

Senator Curtis S. Bramble proposes the following substitute bill:

NONJUDICIAL FORECLOSURE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ amends terms;
- ▶ prohibits an association of unit owners from enforcing a lien on a unit through nonjudicial foreclosure unless the amount owed exceeds a certain amount;
- ▶ prohibits an association from enforcing a lien on a lot through nonjudicial foreclosure unless the amount owed exceeds a certain amount; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-3, as last amended by Laws of Utah 2017, Chapter 131



26 [57-8-45](#), as last amended by Laws of Utah 2013, Chapter 95

27 [57-8a-102](#), as last amended by Laws of Utah 2017, Chapters 131 and 424

28 [57-8a-302](#), as last amended by Laws of Utah 2013, Chapter 95

29

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

31 Section 1. Section [57-8-3](#) is amended to read:

32 **[57-8-3](#). Definitions.**

33 As used in this chapter:

34 (1) "Assessment" means any charge imposed by the association, including:

35 (a) common expenses on or against a unit owner pursuant to the provisions of the
36 declaration, bylaws, or this chapter; and

37 (b) an amount that an association of unit owners assesses to a unit owner under
38 Subsection [57-8-43](#)(9)(g).

39 (2) "Association of unit owners" or "association" means all of the unit owners:

40 (a) acting as a group in accordance with the declaration and bylaws; or

41 (b) organized as a legal entity in accordance with the declaration.

42 (3) "Building" means a building, containing units, and comprising a part of the
43 property.

44 (4) "Commercial condominium project" means a condominium project that has no
45 residential units within the project.

46 (5) "Common areas and facilities" unless otherwise provided in the declaration or
47 lawful amendments to the declaration means:

48 (a) the land included within the condominium project, whether leasehold or in fee
49 simple;

50 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
51 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

52 (c) the basements, yards, gardens, parking areas, and storage spaces;

53 (d) the premises for lodging of janitors or persons in charge of the property;

54 (e) installations of central services such as power, light, gas, hot and cold water,
55 heating, refrigeration, air conditioning, and incinerating;

56 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all

57 apparatus and installations existing for common use;

58 (g) such community and commercial facilities as may be provided for in the
59 declaration; and

60 (h) all other parts of the property necessary or convenient to its existence, maintenance,
61 and safety, or normally in common use.

62 (6) "Common expenses" means:

63 (a) all sums lawfully assessed against the unit owners;

64 (b) expenses of administration, maintenance, repair, or replacement of the common
65 areas and facilities;

66 (c) expenses agreed upon as common expenses by the association of unit owners; and

67 (d) expenses declared common expenses by this chapter, or by the declaration or the
68 bylaws.

69 (7) "Common profits," unless otherwise provided in the declaration or lawful
70 amendments to the declaration, means the balance of all income, rents, profits, and revenues
71 from the common areas and facilities remaining after the deduction of the common expenses.

72 (8) "Condominium" means the ownership of a single unit in a multiunit project
73 together with an undivided interest in common in the common areas and facilities of the
74 property.

75 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in
76 accordance with Section [57-8-13](#).

77 (10) "Condominium project" means a real estate condominium project; a plan or
78 project whereby two or more units, whether contained in existing or proposed apartments,
79 commercial or industrial buildings or structures, or otherwise, are separately offered or
80 proposed to be offered for sale. Condominium project also means the property when the
81 context so requires.

82 (11) "Condominium unit" means a unit together with the undivided interest in the
83 common areas and facilities appertaining to that unit. Any reference in this chapter to a
84 condominium unit includes both a physical unit together with its appurtenant undivided interest
85 in the common areas and facilities and a time period unit together with its appurtenant
86 undivided interest, unless the reference is specifically limited to a time period unit.

87 (12) "Contractible condominium" means a condominium project from which one or

88 more portions of the land within the project may be withdrawn in accordance with provisions
89 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
90 termination of one or more leases, then the condominium project is not a contractible
91 condominium within the meaning of this chapter.

