

HOMEOWNERS ASSOCIATION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends and enacts provisions governing homeowner associations.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ requires each attorney in the Office of the Property Right Ombudsman (office) to have a background in various laws governing homeowner associations (HOA);
- ▶ amends membership of the Land Use and Eminent Domain Advisory Board;
- ▶ requires the office to:
 - provide lot owners and unit owners information on their rights in respect to an HOA;
 - provide lot owners and unit owners information on various laws governing an HOA; and
 - conduct mediation, arbitration, or issue an advisory opinion upon the request of a lot owner, a unit owner, or an HOA;
- ▶ authorizes a court to award reasonable attorney fees if an HOA fails to adopt a clear dispute resolution process or comply with that process;
- ▶ provides that a management committee or board of directors, respectively, is responsible for all documents pertaining to the HOA;
- ▶ requires an HOA to:



- 28 • notify each lot owner or unit owner of legal action or state action in which the
- 29 HOA is involved;
- 30 • make available certain documents;
- 31 • inform each lot owner or unit owner of a request for arbitration or mediation
- 32 filed with the office;
- 33 • include certain information when recording a lien; and
- 34 • provide a recording of management committee or board meetings;
- 35 ▶ enacts provisions governing the presumption of payment to an HOA;
- 36 ▶ enacts provisions stating that the management committee or board, respectively, is a
- 37 fiduciary for the HOA and each lot owner or unit owner; and
- 38 ▶ makes technical and conforming changes.

39 Money Appropriated in this Bill:

40 None

41 Other Special Clauses:

42 None

43 Utah Code Sections Affected:

44 AMENDS:

- 45 **13-43-102**, as enacted by Laws of Utah 2006, Chapter 258
- 46 **13-43-201**, as enacted by Laws of Utah 2006, Chapter 258
- 47 **13-43-202**, as last amended by Laws of Utah 2021, First Special Session, Chapter 3
- 48 **13-43-203**, as last amended by Laws of Utah 2018, Chapter 215
- 49 **13-43-204**, as last amended by Laws of Utah 2018, Chapter 349
- 50 **13-43-205**, as last amended by Laws of Utah 2014, Chapter 59
- 51 **13-43-206**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4
- 52 **57-8-17**, as last amended by Laws of Utah 2022, Chapter 439
- 53 **57-8-38**, as last amended by Laws of Utah 2008, Chapter 3
- 54 **57-8-44**, as last amended by Laws of Utah 2014, Chapter 116
- 55 **57-8-57**, as last amended by Laws of Utah 2017, Chapter 131
- 56 **57-8-59**, as enacted by Laws of Utah 2018, Chapter 395
- 57 **57-8a-226**, as last amended by Laws of Utah 2017, Chapters 131, 284
- 58 **57-8a-227**, as last amended by Laws of Utah 2022, Chapter 439

59 [57-8a-301](#), as last amended by Laws of Utah 2014, Chapter 116

60 [57-8a-501](#), as enacted by Laws of Utah 2013, Chapter 152

61 ENACTS:

62 [57-8-10.4](#), Utah Code Annotated 1953

63 [57-8-50.1](#), Utah Code Annotated 1953

64 [57-8a-232](#), Utah Code Annotated 1953

65 [57-8a-233](#), Utah Code Annotated 1953

66 [57-8a-312](#), Utah Code Annotated 1953



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

69 Section 1. Section **13-43-102** is amended to read:

70 **13-43-102. Definitions.**

71 As used in this chapter:

72 (1) "Constitutional taking" or "taking" means a governmental action resulting in a
73 taking of real property that requires compensation to the owner of the property under:

74 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

75 (b) Utah Constitution, Article I, Section 22.

76 (2) "Homeowner association" means:

77 (a) an association of unit owners, as defined in Section [57-8-3](#); or

78 (b) a homeowner association, as defined in Section [57-8a-102](#).

79 (3) "Lot" means the same as that term is defined in Section [57-8a-102](#).

80 ~~(2)~~ (4) "Takings and eminent domain law" means the provisions of the federal and
81 state constitutions, the case law interpreting those provisions, and any relevant statutory
82 provisions that:

83 (a) involve constitutional issues arising from the use or ownership of real property;

84 (b) require a governmental ~~[unit]~~ body to compensate a real property owner for a
85 constitutional taking; or

86 (c) provide for relocation assistance to those persons who are displaced by the use of
87 eminent domain.

88 (5) "Unit" means the same as that term is defined in Section [57-8-3](#).

89 (6) "Unit owner" means the same as that term is defined in Section [57-8-3](#).

90 Section 2. Section 13-43-201 is amended to read:

91 **13-43-201. Office of the Property Rights Ombudsman.**

92 (1) There is created an Office of the Property Rights Ombudsman in the Department of
93 Commerce.

94 (2) ~~[The]~~ To fill legal positions within the Office of the Property Rights Ombudsman,
95 the executive director of the Department of Commerce, with the concurrence of the Land Use
96 and Eminent Domain Advisory Board created in Section 13-43-202, shall appoint attorneys
97 with background or expertise in:

98 (a) takings[;] law;

99 (b) eminent domain[, and] law;

100 (c) land use law ~~[to fill legal positions within the Office of the Property Rights~~
101 ~~Ombudsman.];~~

102 (d) Title 57, Chapter 8, Condominium Ownership Act;

103 (e) Title 57, Chapter 8a, Community Association Act;

104 (f) Title 57, Chapter 21, Utah Fair Housing Act;

105 (g) The Fair Housing Act, 42 U.S.C. Sec. 3601 et seq.;

106 (h) Section 504 of the Rehabilitation Act of 1973; and

107 (i) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

108 (3) A person appointed under this section is an exempt employee.

109 (4) An attorney appointed under this section is an at-will employee who may be
110 terminated without cause by:

111 (a) the executive director of the Department of Commerce; or

112 (b) an action of the ~~[and]~~ Land Use and Eminent Domain Advisory Board.

113 Section 3. Section 13-43-202 is amended to read:

114 **13-43-202. Land Use and Eminent Domain Advisory Board -- Appointment --**
115 **Compensation -- Duties.**

116 (1) There is created the Land Use and Eminent Domain Advisory Board, within the
117 Office of the Property Rights Ombudsman, consisting of the following ~~[seven]~~ nine members:

118 (a) one individual representing special service districts, nominated by the Utah
119 Association of Special Districts;

120 (b) one individual representing municipal government, nominated by the Utah League

121 of Cities and Towns;

122 (c) one individual representing county government, nominated by the Utah Association
123 of Counties;

124 (d) one individual representing the residential construction industry, nominated by the
125 Utah Home Builders Association;

126 (e) one individual representing the real estate industry, nominated by the Utah
127 Association of Realtors;

128 (f) one individual representing the land development community, jointly nominated by
129 the Utah Association of Realtors and the Utah Home Builders Association; [~~and~~]

130 (g) one individual who:

131 (i) is a citizen with experience in land use issues;

132 (ii) does not hold public office; and

133 (iii) is not currently employed, nor has been employed in the previous 12 months, by
134 any of the entities or industries listed in Subsections (1)(a) through (f)[-];

135 (h) one individual who is a current board member of a homeowner association; and

136 (i) one individual who:

137 (i) is a lot owner or unit owner;

138 (ii) does not hold public office; and

139 (iii) is not employed by or a contractor of a homeowner association.

140 (2) After receiving nominations, the governor shall appoint members to the board.

141 (3) The term of office of each member is four years, except that the governor shall
142 appoint three of the members of the board to an initial two-year term.

