

1 **CONDOMINIUM AND COMMUNITY ASSOCIATION**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5

6 **LONG TITLE**

7 **General Description:**

8 This bill enacts and modifies provisions relating to condominium and community
9 associations.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies and enacts provisions of the Condominium Ownership Act and the
13 Community Association Act;
- 14 ▶ enacts provisions relating to the improvement, alteration, or combination of units or
15 lots;
- 16 ▶ enacts provisions relating to the responsibility for maintenance, repair, and
17 replacement of common areas and units or lots;
- 18 ▶ modifies reserve fund provisions;
- 19 ▶ enacts provisions relating to subjecting common areas to a security interest;
- 20 ▶ enacts provisions relating to an owner's request to make modifications to the
21 owner's unit or lot;
- 22 ▶ enacts provisions allowing a preexisting association to make a later-enacted
23 provision of law applicable to the association;
- 24 ▶ enacts provisions relating to fines imposed by an association;
- 25 ▶ modifies provisions relating to the organization of an association as a nonprofit
26 corporation or other entity;
- 27 ▶ enacts provisions for resolving conflicting provisions of law and other applicable
28 documents;
- 29 ▶ modifies insurance provisions;
- 30 ▶ enacts provisions relating to the powers, meetings, and actions of a management
31 committee or board;

- 32 ▶ enacts provisions relating to a community association's governing documents,
33 including application of the rule against perpetuities and the rule against
34 unreasonable restraints on alienation;
- 35 ▶ enacts a provision relating to the organization of a community association;
- 36 ▶ enacts a provision relating to a lot owner's improvement or alteration to a lot;
- 37 ▶ enacts a provision relating to eminent domain of property that is part of a
38 community association;
- 39 ▶ enacts a provision relating to the ownership, conveyance, and governmental
40 assessment of community association common areas;
- 41 ▶ enacts provisions relating to the consolidation and termination of a community
42 association;
- 43 ▶ repeals an obsolete provision; and
- 44 ▶ makes technical changes.

45 **Money Appropriated in this Bill:**

46 None

47 **Other Special Clauses:**

48 None

49 **Utah Code Sections Affected:**

50 AMENDS:

51 **57-8-3**, as last amended by Laws of Utah 2012, Chapter 166

52 **57-8-7**, as last amended by Laws of Utah 2003, Chapter 265

53 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369

54 **57-8-23**, as enacted by Laws of Utah 1963, Chapter 111

55 **57-8-40**, as enacted by Laws of Utah 2008, Chapter 291

56 **57-8-43**, as enacted by Laws of Utah 2011, Chapter 355

57 **57-8a-102**, as last amended by Laws of Utah 2011, Chapter 355

58 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369

59 **57-8a-212**, as enacted by Laws of Utah 2011, Chapter 355

60 **57-8a-220**, as enacted by Laws of Utah 2011, Chapter 355

61 **57-8a-402**, as enacted by Laws of Utah 2011, Chapter 355

62 **57-8a-403**, as enacted by Laws of Utah 2011, Chapter 355

- 63 **57-8a-404**, as enacted by Laws of Utah 2011, Chapter 355
- 64 **57-8a-405**, as last amended by Laws of Utah 2012, Chapter 369
- 65 **57-8a-406**, as enacted by Laws of Utah 2011, Chapter 355
- 66 **57-8a-407**, as enacted by Laws of Utah 2011, Chapter 355
- 67 **76-6-206**, as last amended by Laws of Utah 2010, Chapter 334

68 ENACTS:

- 69 **57-8-4.5**, Utah Code Annotated 1953
- 70 **57-8-7.6**, Utah Code Annotated 1953
- 71 **57-8-7.7**, Utah Code Annotated 1953
- 72 **57-8-10.3**, Utah Code Annotated 1953
- 73 **57-8-10.5**, Utah Code Annotated 1953
- 74 **57-8-40.5**, Utah Code Annotated 1953
- 75 **57-8-55**, Utah Code Annotated 1953
- 76 **57-8-56**, Utah Code Annotated 1953
- 77 **57-8-57**, Utah Code Annotated 1953
- 78 **57-8-58**, Utah Code Annotated 1953
- 79 **57-8a-107**, Utah Code Annotated 1953
- 80 **57-8a-108**, Utah Code Annotated 1953
- 81 **57-8a-109**, Utah Code Annotated 1953
- 82 **57-8a-110**, Utah Code Annotated 1953
- 83 **57-8a-111**, Utah Code Annotated 1953
- 84 **57-8a-222**, Utah Code Annotated 1953
- 85 **57-8a-223**, Utah Code Annotated 1953
- 86 **57-8a-224**, Utah Code Annotated 1953
- 87 **57-8a-225**, Utah Code Annotated 1953
- 88 **57-8a-226**, Utah Code Annotated 1953
- 89 **57-8a-227**, Utah Code Annotated 1953
- 90 **57-8a-228**, Utah Code Annotated 1953
- 91 **57-8a-501**, Utah Code Annotated 1953
- 92 **57-8a-502**, Utah Code Annotated 1953

93 **57-8a-503**, Utah Code Annotated 1953

94 **57-8a-504**, Utah Code Annotated 1953

95 **57-8a-601**, Utah Code Annotated 1953

96 **57-8a-602**, Utah Code Annotated 1953

97 REPEALS AND REENACTS:

98 **57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

99 REPEALS:

100 **57-8a-221**, as enacted by Laws of Utah 2011, Chapter 355

101

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

103 Section 1. Section **57-8-3** is amended to read:

104 **57-8-3. Definitions.**

105 As used in this chapter:

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

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

109 (b) an amount that an association of unit owners assesses to a unit owner under
110 Subsection 57-8-43(9)~~(h)~~(g).

111 (2) "Association of unit owners" means all of the unit owners:

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

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

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

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

118 ~~(4)~~ (5) "Common areas and facilities" unless otherwise provided in the declaration or
119 lawful amendments to the declaration means:

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

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

- 124 (c) the basements, yards, gardens, parking areas, and storage spaces;
- 125 (d) the premises for lodging of janitors or persons in charge of the property;
- 126 (e) installations of central services such as power, light, gas, hot and cold water,
127 heating, refrigeration, air conditioning, and incinerating;
- 128 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
129 apparatus and installations existing for common use;
- 130 (g) such community and commercial facilities as may be provided for in the
131 declaration; and
- 132 (h) all other parts of the property necessary or convenient to its existence, maintenance,
133 and safety, or normally in common use.
- 134 ~~[(5)]~~ (6) "Common expenses" means:
- 135 (a) all sums lawfully assessed against the unit owners;
- 136 (b) expenses of administration, maintenance, repair, or replacement of the common
137 areas and facilities;
- 138 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 139 (d) expenses declared common expenses by this chapter, or by the declaration or the
140 bylaws.
- 141 ~~[(6)]~~ (7) "Common profits," unless otherwise provided in the declaration or lawful
142 amendments to the declaration, means the balance of all income, rents, profits, and revenues
143 from the common areas and facilities remaining after the deduction of the common expenses.
- 144 ~~[(7)]~~ (8) "Condominium" means the ownership of a single unit in a multiunit project
145 together with an undivided interest in common in the common areas and facilities of the
146 property.
- 147 ~~[(8)]~~ (9) "Condominium plat" means a plat or plats of survey of land and units prepared
148 in accordance with Section 57-8-13.
- 149 ~~[(9)]~~ (10) "Condominium project" means a real estate condominium project; a plan or
150 project whereby two or more units, whether contained in existing or proposed apartments,
151 commercial or industrial buildings or structures, or otherwise, are separately offered or
152 proposed to be offered for sale. Condominium project also means the property when the
153 context so requires.
- 154 ~~[(10)]~~ (11) "Condominium unit" means a unit together with the undivided interest in

155 the common areas and facilities appertaining to that unit. Any reference in this chapter to a
156 condominium unit includes both a physical unit together with its appurtenant undivided interest
157 in the common areas and facilities and a time period unit together with its appurtenant
158 undivided interest, unless the reference is specifically limited to a time period unit.

159 ~~[(11)]~~ (12) "Contractible condominium" means a condominium project from which one
160 or more portions of the land within the project may be withdrawn in accordance with
161 provisions of the declaration and of this chapter. If the withdrawal can occur only by the
162 expiration or termination of one or more leases, then the condominium project is not a
163 contractible condominium within the meaning of this chapter.

164 ~~[(12)]~~ (13) "Convertible land" means a building site which is a portion of the common
165 areas and facilities, described by metes and bounds, within which additional units or limited
166 common areas and facilities may be created in accordance with this chapter.

167 ~~[(13)]~~ (14) "Convertible space" means a portion of the structure within the
168 condominium project, which portion may be converted into one or more units or common areas
169 and facilities, including limited common areas and facilities in accordance with this chapter.

170 ~~[(14)]~~ (15) "Declarant" means all persons who execute the declaration or on whose
171 behalf the declaration is executed. From the time of the recordation of any amendment to the
172 declaration expanding an expandable condominium, all persons who execute that amendment
173 or on whose behalf that amendment is executed shall also come within this definition. Any
174 successors of the persons referred to in this subsection who come to stand in the same relation
175 to the condominium project as their predecessors also come within this definition.

176 ~~[(15)]~~ (16) "Declaration" means the instrument by which the property is submitted to
177 the provisions of this act, as it from time to time may be lawfully amended.

178 ~~[(16)]~~ (17) "Expandable condominium" means a condominium project to which
179 additional land or an interest in it may be added in accordance with the declaration and this
180 chapter.

181 (18) "Governing documents":

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

183 (i) exercise powers; or

184 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the

185 association of unit owners; and

- 186 (b) includes:
187 (i) articles of incorporation;
188 (ii) bylaws;
189 (iii) a plat;
190 (iv) a declaration of covenants, conditions, and restrictions; and
191 (v) rules of the association of unit owners.

192 [~~(17)~~] (19) "Leasehold condominium" means a condominium project in all or any
193 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
194 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
195 time. A condominium project including leased land, or an interest in the land, upon which no
196 units are situated or to be situated is not a leasehold condominium within the meaning of this
197 chapter.

198 [~~(18)~~] (20) "Limited common areas and facilities" means those common areas and
199 facilities designated in the declaration as reserved for use of a certain unit or units to the
200 exclusion of the other units.

201 [~~(19)~~] (21) "Majority" or "majority of the unit owners," unless otherwise provided in
202 the declaration or lawful amendments to the declaration, means the owners of more than 50%
203 in the aggregate in interest of the undivided ownership of the common areas and facilities.

204 [~~(20)~~] (22) "Management committee" means the committee as provided in the
205 declaration charged with and having the responsibility and authority to make and to enforce all
206 of the reasonable rules covering the operation and maintenance of the property.

207 (23) "Mixed-use condominium project" means a condominium project that has both
208 residential and commercial units in the condominium project.

209 [~~(21)~~] (24) "Par value" means a number of dollars or points assigned to each unit by the
210 declaration. Substantially identical units shall be assigned the same par value, but units located
211 at substantially different heights above the ground, or having substantially different views, or
212 having substantially different amenities or other characteristics that might result in differences
213 in market value, may be considered substantially identical within the meaning of this
214 subsection. If par value is stated in terms of dollars, that statement may not be considered to
215 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
216 fair market transaction at a different figure may affect the par value of any unit, or any

217 undivided interest in the common areas and facilities, voting rights in the unit owners'
218 association, liability for common expenses, or right to common profits, assigned on the basis
219 thereof.

220 ~~[(22)]~~ (25) "Person" means an individual, corporation, partnership, association, trustee,
221 or other legal entity.

222 ~~[(23)]~~ (26) "Property" means the land, whether leasehold or in fee simple, the building,
223 if any, all improvements and structures thereon, all easements, rights, and appurtenances
224 belonging thereto, and all articles of personal property intended for use in connection
225 therewith.

226 ~~[(24)]~~ (27) "Record," "recording," "recorded," and "recorder" have the meaning stated
227 in Title 57, Chapter 3, Recording of Documents.