92 (13) "Convertible land" means a building site which is a portion of the common areas
93 and facilities, described by metes and bounds, within which additional units or limited common
94 areas and facilities may be created in accordance with this chapter.

95 (14) "Convertible space" means a portion of the structure within the condominium
96 project, which portion may be converted into one or more units or common areas and facilities,
97 including limited common areas and facilities in accordance with this chapter.

98 (15) "Declarant" means all persons who execute the declaration or on whose behalf the
99 declaration is executed. From the time of the recordation of any amendment to the declaration
100 expanding an expandable condominium, all persons who execute that amendment or on whose
101 behalf that amendment is executed shall also come within this definition. Any successors of
102 the persons referred to in this subsection who come to stand in the same relation to the
103 condominium project as their predecessors also come within this definition.

104 (16) "Declaration" means the instrument by which the property is submitted to the
105 provisions of this act, as it from time to time may be lawfully amended.

106 (17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

107 (18) "Expandable condominium" means a condominium project to which additional
108 land or an interest in it may be added in accordance with the declaration and this chapter.

109 (19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

110 (20) "Governing documents":

111 (a) means a written instrument by which an association of unit owners may:

112 (i) exercise powers; or

113 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
114 association of unit owners; and

115 (b) includes:

116 (i) articles of incorporation;

117 (ii) bylaws;

118 (iii) a plat;

119 (iv) a declaration of covenants, conditions, and restrictions; and

120 (v) rules of the association of unit owners.

121 (21) "Independent third party" means a person that:

122 (a) is not related to the unit owner;

123 (b) shares no pecuniary interests with the unit owner; and

124 (c) purchases the unit in good faith and without the intent to defraud a current or future
125 lienholder.

126 (22) "Judicial foreclosure" means a foreclosure of a unit:

127 (a) for the nonpayment of an assessment;

128 (b) in the manner provided by law for the foreclosure of a mortgage on real property;

129 and

130 (c) as provided in this chapter.

131 [~~(22)~~] (23) "Leasehold condominium" means a condominium project in all or any
132 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
133 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
134 time. A condominium project including leased land, or an interest in the land, upon which no
135 units are situated or to be situated is not a leasehold condominium within the meaning of this
136 chapter.

137 [~~(23)~~] (24) "Limited common areas and facilities" means those common areas and
138 facilities designated in the declaration as reserved for use of a certain unit or units to the
139 exclusion of the other units.

140 [~~(24)~~] (25) "Majority" or "majority of the unit owners," unless otherwise provided in
141 the declaration or lawful amendments to the declaration, means the owners of more than 50%
142 in the aggregate in interest of the undivided ownership of the common areas and facilities.

143 [~~(25)~~] (26) "Management committee" means the committee as provided in the
144 declaration charged with and having the responsibility and authority to make and to enforce all
145 of the reasonable rules covering the operation and maintenance of the property.

146 [~~(26)~~] (27) " Management committee meeting" means a gathering of a management
147 committee, whether in person or by means of electronic communication, at which the
148 management committee can take binding action.

149 [~~(27)~~] (28) (a) "Means of electronic communication" means an electronic system that

150 allows individuals to communicate orally in real time.

151 (b) "Means of electronic communication" includes:

152 (i) web conferencing;

153 (ii) video conferencing; and

154 (iii) telephone conferencing.

155 ~~[(28)]~~ (29) "Mixed-use condominium project" means a condominium project that has
156 both residential and commercial units in the condominium project.

157 (30) "Nonjudicial foreclosure" means the sale of a unit:

158 (a) for the nonpayment of an assessment;

159 (b) in the same manner as the sale of trust property under Sections [57-1-19](#) through
160 [57-1-34](#); and

161 (c) as provided in this chapter.