143 (4) Each mid-term vacancy shall be filled for the unexpired term in the same manner as
144 an appointment under Subsections (1) and (2).

145 (5) (a) Board members shall elect a chair from their number and establish rules for the
146 organization and operation of the board.

147 (b) [~~Five~~] Seven members of the board constitute a quorum for the conduct of the
148 board's business.

149 (c) The affirmative vote of [~~five~~] seven members is required to constitute the decision
150 of the board on any matter.

151 (6) A member may not receive compensation or benefits for the member's service, but

152 may receive per diem and travel expenses in accordance with:

- 153 (a) Section 63A-3-106;
- 154 (b) Section 63A-3-107; and
- 155 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
- 156 63A-3-107.
- 157 (7) A member need not give a bond for the performance of official duties.
- 158 (8) The Office of the Property Rights Ombudsman shall provide staff to the board.
- 159 (9) The board shall:
 - 160 (a) receive reports from the Office of the Property Rights Ombudsman that are
 - 161 requested by the board;
 - 162 (b) establish rules of conduct and performance for the Office of the Property Rights
 - 163 Ombudsman;
 - 164 (c) receive donations or contributions from any source for the Office of the Property
 - 165 Rights Ombudsman's benefit;
 - 166 (d) subject to any restriction placed on a donation or contribution received under
 - 167 Subsection (9)(c), authorize the expenditure of donations or contributions for the Office of the
 - 168 Property Rights Ombudsman's benefit;
 - 169 (e) receive budget recommendations from the Office of the Property Rights
 - 170 Ombudsman; and
 - 171 (f) revise budget recommendations received under Subsection (9)(e).
- 172 (10) The board shall maintain a resource list of qualified arbitrators and mediators who
- 173 may be appointed under Section 13-43-204 and qualified persons who may be appointed to
- 174 render advisory opinions under Section 13-43-205.

175 Section 4. Section 13-43-203 is amended to read:

176 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

177 (1) The Office of the Property Rights Ombudsman shall:

- 178 (a) develop and maintain expertise in and understanding of:
 - 179 (i) takings[;] law;
 - 180 (ii) eminent domain[;and] law;
 - 181 (iii) land use law;
 - 182 (iv) Title 57, Chapter 8, Condominium Ownership Act;

- 183 (v) Title 57, Chapter 8a, Community Association Act;
184 (vi) Title 57, Chapter 21, Utah Fair Housing Act;
185 (vii) The Fair Housing Act, 42 U.S.C. Sec. 3601 et seq.;
186 (viii) Section 504 of the Rehabilitation Act of 1973; and
187 (ix) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.;
188 (b) clearly identify the specific information that is prepared for distribution to property
189 owners whose land is being acquired under the provisions of Section [78B-6-505](#);
190 (c) assist state agencies and local governments in developing the guidelines required by
191 Title 63L, Chapter 4, Constitutional Takings Issues Act;
192 (d) at the request of a state agency or local government, assist the state agency or local
193 government, in analyzing actions with potential takings implications or other land use issues;
194 (e) advise real property owners who:
195 (i) have a legitimate potential or actual takings claim against a state or local
196 government entity or have questions about takings, eminent domain, and land use law; [~~or~~]
197 (ii) own a parcel of property that is landlocked, as to the owner's rights and options
198 with respect to obtaining access to a public street;
199 (iii) are lot owners as to the owners' rights in respect to a homeowner association; or
200 (iv) are unit owners as to the unit owners' rights in respect to a homeowner association;
201 (f) identify state or local government actions that have potential takings implications
202 and, if appropriate, advise those state or local government entities about those implications;
203 (g) provide information to private citizens, civic groups, government entities, and other
204 interested parties about takings, eminent domain, [~~and~~] land use law, and their rights, including
205 a right to just compensation, and responsibilities under the takings, eminent domain, or land
206 use laws through seminars and publications, and by other appropriate means;
207 (h) provide uniform information to private citizens, unit owners, lot owners,
208 homeowner associations, and other interested parties about rights and responsibilities
209 regarding:
210 (i) the application and compliance with governing documents, as defined in Section
211 [57-8-3](#) or [57-8a-102](#), respectively;
212 (ii) Title 57, Chapter 21, Utah Fair Housing Act;
213 (iii) The Fair Housing Act, 42 U.S.C. 3601 et seq.;

- 214 (iv) Section 504 of the Rehabilitation Act of 1973;
215 (v) the foreclosure process for failure to pay an assessment, as defined in Section
216 57-8-3 or 57-8a-102, respectively; and
217 (vi) failure to comply with the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692
218 et seq.;
- 219 ~~(h)~~ (i) provide the information described in Section 78B-6-505 on the Office of the
220 Property Rights Ombudsman's website in a form that is easily accessible; and
- 221 (ii) ensure that the information is current; and
- 222 ~~(i)~~ (j) (i) provide education and training regarding:
- 223 (A) the drafting and application of land use laws and regulations; ~~and~~
224 (B) land use dispute resolution; and
225 (C) mitigating and resolving disputes involving issues described in Subsection (1)(h);
226 and
- 227 (ii) use any money transmitted in accordance with Subsection 15A-1-209(5) to pay for
228 any expenses required to provide the education and training described in Subsection (1)(i)(i),
229 including grants to a land use training organization that:
- 230 (A) the Land Use and Eminent Domain Advisory Board, created in Section 13-43-202,
231 selects and proposes; and
- 232 (B) the property rights ombudsman and the executive director of the Department of
233 Commerce jointly approve.
- 234 (2) (a) Neither the Office of the Property Rights Ombudsman nor its individual
235 attorneys may represent private parties, state agencies, local governments, a homeowner
236 association, lot owner, unit owner, or any other individual or entity in a legal action that arises
237 from or relates to a matter addressed in this chapter.
- 238 (b) An action by an attorney employed by the Office of the Property Rights
239 Ombudsman, by a neutral third party acting as mediator or arbitrator under Section 13-43-204,
240 or by a neutral third party rendering an advisory opinion under Section 13-43-205 or
241 13-43-206, taken within the scope of the duties set forth in this chapter, does not create an
242 attorney-client relationship between the Office of the Property Rights Ombudsman, or the
243 office's attorneys or appointees, and an individual or entity.
- 244 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third

245 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
 246 to testify in a civil action filed concerning the subject matter of any review, mediation, or
 247 arbitration by, or arranged through, the office.

248 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
 249 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
 250 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

251 (b) Subsection (4)(a) does not apply to:

252 (i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;

253 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B,
 254 Chapter 11, Utah Uniform Arbitration Act;

255 (iii) actions for de novo review of an arbitration award or issue brought under the
 256 authority of Subsection 13-43-204~~(3)~~ (4)(a)(i); or

257 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

258 Section 5. Section 13-43-204 is amended to read:

259 **13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation**
 260 **of disputes.**

261 (1) If requested by the private property owner, or in the case of a water conveyance
 262 facility either the private property owner or the facility owner of the water conveyance facility,
 263 and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or
 264 conduct or arrange arbitration for:

265 (a) a dispute between the owner and a government entity or other type of condemning
 266 entity:

267 (i) involving taking or eminent domain issues;

268 (ii) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5,
 269 Eminent Domain; or

270 (iii) involving relocation assistance under Title 57, Chapter 12, Utah Relocation
 271 Assistance Act; or

272 (b) the private property owner and the facility owner of a water conveyance facility as
 273 described in Section 73-1-15.5 regarding:

274 (i) the relocation of the water conveyance facility; or

275 (ii) a modification to the method of water delivery of the water conveyance facility.