228 ~~[(25)]~~ (28) "Size" means the number of cubic feet, or the number of square feet of
229 ground or floor space, within each unit as computed by reference to the record of survey map
230 and rounded off to a whole number. Certain spaces within the units including attic, basement,
231 or garage space may be omitted from the calculation or be partially discounted by the use of a
232 ratio, if the same basis of calculation is employed for all units in the condominium project and
233 if that basis is described in the declaration.

234 ~~[(26)]~~ (29) "Time period unit" means an annually recurring part or parts of a year
235 specified in the declaration as a period for which a unit is separately owned and includes a
236 timeshare estate as defined in Subsection 57-19-2(19).

237 ~~[(27)]~~ (30) "Unit" means either a separate physical part of the property intended for any
238 type of independent use, including one or more rooms or spaces located in one or more floors
239 or part or parts of floors in a building or a time period unit, as the context may require. A
240 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
241 proposed condominium unit under an expandable condominium project, not constructed, is a
242 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

243 ~~[(28)]~~ (31) "Unit number" means the number, letter, or combination of numbers and
244 letters designating the unit in the declaration and in the record of survey map.

245 ~~[(29)]~~ (32) "Unit owner" means the person or persons owning a unit in fee simple and
246 an undivided interest in the fee simple estate of the common areas and facilities in the
247 percentage specified and established in the declaration or, in the case of a leasehold

248 condominium project, the person or persons whose leasehold interest or interests in the
249 condominium unit extend for the entire balance of the unexpired term or terms.

250 Section 2. Section **57-8-4.5** is enacted to read:

251 **57-8-4.5. Improvement or alteration to a unit.**

252 (1) Subject to the declaration and Subsection (2), a unit owner may:

253 (a) make an improvement or alteration to that owner's unit; and

254 (b) after acquiring an adjoining unit:

255 (i) remove or alter a partition between the unit owner's unit and the acquired unit, even

256 if the partition is entirely or partly common areas and facilities; or

257 (ii) create an aperture to the adjoining unit or portion.

258 (2) A unit owner may not take an action under Subsection (1) if the action would:

259 (a) impair the structural integrity or mechanical systems of the building or either unit;

260 (b) reduce the support of any portion of the common areas and facilities or another

261 unit; or

262 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
263 government land use ordinance, or a building code.

264 (3) The management committee may require a unit owner to submit, at the unit owner's

265 expense, a registered professional engineer's or registered architect's opinion stating that a

266 proposed change to the unit owner's unit will not:

267 (a) impair the structural integrity or mechanical systems of the building or either unit;

268 (b) reduce the support or integrity of common areas and facilities; or

269 (c) compromise structural components.

270 (4) The management committee may require a unit owner to pay all of the legal

271 expenses of the association of unit owners related to a proposed alteration to the unit or

272 building under this section.

273 (5) Subsections (1) and (3) do not apply to a condominium project with detached units.

274 Section 3. Section **57-8-7** is amended to read:

275 **57-8-7. Common areas and facilities.**

276 (1) As used in this section:

277 (a) "Emergency repairs" means any repairs which if not made in a timely manner will

278 likely result in immediate and substantial damage to the common areas and facilities or to

279 another unit or units~~[; and]~~.

280 (b) "Prompt repairs" means:

281 (i) in the case of emergency repairs, repairs completed within a time that is reasonable
282 given the nature of the emergency, but no later than the time described in Subsection (1)(b)(ii);
283 and

284 (ii) in the case of all other repairs, repairs completed within 15 business days after the
285 association of unit owners is notified of the need for the repairs.

286 ~~(b)~~ (c) "Reasonable notice" means:

287 (i) written notice ~~[which]~~ that is hand delivered to the unit at least 24 hours prior to the
288 proposed entry~~[-]; or~~

289 (ii) in the case of emergency repairs, notice that is reasonable under the circumstances.

290 (2) Each unit owner shall be entitled to an undivided interest in the common areas and
291 facilities in the percentages or fractions expressed in the declaration. The declaration may
292 allocate to each unit an undivided interest in the common areas and facilities proportionate to
293 either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an
294 equal undivided interest in the common areas and facilities, subject to the following exception:
295 each convertible space depicted on the condominium plat shall be allocated an undivided
296 interest in the common areas and facilities proportionate to the size of the space vis-a-vis the
297 aggregate size of all units so depicted, while the remaining undivided interest in the common
298 areas and facilities shall be allocated equally among the other units so depicted. The undivided
299 interest in the common areas and facilities allocated in accordance with this Subsection (2)
300 shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal
301 undivided interest in the common areas and facilities is allocated to each unit, the declaration
302 may simply state that fact and need not express the fraction or percentage so allocated.
303 Otherwise, the undivided interest allocated to each unit shall be reflected by a table in the
304 declaration, or by an exhibit or schedule accompanying the declaration and recorded
305 simultaneously with it, containing columns. The first column shall identify the units, listing
306 them serially or grouping them together in the case of units to which identical undivided
307 interests are allocated. Corresponding figures in the second and third columns shall set forth
308 the respective sizes or par values of those units and the fraction or percentage of undivided
309 interest in the common areas and facilities allocated thereto.

310 (3) Except as otherwise expressly provided by this act, the undivided interest of each
311 unit owner in the common areas and facilities as expressed in the declaration shall have a
312 permanent character and shall not be altered without the consent of two-thirds of the unit
313 owners expressed in an amended declaration duly recorded. The undivided interest in the
314 common areas and facilities shall not be separated from the unit to which it appertains and shall
315 be considered to be conveyed or encumbered or released from liens with the unit even though
316 such interest is not expressly mentioned or described in the conveyance or other instrument. A
317 time period unit may not be further divided into shorter time periods by a conveyance or
318 disclaimer.

319 (4) The common areas and facilities shall remain undivided and no unit owner or any
320 other person shall bring any action for partition or division of any part thereof, unless the
321 property has been removed from the provisions of this act as provided in Sections 57-8-22 and
322 57-8-31. Any covenants to the contrary shall be null and void.

323 (5) Each unit owner may use the common areas and facilities in accordance with the
324 purpose for which they were intended without hindering or encroaching upon the lawful rights
325 of the other unit owners.

326 (6) The necessary work of maintenance, repair, and replacement of the common areas
327 and facilities and the making of any additions or improvements thereon shall be carried out
328 only as provided in this ~~[act]~~ chapter or in the declaration or bylaws.

329 (7) Except as otherwise provided in the declaration or Section 57-8-43:

330 (a) an association of unit owners is responsible for the maintenance, repair, and
331 replacement of common areas and facilities; and

332 (b) a unit owner is responsible for the maintenance, repair, and replacement of the unit
333 owner's unit.

334 ~~[(7) The]~~ (8) After reasonable notice to the occupant of the unit being entered, the
335 manager or management committee [shall have the right to have] may access [to] each unit:

336 (a) from time to time during reasonable hours [and after reasonable notice to the
337 occupant of the unit being entered], as may be necessary for the maintenance, repair, or
338 replacement of any of the common areas and facilities; or

339 (b) for making emergency repairs [necessary to prevent damage to the common areas
340 and facilities or to another unit or units, provided that a reasonable effort is made to provide

341 notice to the occupant of the unit prior to entry].

342 (9) An association of unit owners is liable for prompt repairs if it causes damage to:

343 (a) the common areas and facilities; or

344 (b) a unit the association of unit owners uses to access the common areas and facilities.

345 Section 4. Section **57-8-7.5** is amended to read:

346 **57-8-7.5. Reserve analysis -- Reserve fund.**

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

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

352 (b) the appropriate amount of any reserve fund.

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

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

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

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

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

363 [~~(4) (a) A management committee may not use money in a reserve fund:]~~

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

366 [~~(ii) for any purpose other than the purpose for which the reserve fund was
367 established.]~~

368 (4) (a) Unless a majority of the members of an association of unit owners vote to
369 approve the use, a management committee may not use money in a reserve fund for the
370 payment of attorney fees or for any other purpose other than:

371 (i) the construction, maintenance, repair, replacement, or reconstruction of or other

372 benefit to the common areas and facilities; or

373 (ii) a purpose for which the reserve fund was established under the declaration.

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

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

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

381 (6) An association of unit owners shall:

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

384 [~~(i) present the reserve study; and~~]

385 (i) provide to unit owners the most recent reserve study or update;

386 (ii) provide an opportunity for unit owners to discuss reserves; and

387 (iii) (A) if the original declaration does not require the funding of a reserve fund,

388 provide an opportunity for unit owners to vote on whether to fund a reserve fund and, if so,

389 how to fund it and in what amount; [~~and~~] or

390 (B) if the declaration requires the funding of a reserve fund and allows discretion on

391 the amount of funding or how to fund the reserve fund, provide an opportunity for unit owners

392 to vote to determine the amount of funding and how to fund the reserve fund within the

393 discretion allowed in the declaration; and

394 (b) prepare and keep minutes of each meeting held under Subsection (6)(a) and

395 indicate in the minutes any decision relating to funding a reserve fund.

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

398 Section 5. Section **57-8-7.6** is enacted to read:

399 **57-8-7.6. Subjecting common areas and facilities to security interest.**

400 (1) As used in this section, "required percentage" means:

401 (a) 75%; or

402 (b) (i) a percentage higher than 75% if the higher percentage is specified in the

403 declaration; or

404 (ii) for a nonresidential association of unit owners, a percentage lower than 75%, if the
405 lower percentage is specified in the declaration.

406 (2) Subject to Section 57-8-7.7 and unless otherwise provided in the declaration, an
407 association of unit owners may subject portions of the common areas and facilities to a security
408 interest.

409 (3) A security interest permitted under Subsection (2) shall be ratified by:

410 (a) persons entitled to cast at least the required percentage of allocated voting interests
411 in the association of unit owners, including persons entitled to cast at least the required
412 percentage of votes allocated to units not owned by a declarant; and

413 (b) the owners of all units to which the limited common areas and facilities proposed to
414 be subjected to a security interest are allocated.

415 (4) (a) This section does not prohibit the assignment of an association of unit owners'
416 right to collect common assessments as security for an obligation.

417 (b) A board may collect common assessments as a security for an obligation under
418 Section 57-8-44.

419 Section 6. Section **57-8-7.7** is enacted to read:

420 **57-8-7.7. Certificate evidencing security interest in common areas and facilities.**

421 (1) A member of a management committee of an association of unit owners that
422 executes an agreement pursuant to Section 57-8-7.6 subjecting the common areas and facilities
423 to a security interest shall execute a certificate evidencing the agreement, stating that the
424 agreement was ratified as required in Subsection 57-8-7.6(3).

425 (2) An association of unit owners shall submit a certificate described in Subsection (1)
426 for recording to the office of each applicable county recorder.

427 (3) An agreement described in Subsection (1) and a ratification of the agreement are
428 not effective until the certificate described in Subsection (1) is recorded in the office of each
429 applicable county recorder.

430 (4) An agreement described in Subsection (1) shall specify a date after which the
431 agreement becomes void unless the certificate described in Subsection (1) is recorded before
432 that date.

433 (5) An agreement and certificate described in Subsection (1) are presumed valid unless

434 challenged within one year after the certificate is recorded.

435 (6) An encumbrance of common areas and facilities does not deprive a unit owner of
436 the rights of access and support.

437 (7) If the holders of first security interests on 75% of the units subject to security
438 interests on the day that the certificate described in Subsection (1) is recorded consent in
439 writing, an encumbrance of common areas and facilities under this section has priority over all
440 preexisting encumbrances on the undivided interests in the common areas and facilities held by
441 all persons holding security interests in the units.

442 (8) (a) Subject to Subsection (8)(c), the following may be recorded at any time before
443 the date that an agreement described in Subsection (1) becomes void:

444 (i) the consent of first security interest holders on units described in Subsection (7); or

445 (ii) a certificate affirming that the association of unit owners has received the consents
446 described in Subsection (8)(a)(i).

