws, or rules, an association of unit owners may provide notice by electronic means, including text message, email, or the website of the association of unit owners.

(b) Notwithstanding Subsection (3)(a), a unit owner may, by written demand, require an association of unit owners to provide notice to the unit owner by mail.

57-8-43. Insurance.

(1) As used in this section, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association of unit owners to pay.

(2) This section applies to an insurance policy or combination of insurance policies:

(a) issued or renewed on or after July 1, 2011; and

(b) issued to or renewed by:

(i) a unit owner; or

(ii) an association of unit owners, regardless of when the association of unit owners is formed.

(3) Beginning not later than the day on which the first unit is conveyed to a person other than a declarant, an association of unit owners shall maintain, to the extent reasonably available:

(a) subject to Subsection (9), property insurance on the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and

(b) subject to Subsection (10), liability insurance, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.

(4) If an association of unit owners becomes aware that property insurance under Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the association of unit owners shall, within seven calendar days after becoming aware, give all unit owners notice, as provided in Section **57-8-42**, that the insurance is not reasonably available.

(5) (a) The declaration or bylaws may require the association of unit owners to carry other types of insurance in addition to those described in Subsection (3).

(b) In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws and subject to the requirements of this section, an association of unit owners may, as the

management committee considers appropriate, obtain:

- (i) an additional type of insurance than otherwise required; or
- (ii) a policy with greater coverage than otherwise required.

(6) Unless a unit owner is acting within the scope of the unit owner's authority on behalf of an association of unit owners, a unit owner's act or omission may not:

- (a) void a property insurance policy under Subsection (3)(a) or a liability insurance policy under Subsection (3)(b); or
- (b) be a condition to recovery under a policy.

(7) An insurer under a property insurance policy or liability insurance policy obtained under this section waives the insurer's right to subrogation under the policy against any unit owner or member of the unit owner's household.

(8) (a) An insurance policy issued to an association of unit owners may not be inconsistent with any provision of this section.

(b) A provision of a declaration, bylaw, rule, or other document governing the association of unit owners that is contrary to a provision of this section has no effect.

(c) A property insurance or liability insurance policy issued to an association of unit owners may not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

(9) (a) This Subsection (9) applies to property insurance required under Subsection (3)(a).

(b) The property covered by property insurance shall include any property that, under the declaration, is required to become common areas and facilities.

(c) The total amount of coverage provided by blanket property insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies.

(d) Property insurance shall include coverage for any fixture, improvement, or betterment installed by a unit owner to a unit or to a limited common area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common element.

(e) Notwithstanding anything in this section and unless otherwise provided in the declaration, an association of unit owners is not required to obtain property insurance for a loss to a unit that is not physically attached to:

- (i) another unit; or
- (ii) an above-ground structure that is part of a common area or facility.

(f) Each unit owner is an insured person under a property insurance policy.

(g) If a loss occurs that is covered by a property insurance policy in the name of an association of unit owners and another property insurance policy in the name of a unit owner:

- (i) the association's policy provides primary insurance coverage; and
- (ii) notwithstanding Subsection (9)(g)(i), the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the association of unit owners.

(h) (i) As used in this Subsection (9)(h):

(A) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of an association of unit owners.

(B) "Unit damage" means damage to a unit or to a limited common area or facility applicable to that unit, or both.

(C) "Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to unit damage.

(ii) A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for an amount calculated by applying the unit damage percentage for that unit to the amount of the deductible under the property insurance policy of the association of unit owners.

(iii) If a unit owner does not pay the amount required under Subsection (9)(h)(ii) within 30 days after substantial completion of the repairs to the unit, an association of unit owners may levy an

assessment against the unit owner for that amount.

(i) An association of unit owners shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

(j) (i) An association of unit owners shall provide notice in accordance with Section **57-8-42** to each unit owner of the unit owner's obligation under Subsection (9)(h) for the association's policy deductible and of any change in the amount of the deductible.