276 (2) If requested by a lot owner, unit owner, or homeowner association, the Office of the
277 Property Rights Ombudsman shall mediate, conduct, or arrange arbitration for disputes
278 pertaining to an association and related to:

279 (a) failure to comply with governing documents, as defined in Section 57-8-3 or
280 57-8a-102, respectively;

281 (b) failure to comply with:

282 (i) Title 57, Chapter 21, Utah Fair Housing Act;

283 (ii) The Fair Housing Act, 42 U.S.C. 3601 et seq.; or

284 (iii) Section 504 of the Rehabilitation Act of 1973;

285 (c) the amount of an assessment, if a notice of default is recorded against a lot owner or
286 unit owner for failure to pay the assessment; or

287 (d) failure to comply with the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692
288 et seq.

289 ~~[(2)]~~ (3) (a) If arbitration or mediation is requested by a private property owner under
290 this section, Section 57-12-14, or 78B-6-522, or either the private property owner or the facility
291 owner of a water conveyance facility under Section 73-1-15.5, and arranged by the Office of
292 the Property Rights Ombudsman, the parties shall participate in the mediation or arbitration as
293 if the matter were ordered to mediation or arbitration by a court.

294 (b) If a lot owner or unit owner and homeowner association agree to arbitration or
295 mediation under this section, the parties shall participate in the mediation or arbitration as if the
296 matter were ordered to mediation by a court.

297 ~~[(3)]~~ (4) (a) (i) In conducting or arranging for arbitration under Subsection (1) or (2),
298 the Office of the Property Rights Ombudsman shall follow the procedures and requirements of
299 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

300 (ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and
301 parties shall treat the matter as if:

302 (A) it were ordered to arbitration by a court; and

303 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
304 provided for in this section was appointed as arbitrator by the court.

305 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
306 arbitrated is not already the subject of legal action, the district court having jurisdiction over

307 the county where the private property involved in the dispute is located is the court referred to
308 in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

309 (iv) An arbitration award under this chapter may not be vacated under the provisions of
310 Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the
311 parties.

312 (b) The Office of the Property Rights Ombudsman shall issue a written statement
313 declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of
314 the Property Rights Ombudsman:

315 (i) the issues are not ripe for review;

316 (ii) assuming the alleged facts are true, no cause of action exists under United States or
317 Utah law;

318 (iii) all issues raised are beyond the scope of the Office of the Property Rights
319 Ombudsman's statutory duty to review; or

320 (iv) the mediation or arbitration is otherwise not appropriate.

321 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
322 arbitrate a dispute when:

323 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
324 arbitrator and agrees to pay for the services of another arbitrator;

325 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
326 reason other than those stated in Subsection [~~(3)~~] (4)(b) and one or both parties are willing to
327 pay for the services of another arbitrator; or

328 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
329 appoint another person to arbitrate the dispute with no charge to the parties for the services of
330 the appointed arbitrator.

331 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
332 Ombudsman shall appoint an arbitrator who is agreeable to:

333 (A) both parties; or

334 (B) the Office of the Property Rights Ombudsman and the party paying for the
335 arbitrator.

336 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
337 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

338 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
339 expenses incurred in the performance of the arbitrator's duties at the rates established by the
340 Division of Finance under Sections 63A-3-106 and 63A-3-107.

341 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
342 regulations, and rules of Utah and the United States in conducting the arbitration and in
343 determining the award.

344 (e) (i) The property owner and government entity, or other condemning entity, may
345 agree in advance of arbitration that the arbitration is binding and that no de novo review may
346 occur.

347 (ii) The private property owner and facility owner of a water conveyance facility, as
348 described in Section 73-1-15.5, may agree in advance of arbitration that the arbitration is
349 binding and that no de novo review may occur.

350 (iii) A lot owner or unit owner and a homeowner association may agree in advance of
351 arbitration that the arbitration is binding and that no de novo review may occur.

352 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
353 necessary before bringing legal action to adjudicate any claim.

354 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
355 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
356 administrative remedies or as a bar to bringing legal action.

357 (h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative
358 Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

359 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
360 Subsection ~~[(3)(c)]~~ (4)(e), any party to the arbitration may submit the dispute, the award, or any
361 issue upon which the award is based, to the district court for review by trial de novo.

362 ~~[(4)]~~ (5) The filing with the Office of the Property Rights Ombudsman of a request for
363 mediation or arbitration of a constitutional taking issue does not stay:

364 (a) a county or municipal land use decision;

365 (b) a land use appeal authority decision; or

366 (c) the occupancy of the property.

367 ~~[(5)]~~ (6) A member of the Office of the Property Rights Ombudsman, or an arbitrator
368 appointed by the office, may not be compelled to testify in a civil action filed concerning the

369 subject matter of any review, mediation, or arbitration by the Office of the Property Rights
370 Ombudsman.

371 Section 6. Section **13-43-205** is amended to read:

372 **13-43-205. Advisory opinion.**

373 (1) A local government, private entity, lot owner, unit owner, homeowner association,
374 or a potentially aggrieved person may, in accordance with Section **13-43-206**, request a written
375 advisory opinion:

376 (a) from a neutral third party to determine compliance with:

377 (i) Section **10-9a-505.5** and Sections **10-9a-507** through **10-9a-511**;

378 (ii) Section **17-27a-505.5** and Sections **17-27a-506** through **17-27a-510**; [~~and~~]

379 (iii) Title 11, Chapter 36a, Impact Fees Act; [~~and~~] or

380 (iv) as it applies to a lot owner, unit owner, or homeowner association:

381 (A) Title 57, Chapter 8, Condominium Ownership Act;

382 (B) Title 57, Chapter 8a, Community Association Act;

383 (C) Title 57, Chapter 21, Utah Fair Housing Act;

384 (D) The Fair Housing Act, 42 U.S.C. 3601 et seq.;

385 (E) Section 504 of the Rehabilitation Act of 1973; or

386 (F) the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.; and

387 (b) at any time before:

388 (i) a final decision on a land use application by a local appeal authority under Title 11,
389 Chapter 36a, Impact Fees Act, or Section **10-9a-708** or **17-27a-708**;

390 (ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a,
391 Impact Fees Act, or Section **10-9a-801** or **17-27a-801**, if no local appeal authority is designated
392 to hear the issue that is the subject of the request for an advisory opinion; or

393 (iii) the enactment of an impact fee, if the request for an advisory opinion is a request
394 to review and comment on a proposed impact fee facilities plan or a proposed impact fee
395 analysis as defined in Section **11-36a-102**.

396 (2) A private property owner may, in accordance with Section **13-43-206**, request a
397 written advisory opinion from a neutral third party to determine if a condemning entity:

398 (a) is in occupancy of the owner's property;

399 (b) is occupying the property:

400 (i) for a public use authorized by law; and
401 (ii) without colorable legal or equitable authority; and
402 (c) continues to occupy the property without the owner's consent, the occupancy would
403 constitute a taking of private property for a public use without just compensation.

404 (3) An advisory opinion issued under Subsection (2) may justify an award of attorney
405 fees against a condemning entity in accordance with Section 13-43-206 only if the court finds
406 that the condemning entity:

407 (a) does not have a colorable claim or defense for the entity's actions; and
408 (b) continued occupancy without payment of just compensation and in disregard of the
409 advisory opinion.