447 (b) For purposes of calculating the percentage of consenting first security interest
448 holders, a consent or certificate described in Subsection (8)(a) is valid from the date the
449 consent or certificate is recorded, regardless of later sales of or encumbrances on the units.

450 (c) If the required percentage of first security interest holders consent under Subsection
451 (8)(a), an encumbrance of common areas and facilities may not affect interests that:

452 (i) have priority over the declaration; or

453 (ii) are created by the association of unit owners after the declaration was recorded.

454 Section 7. Section **57-8-10.3** is enacted to read:

455 **57-8-10.3. Request for approval of unit modifications.**

456 (1) As used in this section:

457 (a) "Modification approval requirement" means a requirement that a unit owner obtain
458 association of unit owner approval before undertaking a unit modification.

459 (b) "Request for approval" means a written application or request to an association of
460 unit owners for approval of a proposed unit modification.

461 (c) "Unit modification" means any construction, reconstruction, modification, or
462 alteration of or improvement or other change to a unit owner's unit or to a structure in or on the
463 unit.

464 (2) (a) This section applies if a governing document contains a modification approval

465 requirement.

466 (b) (i) A governing document that contains a modification approval requirement shall
467 also contain the provisions contained in Subsections (3) through (9).

468 (ii) The provisions of Subsections (3) through (9) apply whether or not the governing
469 documents contain the provisions contained in those subsections.

470 (3) An association of unit owners shall respond in writing to a unit owner's request for
471 approval within 45 days after receipt of the request for approval.

472 (4) In its response to a unit owner's request for approval, an association of unit owners
473 shall:

474 (a) approve the request for approval;

475 (b) (i) deny the request for approval:

476 (A) because of the unit owner's failure to provide information that the governing
477 documents require;

478 (B) because the request for approval fails to comply with one or more requirements of
479 the governing documents or this section; or

480 (C) pursuant to discretion that the governing documents grant to the association of unit
481 owners; and

482 (ii) state the specific reason or reasons for the denial, including a citation to each
483 applicable provision of the governing documents on which the denial is based; or

484 (c) state that the association of unit owners needs additional time, not to exceed 90
485 days after the association of unit owners' response, to review the request for approval.

486 (5) (a) Following an association of unit owners' denial of a request for approval based
487 on the request for approval's failure to comply with one or more requirements of the governing
488 documents or this section, the unit owner may modify and resubmit the request for approval.

489 (b) A request for approval that is modified and resubmitted as provided in Subsection
490 (5)(a) is subject to the provisions of this section to the same extent as a request for approval
491 submitted for the first time.

492 (6) An association of unit owners' approval or denial of a request for approval may not
493 be arbitrary or capricious.

494 (7) (a) If an association of unit owners does not respond to a unit owner's request for
495 approval within the time specified in Subsection (3), the unit owner may give the association of

496 unit owners written notice that the association of unit owners' failure to respond will be
497 considered to be approval of the request for approval unless the unit owner receives a response
498 from the association of unit owners within 30 days after the unit owner gives notice under this
499 Subsection (7)(a).

500 (b) An association of unit owners' failure to respond to a unit owner's notice under
501 Subsection (7)(a) within 30 days after the unit owner gives the notice is considered to be the
502 association of unit owners' approval of the unit owner's request for approval.

503 (8) In making a unit modification for which an association of unit owners gives
504 approval, including approval under Subsection (7)(b), a unit owner shall comply with all
505 applicable requirements of the governing documents and this chapter.

506 (9) In a dispute over whether an association of unit owners' approval or denial of a unit
507 owner's request for approval is consistent with the requirements of applicable governing
508 documents and this chapter, the prevailing party is entitled to recover reasonable attorney fees
509 and costs.

510 Section 8. Section **57-8-10.5** is enacted to read:

511 **57-8-10.5. Amending the declaration to make provisions of this chapter**
512 **applicable.**

513 (1) An association of unit owners may amend the declaration to make applicable to the
514 association of unit owners a provision of this chapter that is enacted after the creation of the
515 association of unit owners, by complying with:

516 (a) the amendment procedures and requirements specified in the declaration and
517 applicable provisions of this chapter; or

518 (b) the amendment procedures and requirements of this chapter, if the declaration
519 being amended does not contain amendment procedures and requirements.

520 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

521 (a) the amendment grants a right, power, or privilege permitted by that specific section;
522 and

523 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

524 Section 9. Section **57-8-23** is amended to read:

525 **57-8-23. Removal no bar to subsequent resubmission.**

526 The removal provided for in Section 57-8-22 [~~shall~~] does not bar the subsequent

527 resubmission of the property to the provisions of this [act] chapter.

528 Section 10. Section 57-8-37 is repealed and reenacted to read:

529 **57-8-37. Fines.**

530 (1) Unless otherwise limited in the governing documents, the management committee
531 may, as provided in this section, assess a fine against a unit owner for a violation of the
532 governing documents.

533 (2) (a) Before assessing the first fine for a continuing violation or for a violation that is
534 similar to an earlier violation, the management committee shall:

535 (i) issue a warning to the unit owner, describing the violation and specifying the
536 governing documents provision that has been violated; and

537 (ii) inform the unit owner that a fine will be imposed if:

538 (A) for a continuing violation, the continuing violation is not cured within a specific
539 time period of not less than 48 hours; or

540 (B) for a violation that is not a continuing violation, a subsequent similar violation
541 occurs.

542 (b) If provided for in the governing documents, a management committee may assess
543 an additional fine for:

544 (i) a continuing violation that remains uncured for at least 10 days after an earlier fine
545 for the same continuing violation is assessed; and

546 (ii) a violation that occurs within one year of a previously assessed fine for a similar
547 violation.

548 (3) A fine assessed under this section:

549 (a) may be made only for a violation of a rule, covenant, condition, or restriction that is
550 contained in the governing documents;

551 (b) shall be in the amount specified in the governing documents for that type of
552 violation; and

553 (c) shall accrue interest and a late fee as provided in the governing documents.

554 (4) An unpaid fine may be collected as an unpaid assessment as provided in the
555 governing documents and this chapter.

556 (5) (a) No later than 14 days after having been given notice that a fine has been
557 assessed, a unit owner who is assessed a fine under this section may request an informal

558 hearing to protest or dispute the fine.

559 (b) (i) A management committee shall conduct a hearing requested under Subsection
560 (5)(a) in accordance with:

561 (A) the standards provided in the governing documents; or

562 (B) the standards established by the management committee, if the governing
563 documents do not provide standards, subject to Subsection (5)(b)(ii).

564 (ii) Management committee standards established under Subsection (5)(b)(i)(B) shall at
565 a minimum permit a unit owner protesting or disputing a fine to present the owner's position to
566 the management committee regarding the fine.

567 (c) If a unit owner requests a hearing under Subsection (5)(a), interest and late fees may
568 not accrue until after the hearing is conducted and a final decision made.

569 (6) This section applies to an association of unit owners, regardless of when the
570 association of unit owners' project was established.

571 Section 11. Section **57-8-40** is amended to read:

572 **57-8-40. Organization of an association of unit owners under other law -- Priority**
573 **-- Reorganization.**

574 (1) As used in this section, "organizational documents" means the documents related to
575 the formation or operation of a nonprofit corporation or other legal entity formed by the
576 management committee or the declarant.

577 (2) If permitted, required, or acknowledged by the declaration, the management
578 committee may organize an association of unit owners [~~into~~] as:

579 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
580 Nonprofit Corporation Act[;]; or [other]

581 (b) any other entity organized under other law.

582 (3) Organizational documents for a nonprofit corporation or other entity formed in
583 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
584 obligations found in the declaration and any of the association's bylaws recorded at the time of
585 the formation of a nonprofit corporation or other entity [~~under Subsection (2)~~].

586 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
587 organizational documents of [~~an~~] a nonprofit corporation or other entity formed in accordance
588 with Subsection (2) may include any additional indemnification and liability limitation

589 provision [~~for the management committee members and officers of the association that is~~
590 ~~permitted by the chapter under which the association is organized for~~];

591 (a) for:

592 (i) board members, directors, and officers[-]; or

593 (ii) similar persons in a position of control[-]; and

594 [~~(5) In the event of a conflict between this chapter's provisions, a statute under which~~
595 ~~the association of unit owners is organized, documents concerning the organization of the~~
596 ~~association of unit owners as a nonprofit corporation or other entity, the declaration, the~~
597 ~~bylaws, and association rules, the following order prevails:~~]

598 [~~(a) this chapter controls over a conflicting provision found in any of the sources listed~~
599 ~~in Subsections (5)(b) through (f);]~~

600 [~~(b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law~~
601 ~~under which an entity is organized controls over a conflicting provision in any of the sources~~
602 ~~listed in Subsections (5)(c) through (f);]~~

603 [~~(c) an organizational document filed in accordance with Title 16, Chapter 6a, Utah~~
604 ~~Revised Nonprofit Corporation Act, or any other law under which an entity is organized~~
605 ~~controls over a conflicting provision in any of the sources listed in Subsections (5)(d) through~~
606 ~~(f);]~~

607 [~~(d) the declaration controls over a conflicting provision in any of the sources listed in~~
608 ~~Subsections (5)(e) or (f);]~~

609 [~~(e) the bylaws control over a conflicting provision in association rules, and]~~

610 [~~(f) the association rules yield to a conflicting provision in any of the sources listed in~~
611 ~~Subsection (5)(a) through (e).]~~

612 (b) that is permitted by the law under which the nonprofit corporation or other entity is
613 organized.

614 [~~(6)~~ (5) Immediately upon the legal formation of [~~an~~] a nonprofit corporation or other
615 entity in compliance with this section, the association of unit owners and unit owners are
616 subject to any right, obligation, procedure, and remedy applicable to that [entity] nonprofit
617 corporation or other entity, subject to Section 57-8-40.5.

618 [~~(7)~~ (6) (a) A form [^u] set of articles of incorporation[^u] or similar organizational
619 document [attached] recorded with or attached as an exhibit to a declaration or other recorded

620 governing document may be modified by the management committee for filing or [~~re-filing~~]
621 refiling if the modified version [~~is otherwise consistent with this section's provisions~~] complies
622 with this section.

623 (b) An organizational document [~~attached~~], concerning the organization of a nonprofit
624 corporation or other entity, that is recorded with or attached as an exhibit to a declaration [that
625 is filed and concerns the organization of an entity] may be amended in accordance with its own
626 terms or any applicable law, [~~notwithstanding the fact that~~] even though the organizational
627 document [~~might be recorded~~] has been recorded or attached as an exhibit to a declaration or
628 other recorded governing document.

629 (c) Except for amended bylaws, an initial or amended organizational document properly
630 filed with the state does not need to be recorded.

631 [~~(8) This section applies to the reorganization of an association of unit owners~~
632 ~~previously organized if the entity's status is terminated or dissolved without the possibility of~~
633 ~~reinstatement.]~~

634 (7) An association of unit owners that is terminated or dissolved without the possibility
635 of reinstatement may be reorganized by complying with the requirements of this section.

636 [~~(9)~~ (8) (a) This section applies to [~~all~~] a condominium [projects, whether established
637 before or after May 5, 2008] project, regardless of when the condominium project is
638 established.

639 (b) This section does not validate or invalidate the organization of an association of of
640 unit owners that occurred before May [~~5, 2008~~] 14, 2013, whether or not the association of unit
641 owners was otherwise in compliance with this section.