(ii) An association of unit owners that fails to provide notice as provided in Subsection (9)(j)(i) is responsible for the amount of the deductible increase that the association of unit owners could have assessed to a unit owner under Subsection (9)(h).

(iii) The failure of an association of unit owners to provide notice as provided in Subsection (9)(j)(i) may not be construed to invalidate any other provision of this section.

(k) If, in the exercise of the business judgment rule, the management committee determines that a claim is likely not to exceed the property insurance policy deductible of the association of unit owners:

(i) the unit owner's policy is considered the policy for primary coverage to the amount of the policy deductible of the association of unit owners;

(ii) a unit owner who does not have a policy to cover the property insurance policy deductible of the association of unit owners is responsible for the loss to the amount of the policy deductible of the association of unit owners, as provided in Subsection (9)(h); and

(iii) the association of unit owners need not tender the claim to the association's insurer.

(l) (i) An insurer under a property insurance policy issued to an association of unit owners shall adjust with the association of unit owners a loss covered under the association's policy.

(ii) Notwithstanding Subsection (9)(l)(i), the insurance proceeds for a loss under a property insurance policy of an association of unit owners:

(A) are payable to an insurance trustee that the association of unit owners designates or, if no trustee is designated, to the association of unit owners; and

(B) may not be payable to a holder of a security interest.

(iii) An insurance trustee or an association of unit owners shall hold any insurance proceeds in trust for the association of unit owners, unit owners, and lien holders.

(iv) (A) Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.

(B) After the disbursements described in Subsection (9)(l)(iv)(A) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association of unit owners, unit owners, and lien holders.

(m) An insurer that issues a property insurance policy under this section, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

(i) the association of unit owners;

(ii) a unit owner, upon the unit owner's written request; and

(iii) a holder of a security interest, upon the holder's written request.

(n) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section **31A-21-303**.

(o) A management committee that acquires from an insurer the property insurance required in this section is not liable to unit owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.

(10) (a) This Subsection (10) applies to a liability insurance policy required under Subsection (3)(b).

(b) A liability insurance policy shall be in an amount determined by the management committee but not less than an amount specified in the declaration or bylaws.

(c) Each unit owner is an insured person under a liability insurance policy that an association of unit owners obtains that insures against liability arising from the unit owner's interest in the common areas and facilities or from membership in the association of unit owners.

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

- (1) (a) An association of unit owners has a lien on a unit for:
- (i) an assessment;
 - (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:
 - (A) court costs and reasonable attorney fees;
 - (B) late charges;
 - (C) interest; and
 - (D) any other amount that the association of unit owners is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and
 - (iii) a fine that the association of unit owners imposes against the owner of the unit.
- (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).
- (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association of unit owners otherwise provides in a notice of assessment.
- (3) An unpaid assessment or fine accrues interest at the rate provided:
- (a) in Subsection **15-1-1(2)**; or
 - (b) in the governing documents, if the governing documents provide for a different interest rate.
- (4) A lien under this section has priority over each other lien and encumbrance on a unit except:
- (a) a lien or encumbrance recorded before the declaration is recorded;
 - (b) a first or second security interest on the unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the association of unit owners; or
 - (c) a lien for real estate taxes or other governmental assessments or charges against the unit.
- (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
- (6) Unless the declaration provides otherwise, if two or more associations of unit owners have liens for assessments on the same unit, the liens have equal priority, regardless of when the liens are created.

57-8-45. Enforcement of a lien.

- (1) (a) To enforce a lien established under Section **57-8-44**, an association of unit owners may:
- (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by:
 - (A) Sections **57-1-24**, **57-1-25**, **57-1-26**, and **57-1-27**; and
 - (B) this chapter; or
 - (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
 - (A) law for the foreclosure of a mortgage; and
 - (B) this chapter.
 - (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection (1)(a):
 - (i) the association of unit owners is considered to be the beneficiary under a trust deed; and
 - (ii) the unit owner is considered to be the trustor under a trust deed.
- (2) A unit owner's acceptance of the owner's interest in a unit constitutes a simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.
- (3) (a) A power of sale and other powers of a trustee under this part and under Sections **57-1-19** through **57-1-34** may not be exercised unless the association of unit owners appoints a qualified trustee.
- (b) An association of unit owners' execution of a substitution of trustee form authorized in Section **57-1-22** is sufficient for appointment of a trustee under Subsection (3)(a).
 - (c) A person may not be a trustee under this part unless the person qualifies as a trustee under

Subsection **57-1-21**(1)(a)(i) or (iv).