410 (4) If a unit owner, lot owner, or homeowner association requests an advisory opinion,
411 the Office of the Property Rights Ombudsman may not proceed with issuing an advisory
412 opinion or appointing a neutral third party to issue an advisory opinion unless each party:

413 (a) voluntarily participates; and

414 (b) (i) agrees to stay any proceeding filed previous to the request for an advisory
415 opinion or during the process of issuing the advisory opinion, until the advisory opinion is
416 issued; and

417 (ii) agrees to waive any statute of limitation or other deadlines to initiate legal
418 proceedings until the advisory opinion is issued.

419 Section 7. Section 13-43-206 is amended to read:

420 **13-43-206. Advisory opinion -- Process.**

421 (1) A request for an advisory opinion under Section 13-43-205 shall be:

422 (a) filed with the Office of the Property Rights Ombudsman; and
423 (b) accompanied by a filing fee of \$150.

424 (2) The Office of the Property Rights Ombudsman may establish policies providing for
425 partial fee waivers for a person who is financially unable to pay the entire fee.

426 (3) A person requesting an advisory opinion need not exhaust administrative remedies,
427 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
428 advisory opinion.

429 (4) The Office of the Property Rights Ombudsman shall:

430 (a) deliver notice of the request to opposing parties indicated in the request;

- 431 (b) inquire of all parties if there are other necessary parties to the dispute; and
- 432 (c) deliver notice to all necessary parties.
- 433 (5) If a governmental entity is an opposing party, the Office of the Property Rights
- 434 Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.
- 435 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
- 436 parties can agree to a neutral third party to issue an advisory opinion.
- 437 (b) If no agreement can be reached within four business days after notice is delivered
- 438 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall
- 439 appoint a neutral third party to issue an advisory opinion.
- 440 (7) All parties that are the subject of the request for advisory opinion shall:
- 441 (a) share equally in the cost of the advisory opinion; and
- 442 (b) provide financial assurance for payment that the neutral third party requires.
- 443 (8) The neutral third party shall comply with the provisions of Section 78B-11-109,
- 444 and shall promptly:
 - 445 (a) seek a response from all necessary parties to the issues raised in the request for
 - 446 advisory opinion;
 - 447 (b) investigate and consider all responses; and
 - 448 (c) issue a written advisory opinion within 15 business days after the appointment of
 - 449 the neutral third party under Subsection (6)(b), unless:
 - 450 (i) the parties agree to extend the deadline; or
 - 451 (ii) the neutral third party determines that the matter is complex and requires additional
 - 452 time to render an opinion, which may not exceed 30 calendar days.
 - 453 (9) An advisory opinion shall include a statement of the facts and law supporting the
 - 454 opinion's conclusions.
 - 455 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
 - 456 Ombudsman shall be delivered as soon as practicable to all necessary parties.
 - 457 (b) A copy of the advisory opinion shall be delivered to the government entity in the
 - 458 manner provided for in Section 63G-7-401.
 - 459 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is
 - 460 not binding on any party to, nor admissible as evidence in, a dispute involving:
 - 461 (a) land use law except as provided in Subsection (12)[-]; or

462 (b) a homeowner association.

463 (12) Subject to Subsection (13), if a dispute involving land use law results in the
464 issuance of an advisory opinion described in this section, if the same issue that is the subject of
465 the advisory opinion is subsequently litigated on the same facts and circumstances at issue in
466 the advisory opinion, and if the relevant issue is resolved consistent with the advisory opinion,
467 the substantially prevailing party on that cause of action may collect:

468 (a) reasonable attorney fees and court costs pertaining to the development of that cause
469 of action from the date of the delivery of the advisory opinion to the date of the court's
470 resolution; and

471 (b) subject to Subsection (13), if the court finds that the opposing party knowingly and
472 intentionally violated the law governing that cause of action, a civil penalty of \$250 per day:

473 (i) beginning on the later of:

474 (A) 30 days after the day on which the advisory opinion was delivered; or

475 (B) the day on which the action was filed; and

476 (ii) ending the day on which the court enters a final judgment.

477 (13) (a) Subsection (12) does not apply unless the resolution described in Subsection
478 (12) is final.

479 (b) A court may not impose a civil penalty under Subsection (12)(b) against or in favor
480 of a party other than the land use applicant or a government entity.

481 (14) In addition to any amounts awarded under Subsection (12), if the dispute
482 described in Subsection (12) in whole or in part concerns an impact fee, and if the result of the
483 litigation requires that the political subdivision or private entity refund the impact fee in
484 accordance with Section [11-36a-603](#), the political subdivision or private entity shall refund the
485 impact fee in an amount that is based on the difference between the impact fee paid and what
486 the impact fee should have been if the political subdivision or private entity had correctly
487 calculated the impact fee.

488 (15) Nothing in this section is intended to create any new cause of action under land
489 use law.

490 (16) Unless filed by the local government, a request for an advisory opinion under
491 Section [13-43-205](#) does not stay the progress of a land use application, the effect of a land use
492 decision, or the condemning entity's occupancy of a property.

493 Section 8. Section **57-8-10.4** is enacted to read:

494 **57-8-10.4. Notice of legal action.**

495 (1) Subject to Subsection (2), if an association is a party to a legal action or a complaint
496 filed with a state agency, the association shall:

497 (a) notify each unit owner no later than 30 days after the day the association is served
498 in a legal action, initiates a legal action, or receives notice of a complaint from a state agency;
499 and

500 (b) allow a unit owner to review any documents related to the legal action or
501 complaint.

502 (2) Subsection (1) does not apply to an action filed by the association to collect an
503 assessment unless a unit owner files a counter suit.

504 (3) If the association fails to notify a unit owner in accordance with Subsection (1)(a),
505 the association is, based upon a finding by the court, liable for:

506 (a) any cost associated with efforts to obtain information described in Subsection
507 (1)(b); and

508 (b) any damages related to the failure to give notice, including consequential damages
509 or reasonable attorney fees associated with:

510 (i) a property; or

511 (ii) decisions or actions by a unit owner or property purchaser that could have been
512 different had the unit owner or purchaser known about ongoing litigation or possible liabilities.

513 Section 9. Section **57-8-17** is amended to read:

514 **57-8-17. Records -- Availability for examination.**

515 (1) (a) Subject to Subsection (1)(b) and regardless of whether the association of unit
516 owners is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an
517 association of unit owners shall keep and make available to unit owners:

518 (i) each record identified in Subsections **16-6a-1601**(1) through (5), in accordance with
519 Sections **16-6a-1601**, **16-6a-1602**, **16-6a-1603**, **16-6a-1605**, **16-6a-1606**, and **16-6a-1610**; and

520 (ii) a copy of the association's:

521 (A) governing documents;

522 (B) most recent approved minutes;

523 (C) most recent budget and financial statement;

524 (D) most recent reserve analysis; and
525 (E) certificate of insurance for each insurance policy the association of unit owners
526 holds.

527 (b) An association of unit owners may redact the following information from any
528 document the association of unit owners produces for inspection or copying:

- 529 (i) a Social Security number;
- 530 (ii) a bank account number; or
- 531 (iii) any communication subject to attorney-client privilege.

532 (2) (a) In addition to the requirements described in Subsection (1), an association of
533 unit owners shall:

534 (i) make the following documents available to a unit owner:

535 (A) a notice of a violation by the requesting unit owner; or

536 (B) any document pertaining to the requesting unit owner's unit;

537 (ii) make documents available to unit owners in accordance with the association of unit
538 owners' governing documents; and

539 ~~[(ii)]~~ (iii) (A) if the association of unit owners has an active website, make the
540 documents described in Subsections (1)(a)(ii)(A) through (C) available to unit owners, free of
541 charge, through the website; or

542 (B) if the association of unit owners does not have an active website, make physical
543 copies of the documents described in Subsections (1)(a)(ii)(A) through (C) available to unit
544 owners during regular business hours at the association of unit owners' address registered with
545 the Department of Commerce under Section [57-8-13.1](#).