642 Section 12. Section **57-8-40.5** is enacted to read:

643 **57-8-40.5. Resolution of conflicting provisions.**

644 (1) A conflict involving the application of provisions of this chapter, other statute, and
645 the governing documents shall be resolved by applying those provisions in the following order
646 of priority:

647 (a) this chapter;

648 (b) as applicable, Title 10, Chapter 9a, Municipal Land Use, Development, and
649 Management Act, or Title 17, Chapter 27a, County Land Use, Development, and Management
650 Act;

651 (c) (i) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, if the association
652 of unit owners is organized as a nonprofit corporation; or

653 (ii) the law governing the entity that the association of unit owners is organized as, if
654 the association of unit owners is organized as an entity other than a nonprofit corporation;

655 (d) other statute;

656 (e) governing documents, in the following order of priority, unless the declaration
657 provides otherwise:

658 (i) a recorded plat;

659 (ii) a recorded declaration;

660 (iii) (A) the articles of incorporation, if the association of unit owners is organized as a
661 nonprofit corporation; or

662 (B) the organizational document establishing the entity that the association of unit
663 owners is organized as, if the association of unit owners is organized as an entity other than a
664 nonprofit corporation;

665 (iv) the bylaws, if applicable;

666 (v) the rules of the association of unit owners; and

667 (vi) any other governing document.

668 (2) This section applies to a condominium project, regardless of when the
669 condominium project is established.

670 Section 13. Section **57-8-43** is amended to read:

671 **57-8-43. Insurance.**

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

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

676 [~~(a)~~] (i) issued or renewed on or after July 1, 2011; and

677 [~~(b)~~] (ii) issued to or renewed by:

678 [~~(+)~~] (A) a unit owner; or

679 [~~(+)~~] (B) an association of unit owners, regardless of when the association of unit
680 owners is formed.

681 (b) Unless otherwise provided in the declaration, this section does not apply to a

682 commercial condominium project.

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

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

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

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

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

700 (b) In addition to any type of insurance coverage or limit of coverage provided in the
701 declaration or bylaws and subject to the requirements of this section, an association of unit
702 owners may, as the management committee considers appropriate, obtain:

703 (i) an additional type of insurance than otherwise required; or

704 (ii) a policy with greater coverage than otherwise required.

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

707 (a) void a property insurance policy under Subsection (3)(a) or a liability insurance
708 policy under Subsection (3)(b); or

709 (b) be a condition to recovery under a policy.

710 (7) An insurer under a property insurance policy or liability insurance policy obtained
711 by an association of unit owners under this section waives the insurer's right to subrogation
712 under the policy against ~~[any unit owner or member of the unit owner's household.]~~:

713 (a) any person residing with the unit owner, if the unit owner resides in the unit; and
714 (b) the unit owner.

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

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

719 (c) ~~[(A)]~~ Neither the governing documents nor a property insurance or liability
720 insurance policy issued to an association of unit owners may [not] prevent a unit owner from
721 obtaining insurance for the unit owner's own benefit.

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

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

726 ~~[(c)]~~ (b) The total amount of coverage provided by blanket property insurance may not
727 be less than 100% of the full replacement cost of the insured property at the time the insurance
728 is purchased and at each renewal date, excluding:

729 (i) items normally excluded from property insurance policies[-]; and

730 (ii) unless otherwise provided in the declaration, any commercial condominium unit,
731 including any fixture, improvement, or betterment in a commercial condominium unit in a
732 mixed-use condominium project.

733 ~~[(d)]~~ (c) Property insurance shall include coverage for any fixture, improvement, or
734 betterment installed ~~[by a unit owner to a]~~ at any time to a residential unit or to a limited
735 common area associated with a residential unit, whether installed in the original construction or
736 in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical
737 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
738 permanently part of or affixed to a residential unit or to a limited common element associated
739 with a residential unit.

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

743 (i) another unit; or

744 (ii) an above-ground structure that is part of a common area or facility.

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

746 ~~(g)~~ (f) If a loss occurs that is covered by a property insurance policy in the name of an

747 association of unit owners and another property insurance policy in the name of a unit owner:

748 (i) the association's policy provides primary insurance coverage; and

749 (ii) notwithstanding Subsection (9)~~(g)~~(f)(i); and subject to Subsection (9)(g):

750 (A) the unit owner is responsible for the deductible of the association of unit owners;

751 and

752 (B) building property coverage, often referred to as coverage A, of the unit owner's

753 policy applies to that portion of the loss attributable to the policy deductible of the association

754 of unit owners.

755 ~~(h)~~ (g) (i) As used in this Subsection (9)~~(h)~~(g) and Subsection (9)(j):

756 (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is

757 covered by a property insurance policy of an association of unit owners.

758 (B) "Unit damage" means damage to a unit or to a limited common area or facility

759 ~~[applicable]~~ appurtenant to that unit, or both.

760 (C) "Unit damage percentage" means the percentage of total damage resulting in a

761 covered loss that is attributable to unit damage.

762 (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered

763 loss is responsible for an amount calculated by applying the unit damage percentage for that

764 unit to the amount of the deductible under the property insurance policy of the association of

765 unit owners.

766 (iii) If a unit owner does not pay the amount required under Subsection (9)~~(h)~~(g)(ii)

767 within 30 days after substantial completion of the repairs to the unit or limited common areas

768 and facilities appurtenant to that unit, an association of unit owners may levy an assessment

769 against the unit owner for that amount.

770 ~~(i)~~ (h) An association of unit owners shall set aside an amount equal to the amount of

771 the association's property insurance policy deductible or \$10,000, whichever is less.

772 ~~(i)~~ (i) (i) An association of unit owners shall provide notice in accordance with

773 Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)~~(h)~~(g)

774 for the association's policy deductible and of any change in the amount of the deductible.

775 (ii) (A) An association of unit owners that fails to provide notice as provided in
 776 Subsection (9)~~(f)~~(i)(i) is responsible for the [amount] portion of the deductible [increase] that
 777 the association of unit owners could have assessed to a unit owner under Subsection
 778 (9)~~(h)~~(g), but only to the extent that the unit owner does not have insurance coverage that
 779 would otherwise apply under this Subsection (9).

780 (B) Notwithstanding Subsection (9)(i)(i)(A), an association of unit owners that
 781 provides notice of the association's policy deductible, as required under Subsection (9)(i)(i), but
 782 fails to provide notice of a later increase in the amount of the deductible is responsible only for
 783 the amount of the increase for which notice was not provided.

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

786 ~~(k)~~ (j) If, in the exercise of the business judgment rule, the management committee
 787 determines that a [claim] covered loss is likely not to exceed the property insurance policy
 788 deductible of the association of unit owners and until the covered loss exceeds the deductible
 789 of the property insurance of the association of unit owners and a claim is submitted to the
 790 property insurance insurer of the association of unit owners:

791 (i) ~~[the]~~ a unit owner's policy is considered the policy for primary coverage [to the
 792 amount of the policy deductible of the association of unit owners] for a loss occurring to the
 793 unit owner's unit or to a limited common area or facility appurtenant to the unit;

794 (ii) the association of unit owners shall pay for any loss to any common areas and
 795 facilities;

796 ~~[(ii)]~~ (iii) a unit owner who does not have a policy to cover the [property insurance
 797 policy deductible of the association of unit owners is responsible for the loss to the amount of
 798 the policy deductible of the association of unit owners, as provided in Subsection (9)(h)]
 799 damage to that unit owner's unit and appurtenant limited common areas and facilities is
 800 responsible for that damage, and the association of unit owners may, as provided in Subsection
 801 (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit
 802 and appurtenant limited common areas and facilities; and

803 ~~[(iii)]~~ (iv) the association of unit owners need not tender the claim to the association's
 804 insurer.

805 ~~(h)~~ (k) (i) An insurer under a property insurance policy issued to an association of unit

806 owners shall adjust with the association of unit owners a loss covered under the association's
807 policy.

808 (ii) Notwithstanding Subsection (9)~~(f)~~(k)(i), the insurance proceeds for a loss under a
809 property insurance policy of an association of unit owners:

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

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

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

815 (iv) (A) ~~[Insurance]~~ If damaged property is to be repaired or restored, insurance
816 proceeds shall be disbursed first for the repair or restoration of the damaged property.

817 (B) After the disbursements described in Subsection (9)~~(f)~~(k)(iv)(A) are made and the
818 damaged property has been completely repaired or restored or the project terminated, any
819 surplus proceeds are payable to the association of unit owners, unit owners, and lien holders, as
820 provided in the declaration.

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

823 (i) the association of unit owners;

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

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

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

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

831 (o) (i) Unless required in the declaration, property insurance coverage is not required
832 for fixtures, improvements, or betterments in a commercial unit or limited common areas and
833 facilities appurtenant to a commercial unit in a mixed-use condominium project.

834 (ii) Notwithstanding any other provision of this section, an association of unit owners
835 may obtain property insurance for fixtures, improvements, or betterments in a commercial unit
836 in a mixed condominium project if allowed or required in the declaration.

837 (p) (i) This Subsection (9) does not prevent a person suffering a loss as a result of
838 damage to property from asserting a claim, either directly or through subrogation, for the loss
839 against a person at fault for the loss.

840 (ii) Subsection (9)(p)(i) does not affect Subsection (7).

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

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

845 (c) Each unit owner is an insured person under a liability insurance policy that an
846 association of unit owners obtains [~~that insures against~~], but only for liability arising from:

847 (i) the unit owner's ownership interest in the common areas and facilities [~~or from~~];

848 (ii) maintenance, repair, or replacement of common areas and facilities; and

849 (iii) the unit owner's membership in the association of unit owners.

850 Section 14. Section **57-8-55** is enacted to read:

851 **57-8-55. Powers of management committee.**

852 (1) Except as limited in a declaration, the bylaws of the association of unit owners,
853 Subsection (2), or other provisions of this chapter, a management committee acts in all
854 instances on behalf of the association of unit owners.

855 (2) (a) A management committee may not:

856 (i) amend a declaration;

857 (ii) terminate the association of unit owners;

858 (iii) elect members of the management committee; or

859 (iv) determine board members' qualifications, powers and duties, or terms of office.

860 (b) A board may fill a vacancy in its membership for the unexpired portion of the term.

861 (3) A declarant may appoint or remove a member of the management committee as
862 provided in Subsection 57-8-16.5(1).

863 (4) Notwithstanding any conflict with the declaration or recorded bylaws, the
864 organizational documents of the association of unit owners may indemnify and limit
865 management committee member and officer liability to the extent permitted by the law under
866 which the association of unit owners is organized.

867 Section 15. Section **57-8-56** is enacted to read:

868 **57-8-56. Meetings of the management committee.**

869 (1) As used in this section, "meeting of the management committee" does not include a
870 gathering of management committee members at which the members do not conduct business
871 of the association of unit owners.

872 (2) The management committee may take an action in any manner allowed under Title
873 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or this chapter.

874 (3) Unless otherwise provided in a declaration or bylaw, Subsections (4) through (11)
875 do not apply during the period of control provided for in Subsection 57-8-16.5(1).

876 (4) (a) (i) Except as provided in Subsection (4)(b) and Section 57-8-57, a meeting of
877 the management committee or subcommittee shall be open to unit owners.

878 (ii) A management committee and its members may not use incidental or social
879 gatherings of management committee members to evade the requirement of Subsection
880 (4)(a)(i).

881 (b) The management committee or a subcommittee may hold a closed session during a
882 meeting of the management committee or subcommittee if the purpose of the session is to:

883 (i) consult with the attorney of the association of unit owners to obtain legal advice;

884 (ii) discuss existing or potential litigation, mediation, arbitration, or administrative
885 proceeding;

886 (iii) discuss a labor or personnel matter;

887 (iv) discuss a matter relating to initial contract negotiations, including the review of a
888 bid or proposal;

889 (v) discuss a matter involving a person, if the management committee determines that
890 public knowledge of the matter would violate the person's privacy; or

891 (vi) discuss a delinquent assessment.

892 (5) A majority of the members of a management committee or a person designated in
893 the bylaws may call a meeting of the management committee.

894 (6) Unless otherwise provided in the declaration or bylaws, the management committee
895 shall meet at least once per year.

896 (7) (a) A physical meeting of the management committee at which some or all
897 members appear in person shall be:

898 (i) at the association of unit owners, if possible in a common area or facility; or

899 (ii) in a location convenient to the association of unit owners.