(d) A trustee under this part is subject to all duties imposed on a trustee under Sections **57-1-19** through **57-1-34**.

(4) This chapter does not prohibit an association of unit owners from bringing an action against a unit owner to recover an amount for which a lien is created under Section **57-8-44** or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the unit owner's unit under this chapter.

57-8-46. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.

(1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association of unit owners shall provide notice to the owner of the unit that is the intended subject of the nonjudicial foreclosure.

(2) The notice under Subsection (1):

(a) shall:

(i) notify the unit owner that the association of unit owners intends to pursue nonjudicial foreclosure with respect to the owner's unit to enforce the association of unit owners' lien for an unpaid assessment;

(ii) notify the unit owner of the owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure;

(iii) be in substantially the following form:

"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association of unit owners), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure proceeding upon my unit,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the address of the association of unit owners for receipt of a demand)."; and

(iv) be sent to the unit owner by certified mail, return receipt requested; and

(b) may be included with other association correspondence to the unit owner.

(3) An association of unit owners may not use a nonjudicial foreclosure to enforce a lien if the unit owner mails the association of unit owners a written demand for judicial foreclosure:

(a) by U.S. mail, certified with a return receipt requested;

(b) to the address stated in the association of unit owners' notice under Subsection (1); and

(c) within 15 days after the date of the postmark on the envelope of the association of unit owners' notice under Subsection (1).

57-8-47. Provisions applicable to nonjudicial foreclosure.

(1) An association of unit owners' nonjudicial foreclosure of a unit is governed by:

(a) Sections **57-1-19** through **57-1-34**, to the same extent as though the association of unit owners'

lien were a trust deed; and

(b) this chapter.

(2) If there is a conflict between a provision of this chapter and a provision of Sections **57-1-19** through **57-1-34** with respect to an association of unit owners' nonjudicial foreclosure of a unit, the provision of this chapter controls.

57-8-48. One-action rule not applicable -- Abandonment of enforcement proceedings.

(1) Subsection **78B-6-901**(1) does not apply to an association of unit owners' judicial or nonjudicial foreclosure of a unit under this part.

(2) An association of unit owners may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

57-8-49. Costs and attorney fees in lien enforcement action.

(1) A court entering a judgment or decree in a judicial action brought under Sections **57-8-44** through **57-8-53** shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association of unit owners is the prevailing party, any costs and reasonable attorney fees that the association of unit owners incurs collecting the judgment.

(2) In a nonjudicial foreclosure, an association of unit owners may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

57-8-50. Action to recover unpaid assessment.

An association of unit owners need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section **57-8-44**.

57-8-51. Appointment of receiver.

In an action by an association of unit owners to collect an assessment or to foreclose a lien for an unpaid assessment, a court may:

(1) appoint a receiver, in accordance with Section **7-2-9**, to collect and hold money alleged to be due and owing to a unit owner:

(a) before commencement of the action; or

(b) during the pendency of the action; and

(2) order the receiver to pay the association of unit owners, to the extent of the association's common expense assessment, money the receiver holds under Subsection (1).

57-8-54. Statement from manager or management committee of unpaid assessment.

(1) A manager or management committee shall issue a written statement indicating any unpaid assessment with respect to a unit owner's unit upon:

(a) a written request by the unit owner; and

(b) payment of a reasonable fee not to exceed \$25.

(2) A written statement under Subsection (1) is conclusive in favor of a person who relies on the written statement in good faith.