546 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section [57-19-2](#).

547 (c) If a provision of an association of unit owners' governing documents conflicts with
548 a provision of this section, the provision of this section governs.

549 (3) In a written request to inspect or copy documents:

550 (a) a unit owner shall include:

551 (i) the association of unit owners' name;

552 (ii) the unit owner's name;

553 (iii) the unit owner's property address;

554 (iv) the unit owner's email address;

555 (v) a description of the documents requested; and
556 (vi) any election or request described in Subsection (3)(b); and
557 (b) a unit owner may:
558 (i) elect whether to inspect or copy the documents;
559 (ii) if the unit owner elects to copy the documents, request hard copies or electronic
560 scans of the documents; or
561 (iii) subject to Subsection (4), request that:
562 (A) the association of unit owners make the copies or electronic scans of the requested
563 documents;
564 (B) a recognized third party duplicating service make the copies or electronic scans of
565 the requested documents;
566 (C) the unit owner be allowed to bring any necessary imaging equipment to the place
567 of inspection and make copies or electronic scans of the documents while inspecting the
568 documents; or
569 (D) the association of unit owners email the requested documents to an email address
570 provided in the request.
571 (4) (a) An association of unit owners shall comply with a request described in
572 Subsection (3).
573 (b) If an association of unit owners produces the copies or electronic scans:
574 (i) the copies or electronic scans shall be legible and accurate; and
575 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
576 copies or electronic scans and for time spent meeting with the unit owner, which may not
577 exceed:
578 (A) the actual cost that the association of unit owners paid to a recognized third party
579 duplicating service to make the copies or electronic scans; or
580 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's
581 time making the copies or electronic scans.
582 (c) If a unit owner requests a recognized third party duplicating service make the copies
583 or electronic scans:
584 (i) the association of unit owners shall arrange for the delivery and pick up of the
585 original documents; and

586 (ii) the unit owner shall pay the duplicating service directly.

587 (d) Subject to Subsection (9), if a unit owner requests to bring imaging equipment to
588 the inspection, the association of unit owners shall provide the necessary space, light, and
589 power for the imaging equipment.

590 (5) If, in response to a unit owner's request to inspect or copy documents, an
591 association of unit owners fails to comply with a provision of this section, the association of
592 unit owners shall pay:

593 (a) the reasonable costs of inspecting and copying the requested documents;

594 (b) for items described in Subsections (1)(a)(ii)(A) through (C), [~~\$25~~] \$50 to the unit
595 owner who made the request for each day the request continues unfulfilled, beginning the sixth
596 day after the day on which the unit owner made the request; and

597 (c) reasonable attorney fees and costs incurred by the unit owner in obtaining the
598 inspection and copies of the requested documents.

599 (6) (a) In addition to any remedy in the association of unit owners' governing
600 documents or as otherwise provided by law, a unit owner may file an action in court under this
601 section if:

602 (i) subject to Subsection (9), an association of unit owners fails to make documents
603 available to the unit owner in accordance with this section, the association of unit owners'
604 governing documents, or as otherwise provided by law; and

605 (ii) the association of unit owners fails to timely comply with a notice described in
606 Subsection (6)(d).

607 (b) In an action described in Subsection (6)(a):

608 (i) the unit owner may request:

609 (A) injunctive relief requiring the association of unit owners to comply with the
610 provisions of this section;

611 (B) \$500 or actual damage, whichever is greater; or

612 (C) any other relief provided by law; and

613 (ii) the court shall award:

614 (A) costs and reasonable attorney fees to the prevailing party, including any reasonable
615 attorney fees incurred before the action was filed that relate to the request that is the subject of
616 the action[-]; and

617 (B) if a unit owner is the prevailing party, costs and fines described in Subsections
618 (5)(a) and (b).

619 (c) (i) In an action described in Subsection (6)(a), upon motion by the unit owner,
620 notice to the association of unit owners, and a hearing in which the court finds a likelihood that
621 the association of unit owners failed to comply with a provision of this section, the court shall
622 order the association of unit owners to immediately comply with the provision.

623 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
624 the day on which the unit owner files the motion.

625 (d) At least 10 days before the day on which a unit owner files an action described in
626 Subsection (6)(a), the unit owner shall deliver a written notice to the association of unit owners
627 that states:

628 (i) the unit owner's name, address, telephone number, and email address;

629 (ii) each requirement of this section with which the association of unit owners has
630 failed to comply;

631 (iii) a demand that the association of unit owners comply with each requirement with
632 which the association of unit owners has failed to comply; and

633 (iv) a date by which the association of unit owners shall remedy the association of unit
634 owners' noncompliance that is at least 10 days after the day on which the unit owner delivers
635 the notice to the association of unit owners.

636 (7) (a) The provisions of Section [16-6a-1604](#) do not apply to an association of unit
637 owners.

638 (b) The provisions of this section apply regardless of any conflicting provision in Title
639 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

640 (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right
641 that the unit owner has under this section.

642 (9) An association of unit owners is not liable for identifying or providing a document
643 in error, if the association of unit owners identified or provided the erroneous document in
644 good faith.

645 (10) (a) A management committee or the committee's agent is responsible for all
646 contracts, governing documents, and any other document pertaining to the association, a unit,
647 or a unit owner's interests and rights.

648 (b) If a management committee fails to produce a document described in Subsection
649 (10)(a), and failure of production of the document is at issue in subsequent litigation, the
650 association shall pay any damages or reasonable attorney fees awarded by a court.

651 Section 10. Section **57-8-38** is amended to read:

652 **57-8-38. Dispute resolution -- Notice.**

653 (1) The declaration, bylaws, or association rules may provide that disputes between the
654 parties shall be submitted to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform
655 Arbitration Act.

656 (2) If the declaration, bylaws, or association rules do not provide a clear dispute
657 resolution process, or an association does not strictly comply with the adopted dispute
658 resolution process, a court may award reasonable attorney fees to a unit owner.

659 (3) (a) If agreed to by both parties, the parties may seek arbitration or mediation in
660 accordance with Section [13-43-204](#).

661 (b) An association, or the association's agent, shall notify each unit owner:

662 (i) of a request for arbitration or mediation in accordance with Section [13-43-204](#);

663 (ii) no later than 30 days after the day on which the request is submitted by the
664 association or the association is notified by the Office of the Property Rights Ombudsman of a
665 request; and

666 (iii) of the substance of the request.

667 Section 11. Section **57-8-44** is amended to read:

668 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
669 **collection.**

670 (1) (a) Except as provided in Section [57-8-13.1](#), an association of unit owners has a
671 lien on a unit for:

672 (i) an assessment;

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

675 (A) court costs and reasonable attorney fees;

676 (B) late charges;

677 (C) interest; and

678 (D) any other amount that the association of unit owners is entitled to recover under the

679 declaration, this chapter, or an administrative or judicial decision; and

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

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

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

686 (b) [The] Subject to Subsection (1)(c), recording of a declaration constitutes record
687 notice and perfection of a lien described in Subsection (1)(a).

688 (c) (i) If an association records a lien against a unit owner, the association shall include
689 at the time the lien is recorded a statement testifying that the association has complied with
690 state law and the association's rules, bylaws, or policies governing collection of an assessment.