900 (b) If a management committee meeting is held by telephone or through any other
901 means of communication by which all persons participating in the meeting are able to hear
902 each other during the meeting, the association of unit owners shall provide:

903 (i) a physical location with adequate facilities to permit those entitled to attend the
904 ability to hear the proceedings; or

905 (ii) information to enable those entitled to attend to call into the meeting using a
906 telephone to access the meeting without incurring any access or long distance charge.

907 (8) At a meeting of the management committee, the management committee shall
908 provide a reasonable opportunity for unit owners to offer comments.

909 (9) (a) A secretary or other officer specified in the bylaws, or an agent of the
910 association of unit owners specified in a resolution of the management committee, shall give
911 notice of a meeting of the management committee to each management committee member and
912 to unit owners unless:

913 (i) the meeting has been included in a schedule previously given to unit owners;

914 (ii) the meeting has been called to deal with an emergency; or

915 (iii) the action is taken under Section 57-8-57.

916 (b) The notice to unit owners described in Subsection (9)(a) shall:

917 (i) be given:

918 (A) as required under Section 57-8-42; and

919 (B) not fewer than three business days before the day of the meeting;

920 (ii) state the time of the meeting; and

921 (iii) state the location of the meeting or, if there is no physical location for the meeting,
922 provide the information required under Subsection (7)(b)(ii).

923 (10) An association of unit owners that enters a contract with a third party in violation
924 of this section is bound by the contract if the third party:

925 (a) relies on an action of the management committee; and

926 (b) had no knowledge at the time of entering the contract that the action violates this
927 section.

928 (11) Notwithstanding noncompliance with this section, a management committee
929 action is binding and valid unless set aside by a court.

930 (12) A person challenging the validity of an action of the management committee for
931 failure to comply with a provision of this section may not bring the challenge more than 60
932 days after:

933 (a) the approval of the management committee minutes recording the management
934 committee's action; and

935 (b) distribution of the record of the management committee's action to unit owners.

936 Section 16. Section **57-8-57** is enacted to read:

937 **57-8-57. Management committee's action without a meeting.**

938 A management committee may act without a meeting:

939 (1) by following the procedures of Section 16-6a-813; or

940 (2) to undertake ministerial actions or to implement an action that the management
941 committee previously agreed to in an open meeting.

942 Section 17. Section **57-8-58** is enacted to read:

943 **57-8-58. Consolidation of multiple associations of unit owners.**

944 (1) Two or more associations of unit owners may be consolidated into a single
945 association of unit owners as provided in Title 16, Chapter 6a, Part 11, Merger, and this
946 section.

947 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
948 consolidation between two or more associations of unit owners to consolidate into a single
949 association of unit owners is not effective unless it is approved by the unit owners of each of
950 the consolidating associations of unit owners, by the highest percentage of allocated voting
951 interests of the unit owners required by each association of unit owners to amend its respective
952 declaration, articles, or bylaws.

953 (3) A declaration of consolidation under Subsection (2) shall:

954 (a) be prepared, executed, and certified by the president of the association of each of
955 the consolidating associations of unit owners; and

956 (b) provide for the reallocation of the allocated interests in the consolidated association
957 by stating:

958 (i) the reallocations of the allocated interests in the consolidated association of unit
959 owners or the formulas used to reallocate the allocated interests; or

960 (ii) (A) the percentage of overall allocated interests of the consolidated association of

961 unit owners that are allocated to all of the units comprising each of the consolidating
962 associations of unit owners; and

963 (B) that the portion of the percentages allocated to each unit formerly comprising a part
964 of a consolidating association of unit owners is equal to the percentages of allocated interests
965 allocated to the unit by the declaration of the consolidating association of unit owners.

966 (4) A declaration of consolidation under Subsection (2) is not effective until it is
967 recorded in the office of each applicable county recorder.

968 (5) Unless otherwise provided in the declaration of consolidation, the consolidated
969 association of unit owners resulting from a consolidation under this section:

970 (a) is the legal successor for all purposes of all of the consolidating associations of unit
971 owners;

972 (b) the operations and activities of all of the consolidating associations of unit owners
973 shall be consolidated into the consolidated association of unit owners; and

974 (c) the consolidated association of unit owners holds all powers, rights, obligations,
975 assets, and liabilities of all consolidating associations of unit owners.

976 Section 18. Section **57-8a-102** is amended to read:

977 **57-8a-102. Definitions.**

978 As used in this chapter:

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

980 (i) by the association;

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

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

983 (b) "Assessment" includes:

984 (i) a common expense; and

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

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

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

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

991 (A) real property taxes;

- 992 (B) insurance premiums;
993 (C) maintenance costs; or
994 (D) for improvement of real property not owned by the member.
- 995 (b) "Association" or "homeowner association" does not include an association created
996 under Title 57, Chapter 8, Condominium Ownership Act.
- 997 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
998 authority to manage the affairs of the association.
- 999 (4) "Common areas" means property that the association:
1000 (a) owns;
1001 (b) maintains;
1002 (c) repairs; or
1003 (d) administers.
- 1004 (5) "Common expense" means costs incurred by the association to exercise any of the
1005 powers provided for in the association's governing documents.
- 1006 (6) "Declarant":
1007 (a) means the person who executes a declaration and submits it for recording in the
1008 office of the recorder of the county in which the property described in the declaration is
1009 located; and
1010 (b) includes the person's successor and assign.
- 1011 (7) (a) "Governing documents" means a written instrument by which the association
1012 may:
1013 (i) exercise powers; or
1014 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
1015 association.
- 1016 (b) "Governing documents" includes:
1017 (i) articles of incorporation;
1018 (ii) bylaws;
1019 (iii) a plat;
1020 (iv) a declaration of covenants, conditions, and restrictions; and
1021 (v) rules of the association.
- 1022 (8) "Judicial foreclosure" means a foreclosure of a lot:

- 1023 (a) for the nonpayment of an assessment; and
1024 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
1025 property; and
1026 (ii) as provided in Part 3, Collection of Assessments.
- 1027 (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
1028 (a) by a person or persons other than the owner; and
1029 (b) for which the owner receives a consideration or benefit, including a fee, service,
1030 gratuity, or emolument.
- 1031 (10) "Limited common areas" means common areas described in the declaration and
1032 allocated for the exclusive use of one or more lot owners.
- 1033 (11) "Lot" means:
1034 (a) a lot, parcel, plot, or other division of land:
1035 (i) designated for separate ownership or occupancy; and
1036 (ii) (A) shown on a recorded subdivision plat; or
1037 (B) the boundaries of which are described in a recorded governing document; or
1038 (b) (i) a unit in a condominium association if the condominium association is a part of
1039 a development; or
1040 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
1041 development.
- 1042 (12) "Nonjudicial foreclosure" means the sale of a lot:
1043 (a) for the nonpayment of an assessment; and
1044 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
1045 57-1-34; and
1046 (ii) as provided in Part 3, Collection of Assessments.
- 1047 (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or
1048 otherwise to primarily residential or recreational purposes.
- 1049 Section 19. Section **57-8a-107** is enacted to read:
1050 **57-8a-107. Resolution of conflicting provisions.**
1051 **(1) A conflict involving application of the following shall be resolved by applying**
1052 **those provisions in the following order of priority:**
1053 **(a) this chapter;**

- 1054 (b) Title 16, Chapter 6a, Revised Nonprofit Corporation Act;
1055 (c) other statute; and
1056 (d) governing documents, in the following order of priority, unless the declaration
1057 provides otherwise:
- 1058 (i) a recorded plat;
 - 1059 (ii) a recorded declaration;
 - 1060 (iii) the association's articles;
 - 1061 (iv) the bylaws;
 - 1062 (v) the association rules; and
 - 1063 (vi) any other written instrument through which the association exercises powers or
1064 manages, maintains, or otherwise affects the real estate and personal property under the
1065 association's authority.
- 1066 (2) (a) A board may modify a form set of articles of incorporation or similar
1067 organizational document attached to a recorded declaration for the purpose of filing or refileing
1068 the modified articles or other organizational document if the modified articles or organizational
1069 document is consistent with this section.
- 1070 (b) Articles of incorporation or bylaws attached to a recorded declaration may be
1071 amended as provided by the articles or bylaws and applicable law, even though the articles or
1072 bylaws have been recorded.
- 1073 (3) This section applies to an association regardless of when it is established.
- 1074 Section 20. Section **57-8a-108** is enacted to read:
- 1075 **57-8a-108. Amending the declaration to make provisions of this chapter**
1076 **applicable.**
- 1077 (1) An association may amend the declaration to make applicable to the association a
1078 provision of this chapter that is enacted after the creation of the association, by complying with:
- 1079 (a) the amendment procedures and requirements specified in the declaration and
1080 applicable provisions of this chapter; or
 - 1081 (b) the amendment procedures and requirements of this chapter, if the declaration
1082 being amended does not contain amendment procedures and requirements.
- 1083 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:
- 1084 (a) the amendment grants a right, power, or privilege permitted by that specific section;

1085 and

1086 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

1087 Section 21. Section **57-8a-109** is enacted to read:

1088 **57-8a-109. Severability -- Rules against perpetuities and unreasonable restraints**

1089 **-- Insubstantial failure to comply.**

1090 (1) All provisions of a governing document are severable.

1091 (2) The rule against perpetuities and the rule against unreasonable restraints on

1092 alienation of real estate may not defeat a provision of a governing document.

1093 (3) (a) A declaration that fails to comply with this chapter does not render a title to a lot

1094 and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

1095 (b) This chapter does not affect whether a substantial failure impairs marketability.

1096 Section 22. Section **57-8a-110** is enacted to read:

1097 **57-8a-110. Organization of an association.**

1098 (1) (a) A declarant shall, no later than the date that the first lot is conveyed, organize an

1099 association.

1100 (b) An association organized on or after May 14, 2013 shall be organized as a nonprofit

1101 corporation under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

1102 (c) Members of the association shall consist of:

1103 (i) all owners of lots subject to the declaration; or

1104 (ii) following termination of the association, all former lot owners entitled to a

1105 distribution of proceeds under Section 57-8a-602 or their heirs, successors, or assigns.

1106 (d) The association shall be governed by a board.

1107 (2) The failure to organize an association as required under Subsection (1) does not

1108 constitute a basis to invalidate or challenge any right, responsibility, or otherwise lawful and

1109 proper action of the association or of the board that is otherwise allowed by this chapter or the

1110 governing documents.

1111 (3) The declaration, plat, and bylaws shall be recorded.

1112 Section 23. Section **57-8a-111** is enacted to read:

1113 **57-8a-111. Organization of an association as a nonprofit corporation or other**

1114 **entity.**

1115 (1) As used in this section, "organizational documents" means the documents related to

1116 the formation or operation of a nonprofit corporation or other legal entity formed by the board
1117 or the declarant.

1118 (2) Subject to Section 57-8a-110 and if permitted, required, or acknowledged by the
1119 declaration, the board may organize an association as:

1120 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
1121 Nonprofit Corporation Act; or

1122 (b) any other entity organized under other law.

1123 (3) Organizational documents for a nonprofit corporation or other entity formed in
1124 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
1125 obligations found in the governing documents of record at the time of the formation of the
1126 nonprofit corporation or other entity.

1127 (4) Notwithstanding any conflict with the declaration or recorded bylaws, the
1128 organizational documents of a nonprofit corporation or other entity formed in accordance with
1129 Subsection (2) may include any additional indemnification and liability limitation provision:

1130 (a) for:

1131 (i) board members, directors, and officers; or

1132 (ii) similar persons in a position of control; and

1133 (b) that is permitted by the law under which the nonprofit corporation or other entity is
1134 organized.

1135 (5) Immediately upon the legal formation of a nonprofit corporation or other entity in
1136 compliance with this section, the association and lot owners are subject to any right, obligation,
1137 procedure, and remedy applicable to that nonprofit corporation or other entity, subject to
1138 Section 57-8a-107.

1139 (6) (a) A form set of articles of incorporation or similar organizational document
1140 recorded with or attached as an exhibit to a declaration or other recorded governing document
1141 may be modified by the board for filing or refiling if the modified version complies with this
1142 section.