162 ~~[(29)]~~ (31) "Par value" means a number of dollars or points assigned to each unit by the
163 declaration. Substantially identical units shall be assigned the same par value, but units located
164 at substantially different heights above the ground, or having substantially different views, or
165 having substantially different amenities or other characteristics that might result in differences
166 in market value, may be considered substantially identical within the meaning of this
167 subsection. If par value is stated in terms of dollars, that statement may not be considered to
168 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
169 fair market transaction at a different figure may affect the par value of any unit, or any
170 undivided interest in the common areas and facilities, voting rights in the unit owners'
171 association, liability for common expenses, or right to common profits, assigned on the basis
172 thereof.

173 ~~[(30)]~~ (32) "Period of administrative control" means the period of control described in
174 Subsection [57-8-16.5\(1\)](#).

175 ~~[(31)]~~ (33) "Person" means an individual, corporation, partnership, association, trustee,
176 or other legal entity.

177 ~~[(32)]~~ (34) "Property" means the land, whether leasehold or in fee simple, the building,
178 if any, all improvements and structures thereon, all easements, rights, and appurtenances
179 belonging thereto, and all articles of personal property intended for use in connection
180 therewith.

181 ~~[(33)]~~ (35) "Record," "recording," "recorded," and "recorder" have the meaning stated
182 in Chapter 3, Recording of Documents.

183 ~~[(34)]~~ (36) "Rentals" or "rental unit" means:

184 (a) a unit that:

185 (i) is not owned by an entity or trust; and

186 (ii) is occupied by an individual while the unit owner is not occupying the unit as the
187 unit owner's primary residence; or

188 (b) an occupied unit owned by an entity or trust, regardless of who occupies the unit.

189 ~~[(35)]~~ (37) "Size" means the number of cubic feet, or the number of square feet of
190 ground or floor space, within each unit as computed by reference to the record of survey map
191 and rounded off to a whole number. Certain spaces within the units including attic, basement,
192 or garage space may be omitted from the calculation or be partially discounted by the use of a
193 ratio, if the same basis of calculation is employed for all units in the condominium project and
194 if that basis is described in the declaration.

195 ~~[(36)]~~ (38) "Time period unit" means an annually recurring part or parts of a year
196 specified in the declaration as a period for which a unit is separately owned and includes a
197 timeshare estate as defined in Section 57-19-2.

198 ~~[(37)]~~ (39) "Unconstructed unit" means a unit that:

199 (a) is intended, as depicted in the condominium plat, to be fully or partially contained
200 in a building; and

201 (b) is not constructed.

202 ~~[(38)]~~ (40) (a) "Unit" means a separate part of the property intended for any type of
203 independent use, which is created by the recording of a declaration and a condominium plat
204 that describes the unit boundaries.

205 (b) "Unit" includes one or more rooms or spaces located in one or more floors or a
206 portion of a floor in a building.

207 (c) "Unit" includes a convertible space, in accordance with Subsection 57-8-13.4(3).

208 ~~[(39)]~~ (41) "Unit number" means the number, letter, or combination of numbers and
209 letters designating the unit in the declaration and in the record of survey map.

210 ~~[(40)]~~ (42) "Unit owner" means the person or persons owning a unit in fee simple and
211 an undivided interest in the fee simple estate of the common areas and facilities in the

212 percentage specified and established in the declaration or, in the case of a leasehold
213 condominium project, the person or persons whose leasehold interest or interests in the
214 condominium unit extend for the entire balance of the unexpired term or terms.

215 Section 2. Section **57-8-45** is amended to read:

216 **57-8-45. Enforcement of a lien.**

217 (1) (a) Except as provided in Section **57-8-13.1**, to enforce a lien established under
218 Section **57-8-44**, an association of unit owners may:

219 (i) subject to Subsection (5), cause a unit to be sold through nonjudicial foreclosure as
220 though the lien were a deed of trust, in the manner provided by:

221 (A) Sections **57-1-24**, **57-1-25**, **57-1-26**, and **57-1-27**; and

222 (B) this chapter; or

223 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

224 (A) law for the foreclosure of a mortgage; and

225 (B) this chapter.

226 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

227 (1)(a):

228 (i) the association of unit owners is considered to be the beneficiary under a trust deed;
229 and

230 (ii) the unit owner is considered to be the trustor under a trust deed.