691 (ii) If an association fails to comply with state law or the association's rules, bylaws, or
692 policies governing collection of an assessment:

693 (A) a lien against the unit owner described in Subsection (1)(c)(i) is not perfected and
694 void; and

695 (B) a court may, against the association or the association's agent, issue a finding of
696 perjury or award fines, reasonable attorney fees, or other damages.

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

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

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

702 (b) in the governing documents, if the governing documents provide for a different
703 interest rate.

704 (4) A lien under this section has priority over each other lien and encumbrance on a
705 unit except:

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

707 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
708 that is recorded before a recorded notice of lien by or on behalf of the association of unit
709 owners; or

710 (c) a lien for real estate taxes or other governmental assessments or charges against the
711 unit.

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

714 (6) Unless the declaration provides otherwise, if two or more associations of unit
715 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
716 when the liens are created.

717 Section 12. Section **57-8-50.1** is enacted to read:

718 **57-8-50.1. Presumption of payment.**

719 (1) If a person mails a payment, in any form, for an assessment to the management
720 committee or the management committee's agent, the payment is presumed received within five
721 days after the date of postmark.

722 (2) The presumption in Subsection (1) is rebuttable.

723 (3) Notwithstanding Subsection (2), it is insufficient evidence to rebut the presumption
724 described in Subsection (1) that the management committee's or the management committee's
725 agent's practice is to only receive or inspect mail on certain dates.

726 Section 13. Section **57-8-57** is amended to read:

727 **57-8-57. Management committee meetings -- Open meetings.**

728 (1) Except for an action taken without a meeting in accordance with Section
729 **16-6a-813**, a management committee may take action only at a management committee
730 meeting.

731 (2) (a) At least 48 hours before a management committee meeting, the association of
732 unit owners shall give written notice of the management committee meeting via email to each
733 unit owner who requests notice of a management committee meeting, unless:

734 (i) notice of the management committee meeting is included in a meeting schedule that
735 was previously provided to the unit owner; or

736 (ii) (A) the management committee meeting is to address an emergency; and

737 (B) each management committee member receives notice of the management
738 committee meeting less than 48 hours before the management committee meeting.

739 (b) A notice described in Subsection (2)(a) shall:

740 (i) be delivered to the unit owner by email, to the email address that the unit owner

741 provides to the management committee or the association of unit owners;
742 (ii) state the time and date of the management committee meeting;
743 (iii) state the location of the management committee meeting; and
744 (iv) if a management committee member may participate by means of electronic
745 communication, provide the information necessary to allow the unit owner to participate by the
746 available means of electronic communication.

747 (3) (a) Except as provided in Subsection (3)(b), a management committee meeting
748 shall be open to each unit owner or the unit owner's representative if the representative is
749 designated in writing.

750 (b) A management committee may close a management committee meeting to:

751 (i) consult with an attorney for the purpose of obtaining legal advice;
752 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
753 proceedings;
754 (iii) discuss a personnel matter;
755 (iv) discuss a matter relating to contract negotiations, including review of a bid or
756 proposal;

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

760 (vi) discuss a delinquent assessment or fine.

761 (4) (a) At each management committee meeting, the management committee shall
762 provide each unit owner a reasonable opportunity to offer comments.

763 (b) The management committee may limit the comments described in Subsection (4)(a)
764 to one specific time period during the meeting.

765 (5) A management committee member may not avoid or obstruct the requirements of
766 this section.

767 (6) (a) Except for a meeting described in Subsection (3)(b), the management committee
768 shall record each management committee meeting.

769 (b) In an association with:

770 (i) fewer than 50 units, the management committee shall make the recording described
771 in Subsection (6)(a) available upon request; and

772 (ii) 50 units or more, the management committee shall post the recording described in
773 Subsection (6)(a) on the association website.

774 [~~(6)~~] (7) Nothing in this section shall affect the validity or enforceability of an action of
775 a management committee.

776 [~~(7)~~] (8) The provisions of this section do not apply during the period of administrative
777 control.

778 [~~(8)~~] (9) The provisions of this section apply regardless of when the condominium
779 project's initial declaration was recorded.

780 [~~(9)~~] (10) (a) Subject to Subsection [~~(9)~~] (10)(d), if an association of unit owners fails
781 to comply with a provision of Subsections (1) through [~~(5)~~] (6) and fails to remedy the
782 noncompliance during the 90-day period described in Subsection [~~(9)~~] (10)(d), a unit owner
783 may file an action in court for:

784 (i) injunctive relief requiring the association of unit owners to comply with the
785 provisions of Subsections (1) through [~~(5)~~] (6);

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

787 (iii) any other relief provided by law.

788 (b) In an action described in Subsection [~~(9)~~] (10)(a), the court may award costs and
789 reasonable attorney fees to the prevailing party.

790 (c) Upon motion from the unit owner, notice to the association of unit owners, and a
791 hearing in which the court finds a likelihood that the association of unit owners has failed to
792 comply with a provision of Subsections (1) through [~~(5)~~] (6), the court may order the
793 association of unit owners to immediately comply with the provisions of Subsections (1)
794 through [~~(5)~~] (6).

795 (d) At least 90 days before the day on which a unit owner files an action described in
796 Subsection [~~(9)~~] (10)(a), the unit owner shall deliver a written notice to the association of unit
797 owners that states:

798 (i) the unit owner's name, address, telephone number, and email address;

799 (ii) each requirement of Subsections (1) through [~~(5)~~] (6) with which the association of
800 unit owners has failed to comply;

801 (iii) a demand that the association of unit owners comply with each requirement with
802 which the association of unit owners has failed to comply; and

803 (iv) a date by which the association of unit owners shall remedy the association of unit
804 owners' noncompliance that is at least 90 days after the day on which the unit owner delivers
805 the notice to the association of unit owners.

806 Section 14. Section **57-8-59** is amended to read:

807 **57-8-59. Management committee act for association of unit owners -- Fiduciary**
808 **duty.**

809 (1) [~~Except~~] Subject to Subsection (2) and except as limited in the declaration, the
810 association of unit owners bylaws or articles of incorporation, or other provisions of this
811 chapter, a management committee acts in all instances on behalf of the association of unit
812 owners.

813 (2) The management committee:

814 (a) is a fiduciary for the association and each unit owner; and

815 (b) may not delegate the management committee's fiduciary duty or limit fiduciary
816 duties in the declaration, bylaws, or rules.

817 Section 15. Section **57-8a-226** is amended to read:

818 **57-8a-226. Board meetings -- Open board meetings.**

819 (1) Except for an action taken without a meeting in accordance with Section
820 **16-6a-813**, a board may take action only at a board meeting.

821 (2) (a) At least 48 hours before a board meeting, the association shall give written
822 notice of the board meeting via email to each lot owner who requests notice of a board
823 meeting, unless:

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

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

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

829 (b) A notice described in Subsection (2)(a) shall:

830 (i) be delivered to the lot owner by email, to the email address that the lot owner
831 provides to the board or the association;

832 (ii) state the time and date of the board meeting;

833 (iii) state the location of the board meeting; and

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

837 (3) (a) Except as provided in Subsection (3)(b), a board meeting shall be open to each
838 lot owner or the lot owner's representative if the representative is designated in writing.

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

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

841 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
842 proceedings;

843 (iii) discuss a personnel matter;

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

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

849 (vi) discuss a delinquent assessment or fine.

850 (c) Any matter discussed at a board meeting closed pursuant to Subsection (3)(b)(ii) is
851 not subject to discovery in a civil action in a state court under the Utah Rules of Civil
852 Procedure.