1143 (b) An organizational document, concerning the organization of a nonprofit
1144 corporation or other entity, that is recorded with or attached as an exhibit to a declaration may
1145 be amended in accordance with its own terms or any applicable law, even though the
1146 organizational document has been recorded or attached as an exhibit to a declaration or other

1147 recorded governing document.

1148 (c) Except for amended bylaws, an initial or amended organizational document
1149 properly filed with the state does not need to be recorded.

1150 (7) An association that is terminated or dissolved without the possibility of
1151 reinstatement may be reorganized by complying with the requirements of this section.

1152 (8) (a) This section applies to an association, regardless of when the project is
1153 established.

1154 (b) This section does not validate or invalidate the organization of an association that
1155 occurred before May 14, 2013, whether or not the association was otherwise in compliance
1156 with this section.

1157 Section 24. Section **57-8a-208** is repealed and reenacted to read:

1158 **Part 2. Administrative Provisions**

1159 **57-8a-208. Fines.**

1160 (1) Unless otherwise limited in the association's governing documents, the board may,
1161 as provided in this section, assess a fine against a lot owner for a violation of the governing
1162 documents.

1163 (2) (a) Before assessing the first fine for a continuing violation or for a violation that is
1164 similar to an earlier violation, the board shall:

1165 (i) issue a warning to the lot owner, describing the violation and specifying the
1166 governing documents provision that has been violated;

1167 (ii) inform the lot owner that a fine will be imposed if:

1168 (A) for a continuing violation, the continuing violation is not cured within a specific
1169 time period of not less than 48 hours; or

1170 (B) for a violation that is not a continuing violation, a subsequent similar violation
1171 occurs.

1172 (b) If provided for in the governing documents, a board may assess an additional fine
1173 for:

1174 (i) a continuing violation that remains uncured for at least 10 days after an earlier fine
1175 for the same continuing violation is assessed; and

1176 (ii) a violation that occurs within one year of a previously assessed fine for a similar
1177 violation.

- 1178 (3) A fine assessed under this section:
1179 (a) may be made only for a violation of a rule, covenant, condition, or restriction that is
1180 contained in the governing documents;
1181 (b) shall be in the amount specified in the governing documents for that type of
1182 violation; and
1183 (c) shall accrue interest and a late fee as provided in the governing documents.
1184 (4) An unpaid fine may be collected as an unpaid assessment as provided in the
1185 governing documents and this chapter.
1186 (5) (a) No later than 14 days after having been given notice that a fine has been
1187 assessed, a lot owner who is assessed a fine under this section may request an informal hearing
1188 to protest or dispute the fine.
1189 (b) (i) A board shall conduct a hearing requested under Subsection (5)(a) in accordance
1190 with:
1191 (A) the standards provided in the governing documents; or
1192 (B) the standards established by the board, if the governing documents do not provide
1193 standards, subject to Subsection (5)(b)(ii).
1194 (ii) Board standards established under Subsection (5)(b)(i)(B) shall at a minimum
1195 permit a lot owner protesting or disputing a fine to present the owner's position to the board
1196 regarding the fine.
1197 (c) If a lot owner requests a hearing under Subsection (5)(a), interest and late fees may
1198 not accrue until after the hearing is conducted and a final decision made.
1199 (6) This section applies to an association, regardless of when the association's project
1200 was established.

1201 Section 25. Section **57-8a-211** is amended to read:

1202 **57-8a-211. Reserve analysis -- Reserve fund.**

1203 (1) As used in this section, "reserve analysis" means an analysis to determine:

- 1204 (a) the need for a reserve fund to accumulate money to cover the cost of repairing,
1205 replacing, and restoring common areas that have a useful life of three years or more, but
1206 excluding any cost that can reasonably be funded from the association's general budget or from
1207 other association funds; and
1208 (b) the appropriate amount of any reserve fund.

- 1209 (2) Except as otherwise provided in the governing documents, a board shall:
- 1210 (a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less
- 1211 frequently than every six years; and
- 1212 (ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve
- 1213 analysis to be conducted before July 1, 2012; and
- 1214 (b) review and, if necessary, update a previously conducted reserve analysis no less
- 1215 frequently than every three years.
- 1216 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
- 1217 organization, as determined by the board, to conduct the reserve analysis.
- 1218 ~~[(4)(a) A board may not use money in a reserve fund:]~~
- 1219 ~~[(i) for daily maintenance expenses, unless a majority of association members vote to~~
- 1220 ~~approve the use of reserve fund money for that purpose; or]~~
- 1221 ~~[(ii) for any purpose other than the purpose for which the reserve fund was~~
- 1222 ~~established.]~~
- 1223 (4) (a) Unless a majority of association members vote to approve the use, a board may
- 1224 not use money in a reserve fund for the payment of attorney fees or for any other purpose other
- 1225 than:
- 1226 (i) the construction, maintenance, repair, replacement, or reconstruction of or other
- 1227 benefit to the common areas or other real estate and personal property that the association is
- 1228 obligated to maintain, repair, or replace; or
- 1229 (ii) a purpose for which the reserve fund was established under the declaration.
- 1230 (b) A board shall maintain a reserve fund separate from other association funds.
- 1231 (c) This Subsection (4) may not be construed to limit a board from prudently investing
- 1232 money in a reserve fund, subject to any investment constraints imposed by the governing
- 1233 documents.
- 1234 (5) Subsections (2), (3), (4), and (6) do not apply to an association during the period of
- 1235 administrative control.
- 1236 (6) An association shall:
- 1237 (a) annually, at the annual meeting of lot owners or at a special meeting of lot owners:
- 1238 ~~[(i) present the reserve study; and]~~
- 1239 (i) provide to lot owners the most recent reserve study or update;

- 1240 (ii) provide an opportunity for lot owners to discuss reserves; and
- 1241 (iii) (A) if the original declaration does not require the funding of a reserve fund,
- 1242 provide an opportunity for lot owners to vote on whether to fund a reserve fund and, if so, how
- 1243 to fund it and in what amount; [~~and~~] or
- 1244 (B) if the declaration requires the funding of a reserve fund and allows discretion on
- 1245 the amount of funding or how to fund the reserve fund, provide an opportunity for lot owners
- 1246 to vote to determine the amount of funding and how to fund the reserve fund within the
- 1247 discretion allowed in the declaration; and
- 1248 (b) prepare and keep minutes of each meeting held under Subsection (6)(a) and
- 1249 indicate in the minutes any decision relating to funding a reserve fund.
- 1250 (7) This section applies to each association, regardless of when the association was
- 1251 created.
- 1252 Section 26. Section **57-8a-212** is amended to read:
- 1253 **57-8a-212. Content of a declaration.**
- 1254 (1) An initial declaration recorded on or after May 10, 2011 shall contain:
- 1255 (a) the name of the project;
- 1256 (b) the name of the association;
- 1257 (c) a statement that the project is not a cooperative;
- 1258 (d) a statement indicating any portions of the project that contain condominiums
- 1259 governed by Chapter 8, Condominium Ownership Act;
- 1260 (e) if the declarant desires to reserve the option to expand the project, a statement
- 1261 reserving the option to expand the project;
- 1262 (f) the name of each county in which any part of the project is located;
- 1263 (g) a legally sufficient description of the real estate included in the project;
- 1264 (h) a description of any limited common areas and any real estate that is or is required
- 1265 to become common areas;
- 1266 (i) any restriction on the alienation of a lot, including a restriction on leasing; and
- 1267 (j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or
- 1268 (iv); and
- 1269 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
- 1270 U.C.A. Sections 57-1-20 and [~~57-8a-402~~] 57-8a-302 to (name of trustee), with power of sale,

1271 the lot and all improvements to the lot for the purpose of securing payment of assessments
1272 under the terms of the declaration."

1273 (2) A declaration may contain any other information the declarant considers
1274 appropriate, including any restriction on the use of a lot, the number of persons who may
1275 occupy a lot, or other qualifications of a person who may occupy a lot.

1276 (3) The location of a limited common area or real estate described in Subsection (1)(g)
1277 may be shown on a subdivision plat.

1278 Section 27. Section **57-8a-220** is amended to read:

1279 **57-8a-220. Creditor approval may be required for lot owner or association action**
1280 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**
1281 **creditor or creditor's successor.**

1282 (1) (a) Subject to Subsection (1)(b), a declaration may:

1283 (i) condition the effectiveness of lot owners' actions specified in the declaration on the
1284 approval of a specified number or percentage of lenders holding a security interest in the lots;
1285 or

1286 (ii) condition the effectiveness of association actions specified in the declaration on the
1287 approval of a specified number or percentage of lenders that have extended credit to the
1288 association.

1289 (b) A condition under Subsection (1)(a) may not:

1290 (i) deny or delegate the lot owners' or board's control over the association's general
1291 administrative affairs;

1292 (ii) prevent the association or board from commencing, intervening in, or settling any
1293 litigation or proceeding; or

1294 (iii) prevent an insurance trustee or the association from receiving or distributing
1295 insurance proceeds under Subsection 57-8a-405[~~(12)~~](11).

1296 (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection
1297 (1)(b) by:

1298 (i) requiring the association to deposit the association's assessments before default with
1299 the lender assigned the income; or

1300 (ii) requiring the association to increase an assessment at the lender's direction by an
1301 amount reasonably necessary to pay the loan in accordance with the loan terms.

1302 (d) This Subsection (1) applies to:

1303 (i) an association formed before, on, or after May 10, 2011; and

1304 (ii) documents created and recorded before, on, or after May 10, 2011.

1305 (2) Subject to this chapter and applicable law, a lender who has extended credit to an
1306 association secured by an assignment of income or an encumbrance of the common areas may
1307 enforce the lender's security agreement as provided in the agreement.

1308 (3) (a) Subject to Subsection (4), a security holder's consent that is required under
1309 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:

1310 (i) the association sends written notice of the proposed amendment or action by
1311 certified or registered mail to the security holder's address stated in a recorded document
1312 evidencing the security interest; and

1313 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security
1314 holder's response does not receive a response within 60 days after the association sends notice
1315 under Subsection (3)(a)(i).

1316 (b) If a security holder's address for receiving notice is not stated in a recorded
1317 document evidencing the security interest, an association:

1318 (i) shall use reasonable efforts to find a mailing address for the security holder; and

1319 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).

1320 (4) If a security holder responds in writing within 60 days after the association sends
1321 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to
1322 another person, the association:

1323 (a) shall:

1324 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the
1325 security interest at the address provided by the security holder in the security holder's response;
1326 or

1327 (ii) if no address is provided:

1328 (A) use reasonable efforts to find a mailing address for the person assigned or
1329 conveyed the security interest; and

1330 (B) send notice by certified or registered mail to the person at the address that the
1331 association finds under Subsection (4)(a)(ii)(A); and

1332 (b) may not presume the security holder's consent under Subsection (3)(a) unless the

1333 person designated in a notice under Subsection (4)(a) to receive the response from the person
1334 assigned or conveyed the security interest does not receive a response within 60 days after the
1335 association sends the notice.

1336 Section 28. Section **57-8a-222** is enacted to read:

1337 **57-8a-222. Improvement or alteration to a lot.**

1338 (1) Subject to the declaration and Subsection (2), a lot owner may:

1339 (a) make an improvement or alteration to that owner's lot; and

1340 (b) after acquiring an adjoining lot:

1341 (i) remove or alter a partition between the lot owner's lot and the acquired lot; or

1342 (ii) create an aperture to the adjoining lot or portion.

1343 (2) A lot owner may not take an action under Subsection (1) if the action would:

1344 (a) impair the structural integrity or mechanical systems of the building or either lot;

1345 (b) reduce the support of any portion of the common areas or another lot; or

1346 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
1347 government land use ordinance, or a building code.

1348 (3) The board may require, at the lot owner's expense, that a lot owner submit a
1349 registered professional engineer's or registered architect's opinion stating that a proposed
1350 change to the lot owner's lot will not:

1351 (a) impair the structural integrity or mechanical systems of the building or either lot;

1352 (b) reduce the support or integrity of a common area; or

1353 (c) compromise structural components.