231 (2) A unit owner's acceptance of the owner's interest in a unit constitutes a
232 simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as
233 provided in this section for the purpose of securing payment of all amounts due under the
234 declaration and this chapter.

235 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
236 **57-1-19** through **57-1-34** may not be exercised unless the association of unit owners appoints a
237 qualified trustee.

238 (b) An association of unit owners' execution of a substitution of trustee form
239 authorized in Section **57-1-22** is sufficient for appointment of a trustee under Subsection (3)(a).

240 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
241 under Subsection **57-1-21**(1)(a)(i) or (iv).

242 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections

243 57-1-19 through 57-1-34.

244 (4) This chapter does not prohibit an association of unit owners from bringing an
245 action against a unit owner to recover an amount for which a lien is created under Section
246 57-8-44 or, subject to Subsection (5), from taking a deed in lieu of foreclosure, if the action is
247 brought or deed taken before the sale or foreclosure of the unit owner's unit under this chapter.

248 (5) (a) An association of unit owners may not cause a unit to be sold through
249 nonjudicial foreclosure unless the assessment amount, owed by the unit owner, that is subject
250 to the lien exceeds \$11,000.

251 (b) For purposes of Subsection (5)(a), the assessment amount owed does not include:

252 (i) debt collection costs; or

253 (ii) the costs and fees described in Subsection 57-8-49(2).

254 Section 3. Section 57-8a-102 is amended to read:

255 **57-8a-102. Definitions.**

256 As used in this chapter:

257 (1) (a) "Assessment" means a charge imposed or levied:

258 (i) by the association;

259 (ii) on or against a lot or a lot owner; and

260 (iii) pursuant to a governing document recorded with the county recorder.

261 (b) "Assessment" includes:

262 (i) a common expense; and

263 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

264 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
265 other legal entity, any member of which:

266 (i) is an owner of a residential lot located within the jurisdiction of the association, as
267 described in the governing documents; and

268 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

269 (A) real property taxes;

270 (B) insurance premiums;

271 (C) maintenance costs; or

272 (D) for improvement of real property not owned by the member.

273 (b) "Association" or "homeowner association" does not include an association created

274 under Title 57, Chapter 8, Condominium Ownership Act.

275 (3) " Board meeting" means a gathering of a board, whether in person or by means of
276 electronic communication, at which the board can take binding action.

277 (4) "Board of directors" or "board" means the entity, regardless of name, with primary
278 authority to manage the affairs of the association.

279 (5) "Common areas" means property that the association:

280 (a) owns;

281 (b) maintains;

282 (c) repairs; or

283 (d) administers.

284 (6) "Common expense" means costs incurred by the association to exercise any of the
285 powers provided for in the association's governing documents.

286 (7) "Declarant":

287 (a) means the person who executes a declaration and submits it for recording in the
288 office of the recorder of the county in which the property described in the declaration is
289 located; and

290 (b) includes the person's successor and assign.

291 (8) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

292 (9) "Gas corporation" means the same as that term is defined in Section 54-2-1.

293 (10) (a) "Governing documents" means a written instrument by which the association
294 may:

295 (i) exercise powers; or

296 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
297 association.

298 (b) "Governing documents" includes:

299 (i) articles of incorporation;

300 (ii) bylaws;

301 (iii) a plat;

302 (iv) a declaration of covenants, conditions, and restrictions; and

303 (v) rules of the association.

304 (11) "Independent third party" means a person that:

- 305 (a) is not related to the owner of the residential lot;
- 306 (b) shares no pecuniary interests with the owner of the residential lot; and
- 307 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 308 or future lienholder.

309 (12) "Judicial foreclosure" means a foreclosure of a lot:

- 310 (a) for the nonpayment of an assessment; [~~and~~]
- 311 (b) [(†)] in the manner provided by law for the foreclosure of a mortgage on real
- 312 property; and

313 [(††)] (c) as provided in Part 3, Collection of Assessments.

314 (13) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

- 315 (a) by a person or persons other than the owner; and
- 316 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 317 gratuity, or emolument.