853 (4) (a) At each board meeting, the board shall provide each lot owner a reasonable
854 opportunity to offer comments.

855 (b) The board may limit the comments described in Subsection (4)(a) to one specific
856 time period during the board meeting.

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

858 (6) (a) Except for a meeting described in Subsection (3)(b), the board shall record each
859 management committee meeting.

860 (b) In an association with:

861 (i) fewer than 50 lots, the board shall make the recording described in Subsection (6)(a)
862 available upon request; and

863 (ii) 50 lots or more, the board shall post the recording described in Subsection (6)(a) on
864 the association website.

865 ~~[(6)]~~ (7) Nothing in this section shall affect the validity or enforceability of an action of
866 a board.

867 ~~[(7)]~~ (8) (a) Except as provided in Subsection ~~[(7)]~~ (8)(b), the provisions of this section
868 do not apply during the period of administrative control.

869 (b) During the period of administrative control, the association shall hold a meeting
870 that complies with Subsections (1) through ~~[(5)]~~ (6):

871 (i) at least once each year; and

872 (ii) each time the association:

873 (A) increases a fee; or

874 (B) raises an assessment.

875 ~~[(8)]~~ (9) The provisions of this section apply regardless of when the association's first
876 governing document was recorded.

877 ~~[(9)]~~ (10) (a) Subject to Subsection ~~[(9)]~~ (10)(d), if an association fails to comply with
878 a provision of Subsections (1) through ~~[(5)]~~ (6) and fails to remedy the noncompliance during
879 the 90-day period described in Subsection ~~[(9)]~~ (10)(d), a lot owner may file an action in court
880 for:

881 (i) injunctive relief requiring the association to comply with the provisions of
882 Subsections (1) through ~~[(5)]~~ (6);

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

884 (iii) any other relief provided by law.

885 (b) In an action described in Subsection ~~[(9)]~~ (10)(a), the court may award costs and
886 reasonable attorney fees to the prevailing party.

887 (c) Upon motion from the lot owner, notice to the association, and a hearing in which
888 the court finds a likelihood that the association has failed to comply with a provision of
889 Subsections (1) through ~~[(5)]~~ (6), the court may order the association to immediately comply
890 with the provisions of Subsections (1) through ~~[(5)]~~ (6).

891 (d) At least 90 days before the day on which a lot owner files an action described in
892 Subsection ~~[(9)]~~ (10)(a), the lot owner shall deliver a written notice to the association that
893 states:

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

895 (ii) each requirement of Subsections (1) through ~~[(5)]~~ (6) with which the association

896 has failed to comply;

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

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

901 Section 16. Section **57-8a-227** is amended to read:

902 **57-8a-227. Records -- Availability for examination.**

903 (1) (a) Subject to Subsection (1)(b) and regardless of whether the association is
904 incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, an
905 association shall keep and make available to lot owners:

906 (i) each record identified in Subsections **16-6a-1601**(1) through (5), in accordance with
907 Sections **16-6a-1601**, **16-6a-1602**, **16-6a-1603**, **16-6a-1605**, **16-6a-1606**, and **16-6a-1610**; and

908 (ii) a copy of the association's:

909 (A) governing documents;

910 (B) most recent approved minutes;

911 (C) most recent budget and financial statement;

912 (D) most recent reserve analysis; and

913 (E) certificate of insurance for each insurance policy the association holds.

914 (b) An association may redact the following information from any document the
915 association produces for inspection or copying:

916 (i) a Social Security number;

917 (ii) a bank account number; or

918 (iii) any communication subject to attorney-client privilege.

919 (2) (a) In addition to the requirements described in Subsection (1), an association shall:

920 (i) make the following documents available to a lot owner:

921 (A) a notice of a violation by the requesting lot owner; or

922 (B) any document pertaining to the requesting lot owner's unit;

923 (ii) make documents available to lot owners in accordance with the association's
924 governing documents; and

925 ~~[(ii)]~~ (iii) (A) if the association has an active website, make the documents described in
926 Subsections (1)(a)(ii)(A) through (C) available to lot owners, free of charge, through the

927 website; or

928 (B) if the association does not have an active website, make physical copies of the
929 documents described in Subsections (1)(a)(ii)(A) through (C) available to lot owners during
930 regular business hours at the association's address registered with the Department of Commerce
931 under Section 57-8a-105.

932 (b) Subsection (2)(a)(ii) does not apply to an association as defined in Section 57-19-2.

933 (c) If a provision of an association's governing documents conflicts with a provision of
934 this section, the provision of this section governs.

935 (3) In a written request to inspect or copy documents:

936 (a) a lot owner shall include:

937 (i) the association's name;

938 (ii) the lot owner's name;

939 (iii) the lot owner's property address;

940 (iv) the lot owner's email address;

941 (v) a description of the documents requested; and

942 (vi) any election or request described in Subsection (3)(b); and

943 (b) a lot owner may:

944 (i) elect whether to inspect or copy the documents;

945 (ii) if the lot owner elects to copy the documents, request hard copies or electronic
946 scans of the documents; or

947 (iii) subject to Subsection (4), request that:

948 (A) the association make the copies or electronic scans of the requested documents;

949 (B) a recognized third party duplicating service make the copies or electronic scans of
950 the requested documents;

951 (C) the lot owner be allowed to bring any necessary imaging equipment to the place of
952 inspection and make copies or electronic scans of the documents while inspecting the
953 documents; or

954 (D) the association email the requested documents to an email address provided in the
955 request.

956 (4) (a) An association shall comply with a request described in Subsection (3).

957 (b) If an association produces the copies or electronic scans:

- 958 (i) the copies or electronic scans shall be legible and accurate; and
- 959 (ii) the lot owner shall pay the association the reasonable cost of the copies or
- 960 electronic scans and for time spent meeting with the lot owner, which may not exceed:
- 961 (A) the actual cost that the association paid to a recognized third party duplicating
- 962 service to make the copies or electronic scans; or
- 963 (B) 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's
- 964 time.
- 965 (c) If a lot owner requests a recognized third party duplicating service make the copies
- 966 or electronic scans:
- 967 (i) the association shall arrange for the delivery and pick up of the original documents;
- 968 and
- 969 (ii) the lot owner shall pay the duplicating service directly.
- 970 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
- 971 shall provide the necessary space, light, and power for the imaging equipment.
- 972 (5) Subject to Subsection (9), if, in response to a lot owner's request to inspect or copy
- 973 documents, an association fails to comply with a provision of this section, the association shall
- 974 pay:
- 975 (a) the reasonable costs of inspecting and copying the requested documents;
- 976 (b) for items described in Subsections (1)(a)(ii)(A) through (C), [~~\$25~~] \$50 to the lot
- 977 owner who made the request for each day the request continues unfulfilled, beginning the sixth
- 978 day after the day on which the lot owner made the request; and
- 979 (c) reasonable attorney fees and costs incurred by the lot owner in obtaining the
- 980 inspection and copies of the requested documents.
- 981 (6) (a) In addition to any remedy in the association's governing documents or otherwise
- 982 provided by law, a lot owner may file an action in court under this section if:
- 983 (i) subject to Subsection (9), an association fails to make documents available to the lot
- 984 owner in accordance with this section, the association's governing documents, or as otherwise
- 985 provided by law; and
- 986 (ii) the association fails to timely comply with a notice described in Subsection (6)(d).
- 987 (b) In an action described in Subsection (6)(a):
- 988 (i) the lot owner may request:

989 (A) injunctive relief requiring the association to comply with the provisions of this
990 section;

991 (B) \$500 or actual damage, whichever is greater; or

992 (C) any other relief provided by law; and

993 (ii) the court shall award:

994 (A) costs and reasonable attorney fees to the prevailing party, including any reasonable
995 attorney fees incurred before the action was filed that relate to the request that is the subject of
996 the action[-]; and

997 (B) if the lot owner is the prevailing party, costs and fines described in Subsections
998 (5)(a) and (b).