1354 (4) The board may require a lot owner to pay all of the association's legal expenses
1355 related to a proposed alteration to the lot or building under this section.

1356 (5) Subsections (1) and (3) do not apply to an association with authority over detached
1357 dwelling units.

1358 Section 29. Section **57-8a-223** is enacted to read:

1359 **57-8a-223. Request for approval of lot modifications.**

1360 (1) As used in this section:

1361 (a) "Lot modification" means any construction, reconstruction, modification, or

1362 alteration of or improvement or other change to a lot owner's lot or to a structure in or on the
1363 lot.

1364 (b) "Modification approval requirement" means a requirement that a lot owner obtain
1365 association approval before undertaking a lot modification.

1366 (c) "Request for approval" means a written application or request to an association for
1367 approval of a proposed lot modification.

1368 (2) (a) This section applies if a governing document contains a modification approval
1369 requirement.

1370 (b) (i) A governing document that contains a modification approval requirement shall
1371 also contain the provisions contained in Subsections (3) through (9).

1372 (ii) The provisions of Subsections (3) through (9) apply whether or not the governing
1373 documents contain the provisions contained in those subsections.

1374 (3) An association shall respond in writing to a lot owner's request for approval within
1375 45 days after receipt of the request for approval.

1376 (4) In its response to a lot owner's request for approval, an association shall:

1377 (a) approve the request for approval;

1378 (b) (i) deny the request for approval:

1379 (A) because of the lot owner's failure to provide information that the governing
1380 documents require;

1381 (B) because the request for approval fails to comply with one or more requirements of
1382 the governing documents or this section; or

1383 (C) pursuant to discretion that the governing documents grant to the association; and

1384 (ii) state the specific reason or reasons for the denial, including a citation to each
1385 applicable provision of the governing documents on which the denial is based; or

1386 (c) state that the association needs additional time, not to exceed 90 days after the
1387 association's response, to review the request for approval.

1388 (5) (a) Following an association's denial of a request for approval based on the request
1389 for approval's failure to comply with one or more requirements of the governing documents or
1390 this section, the lot owner may modify and resubmit the request for approval.

1391 (b) A request for approval that is modified and resubmitted as provided in Subsection
1392 (5)(a) is subject to the provisions of this section to the same extent as a request for approval
1393 submitted for the first time.

1394 (6) An association's approval or denial of a request for approval may not be arbitrary or

1395 capricious.

1396 (7) (a) If an association does not respond to a lot owner's request for approval within
1397 the time specified in Subsection (3), the lot owner may give the association written notice that
1398 the association's failure to respond will be considered to be approval of the request for approval
1399 unless the lot owner receives a response from the association within 30 days after the lot owner
1400 gives notice under this Subsection (7)(a).

1401 (b) An association's failure to respond to a lot owner's notice under Subsection (7)(a)
1402 within 30 days after the lot owner gives the notice is considered to be the association's approval
1403 of the lot owner's request for approval.

1404 (8) In making a lot modification for which an association gives approval, including
1405 approval under Subsection (7)(b), a lot owner shall comply with all applicable requirements of
1406 the governing documents and this chapter.

1407 (9) In a dispute over whether an association's approval or denial of a lot owner's
1408 request for approval is consistent with the requirements of applicable governing documents and
1409 this chapter, the prevailing party is entitled to recover reasonable attorney fees and costs.

1410 Section 30. Section **57-8a-224** is enacted to read:

1411 **57-8a-224. Eminent domain.**

1412 (1) Unless otherwise provided in the declaration, this section governs a taking by
1413 eminent domain.

1414 (2) For purposes of this section, a taking by eminent domain of part of a lot is
1415 considered to be a taking of the entire lot if the taking leaves the lot owner with a remnant that
1416 may not practically or lawfully be used for a purpose permitted by the declaration.

1417 (3) If a lot is taken by eminent domain, the court shall award the lot owner
1418 compensation for the lot and its allocated interests, whether or not any common areas are also
1419 taken by eminent domain.

1420 (4) Upon the taking of a lot by eminent domain:

1421 (a) the lot's allocated interests are automatically reallocated to the remaining lots in
1422 proportion to the respective allocated interests of those lots before the acquisition, unless the
1423 court orders otherwise; and

1424 (b) the association shall promptly prepare, execute, and submit for recording to each
1425 applicable county recorder a declaration amendment reflecting the reallocations.

1426 (5) A remnant of a lot remaining after part of the lot is taken by eminent domain
1427 becomes a common area if the taking of part of the lot is considered under Subsection (2) to be
1428 a taking of the entire lot.

1429 (6) If part of a lot is taken by eminent domain but the entire lot is not considered taken
1430 under Subsection (2):

1431 (a) the court shall award the lot owner compensation for the reduction in value of the
1432 lot and its interest in the common areas, whether or not any common areas are also taken; and

1433 (b) unless the court orders otherwise:

1434 (i) the lot's allocated interests are reduced:

1435 (A) in proportion to the reduction in the size of the lot; or

1436 (B) according to another basis specified in the declaration; and

1437 (ii) the portion of the allocated interests divested under Subsection (6)(b)(i) from the
1438 partially taken lot are automatically reallocated to that lot and to the remaining lots in
1439 proportion to the respective allocated interests of those lots before the taking, with the partially
1440 taken lot participating in the reallocation on the basis of its reduced allocated interests.

1441 (7) If part of the common areas is taken by eminent domain:

1442 (a) the entity taking part of the common areas shall pay to the association the portion of
1443 the compensation awarded for the taking that is attributable to the common areas; and

1444 (b) unless the declaration provides otherwise, the association shall equally divide any
1445 portion of the award attributable to the taking of a limited common area among the owners of
1446 the lots to which the limited common area was allocated at the time of the taking.

1447 (8) An association shall submit for recording to each applicable county recorder the
1448 court judgment or order in an eminent domain action that results in the taking of some or all of
1449 a lot or common areas.

1450 Section 31. Section **57-8a-225** is enacted to read:

1451 **57-8a-225. Responsibility for the maintenance, repair, and replacement of**
1452 **common areas and lots.**

1453 (1) As used in this section:

1454 (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely
1455 result in immediate and substantial damage to a common area or to another lot.

1456 (b) "Prompt repair" means:

1457 (i) in the case of an emergency repair, a repair completed within a time that is
1458 reasonable given the nature of the emergency, but no later than the time described in
1459 Subsection (1)(b)(ii); and

1460 (ii) in the case of another repair, a repair completed within 15 business days after the
1461 association is notified of the need for the repair.

1462 (c) "Reasonable notice" means:

1463 (i) written notice that is hand delivered to the lot at least 24 hours before the proposed
1464 entry; or

1465 (ii) in the case of an emergency repair, notice that is reasonable under the
1466 circumstances.

1467 (2) Except as otherwise provided in the declaration or Part 4, Insurance:

1468 (a) an association is responsible for the maintenance, repair, and replacement of
1469 common areas; and

1470 (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot
1471 owner's lot.

1472 (3) After reasonable notice to the occupant of the lot being entered, the board may
1473 access each lot:

1474 (a) from time to time during reasonable hours, as necessary for the maintenance, repair,
1475 or replacement of any of the common areas; or

1476 (b) for making an emergency repair of a common area.

1477 (4) An association is liable for a prompt repair if it causes damage to:

1478 (a) the common areas and facilities; or

1479 (b) a lot the association uses to access the common areas.

1480 Section 32. Section **57-8a-226** is enacted to read:

1481 **57-8a-226. Ownership, conveyance, and governmental assessment of common**
1482 **areas.**

1483 (1) An ownership interest in, a conveyance of, and a governmental assessment related
1484 to a real estate parcel constituting a common area are subject to Section 10-9a-606 or
1485 17-27a-606, as applicable, and Sections 57-8a-227 and 57-8a-228.

1486 (2) The proceeds of a sale of a common area that is not affixed to or appurtenant to a
1487 lot are an asset of the association.

1488 (3) An association shall equitably distribute proceeds from the sale of limited common
1489 areas among the owners of lots to which the limited common areas were allocated.

1490 Section 33. Section **57-8a-227** is enacted to read:

1491 **57-8a-227. Subjecting common areas to a security interest.**

1492 (1) As used in this section, "required percentage" means:

1493 (a) 75%; or

1494 (b) (i) a percentage higher than 75% if the higher percentage is specified in the
1495 declaration; or

1496 (ii) for an association with no residential lots, a percentage lower than 75%, if the
1497 lower percentage is specified in the declaration.

1498 (2) Subject to Section 57-8a-228 and unless otherwise provided in the declaration, an
1499 association may subject portions of the common areas, not affixed to or appurtenant to lots, to a
1500 security interest.

1501 (3) A security interest permitted under Subsection (2) shall be ratified by:

1502 (a) persons entitled to cast at least the required percentage of allocated voting interests
1503 in the association, including persons entitled to cast at least the required percentage of votes
1504 allocated to lots not owned by a declarant; and

1505 (b) the owners of all lots to which the limited common areas proposed to be subjected
1506 to a security interest are allocated.

1507 (4) (a) This section does not prohibit the assignment of an association's right to collect
1508 common assessments as security for an obligation.

1509 (b) A board may collect common assessments as a security for an obligation under Part
1510 3, Collection of Assessments.

1511 Section 34. Section **57-8a-228** is enacted to read:

1512 **57-8a-228. Certificate evidencing security interest in common areas.**

1513 (1) An officer or board member of an association that executes an agreement pursuant
1514 to Section 57-8a-227 subjecting the common areas to a security interest shall execute a
1515 certificate evidencing the agreement, stating that the agreement was ratified as required in
1516 Subsection 57-8a-227(3).

1517 (2) An association shall submit a certificate described in Subsection (1) for recording
1518 to the office of each applicable county recorder.

1519 (3) An agreement described in Subsection (1) and a ratification of the agreement are
1520 not effective until the certificate described in Subsection (1) is recorded in the office of each
1521 applicable county recorder.

1522 (4) An agreement described in Subsection (1) shall specify a date after which the
1523 agreement becomes void unless the certificate described in Subsection (1) is recorded before
1524 that date.

1525 (5) An agreement and certificate described in Subsection (1) are presumed valid unless
1526 challenged within one year after the certificate is recorded.

1527 (6) An encumbrance of common areas does not deprive a lot owner of the rights of
1528 access and support.

1529 (7) If the holders of first security interests on 75% of the lots subject to security
1530 interests on the day that the certificate described in Subsection (1) is recorded consent in
1531 writing, an encumbrance of common areas under this section has priority over all preexisting
1532 encumbrances on the undivided interests in the common areas held by all persons holding
1533 security interests in the lots.

1534 (8) (a) Subject to Subsection (8)(c), the following may be recorded at any time before
1535 the date that an agreement described in Subsection (1) becomes void:

1536 (i) the consent of first security interest holders on lots described in Subsection (8); or

1537 (ii) a certificate affirming that the association has received the consents described in
1538 Subsection (8)(a)(i).

1539 (b) For purposes of calculating the percentage of consenting first security interest
1540 holders, a consent or certificate described in Subsection (8)(a) is valid from the date the
1541 consent or certificate is recorded, regardless of later sales of or encumbrances on the lots.

1542 (c) If the required percentage of first security interest holders consent under Subsection
1543 (8)(a), an encumbrance of common areas may not affect interests that:

1544 (i) have priority over the declaration; or

1545 (ii) are created by the association after the declaration was recorded.