318 (14) "Limited common areas" means common areas described in the declaration and

319 allocated for the exclusive use of one or more lot owners.

320 (15) "Lot" means:

- 321 (a) a lot, parcel, plot, or other division of land:
 - 322 (i) designated for separate ownership or occupancy; and
 - 323 (ii) (A) shown on a recorded subdivision plat; or
 - 324 (B) the boundaries of which are described in a recorded governing document; or
- 325 (b) (i) a unit in a condominium association if the condominium association is a part of
- 326 a development; or
- 327 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 328 development.

329 (16) (a) "Means of electronic communication" means an electronic system that allows

330 individuals to communicate orally in real time.

331 (b) "Means of electronic communication" includes:

- 332 (i) web conferencing;
- 333 (ii) video conferencing; and
- 334 (iii) telephone conferencing.

335 (17) "Mixed-use project" means a project under this chapter that has both residential

336 and commercial lots in the project.

337 (18) "Nonjudicial foreclosure" means the sale of a lot:

338 (a) for the nonpayment of an assessment; [~~and~~]

339 (b) [(~~it~~)] in the same manner as the sale of trust property under Sections 57-1-19

340 through 57-1-34; and

341 [(~~it~~)] (c) as provided in Part 3, Collection of Assessments.

342 (19) "Period of administrative control" means the period during which the person who

343 filed the association's governing documents or the person's successor in interest retains

344 authority to:

345 (a) appoint or remove members of the association's board of directors; or

346 (b) exercise power or authority assigned to the association under the association's

347 governing documents.

348 (20) "Rentals" or "rental lot" means:

349 (a) a lot that:

350 (i) is not owned by an entity or trust; and

351 (ii) is occupied by an individual while the lot owner is not occupying the lot as the lot

352 owner's primary residence; or

353 (b) an occupied lot owned by an entity or trust, regardless of who occupies the lot.

354 (21) "Residential lot" means a lot, the use of which is limited by law, covenant, or

355 otherwise to primarily residential or recreational purposes.

356 (22) "Solar energy system" means:

357 (a) a system that is used to produce electric energy from sunlight; and

358 (b) the components of the system described in Subsection (22)(a).

359 Section 4. Section 57-8a-302 is amended to read:

360 **57-8a-302. Enforcement of a lien.**

361 (1) (a) Except as provided in Section 57-8a-105, to enforce a lien established under

362 Section 57-8a-301, an association may:

363 (i) subject to Subsection (5), cause a lot to be sold through nonjudicial foreclosure as

364 though the lien were a deed of trust, in the manner provided by:

365 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

366 (B) this part; or

- 367 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
368 (A) law for the foreclosure of a mortgage; and
369 (B) this part.
- 370 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection
371 (1)(a):
372 (i) the association is considered to be the beneficiary under a trust deed; and
373 (ii) the lot owner is considered to be the trustor under a trust deed.
- 374 (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous
375 conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this
376 section for the purpose of securing payment of all amounts due under the declaration and this
377 chapter.
- 378 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
379 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified
380 trustee.
- 381 (b) An association's execution of a substitution of trustee form authorized in Section
382 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
- 383 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
384 under Subsection 57-1-21(1)(a)(i) or (iv).
- 385 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
386 57-1-19 through 57-1-34.
- 387 (4) This part does not prohibit an association from bringing an action against a lot
388 owner to recover an amount for which a lien is created under Section 57-8a-301 or, subject to
389 Subsection (5), from taking a deed in lieu of foreclosure, if the action is brought or deed taken
390 before the sale or foreclosure of the lot owner's lot under this part.
- 391 (5) (a) An association may not cause a lot to be sold through nonjudicial foreclosure
392 unless the assessment amount, owed by the lot owner, that is subject to the lien exceeds
393 \$11,000.
- 394 (b) For purposes of Subsection (5)(a), the assessment amount owed does not include:
395 (i) debt collection costs; or
396 (ii) the costs and fees described in Subsection 57-8a-306(2).