999 (c) (i) In an action described in Subsection (6)(a), upon motion by the lot owner, notice
1000 to the association, and a hearing in which the court finds a likelihood that the association failed
1001 to comply with a provision of this section, the court shall order the association to immediately
1002 comply with the provision.

1003 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
1004 the day on which the lot owner files the motion.

1005 (d) At least 10 days before the day on which a lot owner files an action described in
1006 Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

1007 (i) the lot owner's name, address, telephone number, and email address;

1008 (ii) each requirement of this section with which the association has failed to comply;

1009 (iii) a demand that the association comply with each requirement with which the
1010 association has failed to comply; and

1011 (iv) a date by which the association shall remedy the association's noncompliance that
1012 is at least 10 days after the day on which the lot owner delivers the notice to the association.

1013 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association.

1014 (b) The provisions of this section apply regardless of any conflicting provision in Title
1015 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

1016 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that
1017 the lot owner has under this section.

1018 (9) An association is not liable for identifying or providing a document in error, if the
1019 association identified or provided the erroneous document in good faith.

1020 (10) (a) The board of directors or the board's agent is responsible for all contracts,
1021 governing documents, and any other document pertaining to the association, a lot, or a lot
1022 owner's interests and rights.

1023 (b) If a board of directors fails to produce a document described in Subsection (10)(a),
1024 and failure to produce the document is at issue in subsequent litigation, the association shall
1025 pay any damages or reasonable attorney fees awarded by a court.

1026 Section 17. Section **57-8a-232** is enacted to read:

1027 **57-8a-232. Dispute resolution -- Notice.**

1028 (1) If the declaration, bylaws, or association rules do not provide a clear dispute
1029 resolution process, or an association does not strictly comply with the adopted dispute
1030 resolution process, a court may award reasonable attorney fees to a lot owner.

1031 (2) (a) If agreed to by both parties, the parties may seek arbitration or mediation in
1032 accordance with Section [13-43-204](#).

1033 (b) An association, or the association's agent, shall notify each lot owner:

1034 (i) of a request for arbitration or mediation in accordance with Section [13-43-204](#);

1035 (ii) no later than 30 days after the day on which the request is submitted by the
1036 association or the association is notified by the Office of the Property Rights Ombudsman of a
1037 request; and

1038 (iii) of the substance of the request.

1039 Section 18. Section **57-8a-233** is enacted to read:

1040 **57-8a-233. Notice of legal action.**

1041 (1) Subject to Subsection (2), if an association is a party to a legal action or a complaint
1042 filed with a state agency, the association shall:

1043 (a) notify each lot owner no later than 30 days after the day the association is served in
1044 a legal action, initiates a legal action, or receives notice of a complaint from a state agency; and

1045 (b) allow a lot owner to review any documents related to the legal action or complaint.

1046 (2) Subsection (1) does not apply to an action filed by the association to collect an
1047 assessment unless a unit owner files a counter suit.

1048 (3) If the association fails to notify a lot owner in accordance with Subsection (1)(a),
1049 the association is, based upon a finding by the court, liable for:

1050 (a) any cost associated with efforts to obtain information described in Subsection

- 1051 (1)(b); and
1052 (b) any damages related to the failure to give notice, including consequential damages
1053 or reasonable attorney fees associated with:
1054 (i) a property; or
1055 (ii) decisions or actions by a lot owner or property purchaser that could have been
1056 different had the lot owner or purchaser known about ongoing litigation or possible liabilities.
1057 Section 19. Section **57-8a-301** is amended to read:
1058 **57-8a-301. Lien in favor of association for assessments and costs of collection.**
1059 (1) (a) Except as provided in Section **57-8a-105**, an association has a lien on a lot for:
1060 (i) an assessment;
1061 (ii) except as provided in the declaration, fees, charges, and costs associated with
1062 collecting an unpaid assessment, including:
1063 (A) court costs and reasonable attorney fees;
1064 (B) late charges;
1065 (C) interest; and
1066 (D) any other amount that the association is entitled to recover under the declaration,
1067 this chapter, or an administrative or judicial decision; and
1068 (iii) a fine that the association imposes against a lot owner in accordance with Section
1069 **57-8a-208**, if:
1070 (A) the time for appeal described in Subsection **57-8a-208(5)** has expired and the lot
1071 owner did not file an appeal; or
1072 (B) the lot owner timely filed an appeal under Subsection **57-8a-208(5)** and the district
1073 court issued a final order upholding a fine imposed under Subsection **57-8a-208(1)**.
1074 (b) [The] Subject to Subsection (1)(c), recording of a declaration constitutes record
1075 notice and perfection of a lien described in Subsection (1)(a).
1076 (c) (i) If an association records a lien against a lot owner, the association shall include
1077 at the time the lien is recorded a statement testifying that the association has complied with
1078 state law and the association's rules, bylaws, or policies governing collection of an assessment.
1079 (ii) If an association fails to comply with state law or the association's rules, bylaws, or
1080 policies governing collection of an assessment:
1081 (A) a lien against the lot owner described in Subsection (1)(c)(i) is not perfected and

1082 void; and

1083 (B) a court may, against the association or the association's agent, issue a finding of
1084 perjury or award fines, reasonable attorney fees, or other damages.

1085 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
1086 is for the full amount of the assessment from the time the first installment is due, unless the
1087 association otherwise provides in a notice of assessment.

1088 (3) An unpaid assessment or fine accrues interest at the rate provided:

1089 (a) in Subsection 15-1-1(2); or

1090 (b) in the declaration, if the declaration provides for a different interest rate.

1091 (4) A lien under this section has priority over each other lien and encumbrance on a lot
1092 except:

1093 (a) a lien or encumbrance recorded before the declaration is recorded;

1094 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
1095 is recorded before a recorded notice of lien by or on behalf of the association; or

1096 (c) a lien for real estate taxes or other governmental assessments or charges against the
1097 lot.

1098 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
1099 Exemptions Act.

1100 (6) Unless the declaration provides otherwise, if two or more associations have liens
1101 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
1102 created.

1103 Section 20. Section **57-8a-312** is enacted to read:

1104 **57-8a-312. Presumption of payment.**

1105 (1) If a person mails a payment, in any form, for an assessment to the association or the
1106 association's agent, the payment is presumed received within five days after the date of
1107 postmark.

1108 (2) The presumption in Subsection (1) is rebuttable.

1109 (3) Notwithstanding Subsection (2), it is insufficient evidence to rebut the presumption
1110 described in Subsection (1) that the association's or the association's agent's practice is to only
1111 receive or inspect mail on certain dates.

1112 Section 21. Section **57-8a-501** is amended to read:

1113 **57-8a-501. Board acts for association.**

1114 (1) Except as limited in a declaration, the association bylaws, or other provisions of
1115 this chapter, a board acts in all instances on behalf of the association.

1116 (2) The board of directors:

1117 (a) is a fiduciary for the association and each lot owner; and

1118 (b) may not delegate the board of director's fiduciary duty or limit fiduciary duties in
1119 the declaration, bylaws, or rules.