1546 Section 35. Section **57-8a-402** is amended to read:

1547 **57-8a-402. Applicability of part.**

1548 (1) This part applies to an insurance policy or combination of insurance policies:

1549 (a) issued or renewed on or after July 1, 2011; and

- 1550 (b) issued to or renewed by:
- 1551 (i) a lot owner; or
- 1552 (ii) an association, regardless of when the association is formed.
- 1553 (2) ~~[This]~~ Unless otherwise provided in the declaration, this part does not apply to a
- 1554 project if all of the project's lots are restricted to entirely nonresidential use.
- 1555 (3) Subject to Subsection (4), this part does not apply to a project if:
- 1556 (a) the initial declaration for the project is recorded before January 1, 2012;
- 1557 (b) the project includes attached dwellings; and
- 1558 (c) the declaration requires each lot owner to insure the lot owner's dwelling.
- 1559 (4) (a) An association ~~[that is subject to a declaration recorded before January 1, 2012]~~
- 1560 to which this part does not apply under Subsection (3) may amend the declaration, as provided
- 1561 in the declaration and applicable law, to subject the association to this part.
- 1562 (b) During the period of administrative control, an amendment under Subsection (4)(a)
- 1563 requires the consent of the declarant.
- 1564 Section 36. Section **57-8a-403** is amended to read:
- 1565 **57-8a-403. Property and liability insurance required -- Notice if insurance not**
- 1566 **reasonably available.**
- 1567 (1) Beginning not later than the day on which the first lot is conveyed to a person other
- 1568 than a declarant, an association shall maintain, to the extent reasonably available:
- 1569 (a) subject to Section 57-8a-405, blanket property insurance on the physical structure
- 1570 of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and
- 1571 common areas in the project, insuring against all risks of direct physical loss commonly insured
- 1572 against, including fire and extended coverage perils; and
- 1573 (b) subject to Section 57-8a-406, liability insurance~~[-including medical payments~~
- 1574 ~~insurance]~~ covering all occurrences commonly insured against for death, bodily injury, and
- 1575 property damage arising out of or in connection with the use, ownership, or maintenance of the
- 1576 common areas.
- 1577 (2) If an association becomes aware that property insurance under Subsection (1)(a) or
- 1578 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,
- 1579 within seven calendar days after becoming aware, give all lot owners notice, as provided in
- 1580 Section ~~[57-8a-215]~~ 57-8a-214, that the insurance is not reasonably available.

1581 Section 37. Section **57-8a-404** is amended to read:

1582 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**
1583 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

1584 (1) (a) The declaration or bylaws may require the association to carry other types of
1585 insurance in addition to those described in Section 57-8a-403.

1586 (b) In addition to any type of insurance coverage or limit of coverage provided in the
1587 declaration or bylaws and subject to the requirements of this part, an association may, as the
1588 board considers appropriate, obtain:

1589 (i) an additional type of insurance than otherwise required; or

1590 (ii) a policy with greater coverage than otherwise required.

1591 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf
1592 of an association, a lot owner's act or omission may not:

1593 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability
1594 insurance policy under Subsection 57-8a-403(1)(b); or

1595 (b) be a condition to recovery under a policy.

1596 (3) An insurer under a property insurance policy or liability insurance policy obtained
1597 by an association under this part waives its right to subrogation under the policy against [~~any~~
1598 ~~lot owner or member of the lot owner's household~~];

1599 (a) any person residing with a lot owner, if the lot owner resides on the lot; and

1600 (b) the lot owner.

1601 (4) (a) An insurance policy issued to an association may not be inconsistent with any
1602 provision of this part.

1603 (b) A provision of a governing document that is contrary to a provision of this part has
1604 no effect.

1605 (c) [~~A~~] Neither the governing documents nor a property insurance or liability insurance
1606 policy issued to an association may [~~not~~] prevent a lot owner from obtaining insurance for the
1607 lot owner's own benefit.

1608 Section 38. Section **57-8a-405** is amended to read:

1609 **57-8a-405. Property insurance.**

1610 (1) This section applies to property insurance required under Subsection
1611 57-8a-403(1)(a).

1612 ~~[(2)]~~ The property covered by property insurance shall include any property that, under
1613 the declaration, is required to become common areas.]

1614 ~~[(3)]~~ (2) The total amount of coverage provided by blanket property insurance may not
1615 be less than 100% of the full replacement cost of the insured property at the time the insurance
1616 is purchased and at each renewal date, excluding items normally excluded from property
1617 insurance policies.

1618 ~~[(4)]~~ (3) Property insurance shall include coverage for any fixture, improvement, or
1619 betterment installed ~~[by a lot owner]~~ at any time to an attached dwelling or to a limited
1620 common area appurtenant to a dwelling on a lot, whether installed in the original construction
1621 or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical
1622 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
1623 permanently part of or affixed to an attached dwelling or to a limited common area.

1624 ~~[(5)]~~ (4) Notwithstanding anything in this part and unless otherwise provided in the
1625 declaration, an association is not required to obtain property insurance for a loss to a dwelling
1626 that is not physically attached to another dwelling or to a common area structure.

1627 ~~[(6)]~~ (5) Each lot owner is an insured person under a property insurance policy.

1628 ~~[(7)]~~ (6) If a loss occurs that is covered by a property insurance policy in the name of
1629 an association and another property insurance policy in the name of a lot owner:

1630 (a) the association's policy provides primary insurance coverage; and

1631 (b) notwithstanding Subsection ~~[(7)]~~ (6)(a) and subject to Subsection ~~[(8)]~~ (7):

1632 (i) ~~[a]~~ the lot owner is responsible for the association's policy deductible; and

1633 (ii) building property coverage, often referred to as coverage A, of the lot owner's
1634 policy applies to that portion of the loss attributable to the association's policy deductible.

1635 ~~[(8)]~~ (7) (a) As used in this Subsection ~~[(8)]~~ (7) and Subsection (10):

1636 (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is
1637 covered by an association's property insurance policy.

1638 (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a
1639 limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

1640 (iii) "Lot damage percentage" means the percentage of total damage resulting in a
1641 covered loss that is attributable to lot damage.

1642 (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is

1643 responsible for an amount calculated by applying the lot damage percentage for that lot to the
1644 amount of the deductible under the association's property insurance policy.

1645 (c) If a lot owner does not pay the amount required under Subsection ~~[(8)]~~ (7)(b) within
1646 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the
1647 lot, or the limited common area appurtenant to the lot, an association may levy an assessment
1648 against a lot owner for that amount.

1649 ~~[(9)]~~ (8) An association shall set aside an amount equal to the amount of the
1650 association's property insurance policy deductible or \$10,000, whichever is less.

1651 ~~[(10)]~~ (9) (a) An association shall provide notice in accordance with Section 57-8a-214
1652 to each lot owner of the lot owner's obligation under Subsection ~~[(8)]~~ (7) for the association's
1653 policy deductible and of any change in the amount of the deductible.

1654 (b) (i) An association that fails to provide notice as provided in Subsection ~~[(10)]~~ (9)(a)
1655 is responsible for the ~~[amount]~~ portion of the deductible ~~[increase]~~ that the association could
1656 have assessed to a lot owner under Subsection ~~[(8)]~~ (7), but only to the extent that the lot owner
1657 does not have insurance coverage that would otherwise apply under this section.

1658 (ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the
1659 association's policy deductible, as required under Subsection (9)(a), but fails to provide notice
1660 of a later increase in the amount of the deductible is responsible only for the amount of the
1661 increase for which notice was not provided.

1662 (c) An association's failure to provide notice as provided in Subsection ~~[(10)]~~ (9)(a)
1663 may not be construed to invalidate any other provision of this part.

1664 ~~[(11)]~~ (10) If, in the exercise of the business judgment rule, the board determines that a
1665 ~~[claim]~~ covered loss is likely not to exceed the association's property insurance policy
1666 deductible, and until the covered loss exceeds the association's property insurance deductible
1667 and a claim is submitted to the association's property insurance insurer:

1668 (a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for
1669 primary coverage ~~[to the amount of the association's policy deductible]~~ for the damage to that
1670 lot;

1671 (b) the association shall pay for any loss for any common area for which a loss occurs;

1672 ~~[(b)]~~ (c) a lot owner who does not have a policy to cover the ~~[association's property~~
1673 ~~insurance policy deductible]~~ damage to that lot owner's lot is responsible for ~~[the loss to the~~

1674 ~~amount of the association's policy deductible, as provided in Subsection (8)] that lot damage,~~
1675 ~~and the association may, as provided in Subsection (7)(c), recover any payments the association~~
1676 ~~makes to remediate that lot; and~~

1677 ~~(c)~~ (d) the association need not tender the claim to the association's insurer.

1678 ~~(12)~~ (11) (a) An insurer under a property insurance policy issued to an association
1679 shall adjust with the association a loss covered under the association's policy.

1680 (b) Notwithstanding Subsection ~~(12)~~ (11)(a), the insurance proceeds for a loss under
1681 an association's property insurance policy:

1682 (i) are payable to an insurance trustee that the association designates or, if no trustee is
1683 designated, to the association; and

1684 (ii) may not be payable to a holder of a security interest.

1685 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for
1686 the association, lot owners, and lien holders.

1687 (d) (i) ~~Insurance~~ If damaged property is to be repaired or restored, insurance proceeds
1688 shall be disbursed first for the repair or restoration of the damaged property.

1689 (ii) After the disbursements described in Subsection ~~(12)~~ (11)(d)(i) are made and the
1690 damaged property has been completely repaired or restored or the project terminated, any
1691 surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the
1692 declaration.

1693 ~~(13)~~ (12) An insurer that issues a property insurance policy under this part, or the
1694 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

1695 (a) the association;

1696 (b) a lot owner, upon the lot owner's written request; and

1697 (c) a holder of a security interest, upon the holder's written request.

1698 ~~(14)~~ (13) A cancellation or nonrenewal of a property insurance policy under this
1699 section is subject to the procedures stated in Section 31A-21-303.

1700 ~~(15)~~ (14) A board that acquires from an insurer the property insurance required in this
1701 section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of
1702 the full replacement cost of the insured property at the time of the loss.

1703 (15) (a) This section does not prevent a person suffering a loss as a result of damage to
1704 property from asserting a claim, either directly or through subrogation, for the loss against a

1705 person at fault for the loss.

1706 (b) Subsection (15)(a) does not affect Subsection 57-8a-404(3).

1707 Section 39. Section **57-8a-406** is amended to read:

1708 **57-8a-406. Liability insurance.**

1709 (1) This section applies to a liability insurance policy required under Subsection
1710 57-8a-403(1)(b).

1711 (2) A liability insurance policy shall be in an amount determined by the board but not
1712 less than an amount specified in the declaration or bylaws.

1713 (3) Each lot owner is an insured person under a liability insurance policy that an
1714 association obtains [~~that insures against~~], but only for liability arising from:

1715 (a) the lot owner's ownership interest in the common areas [~~or from~~];

1716 (b) maintenance, repair, or replacement of common areas; and

1717 (c) the lot owner's membership in the association.

1718 Section 40. Section **57-8a-407** is amended to read:

1719 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1720 (1) (a) If a portion of the project for which insurance is required under this part is
1721 damaged or destroyed, the association shall repair or replace the portion within a reasonable
1722 amount of time unless:

1723 (i) the project is terminated;

1724 (ii) repair or replacement would be illegal under a state statute or local ordinance
1725 governing health or safety; or

1726 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the
1727 association vote not to rebuild; and

1728 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that
1729 lot that will not be rebuilt votes not to rebuild.

1730 (b) If a portion of a project is not repaired or replaced because the project is terminated,
1731 the termination provisions of applicable law and the governing documents apply.

1732 (2) (a) The cost of repair or replacement of any lot in excess of insurance proceeds and
1733 reserves is a common expense[-] to the extent the association is required under this chapter to
1734 provide insurance coverage for the lot.

1735 (b) The cost of repair or replacement of any common area in excess of insurance

1736 proceeds and reserves is a common expense.

1737 (3) If the entire project is damaged or destroyed and not repaired or replaced:

1738 (a) the association shall use the insurance proceeds attributable to the damaged
1739 common areas to restore the damaged area to a condition compatible with the remainder of the
1740 project;

1741 (b) the association shall distribute the insurance proceeds attributable to lots and
1742 common areas that are not rebuilt to:

1743 (i) the lot owners of the lots that are not rebuilt;

1744 (ii) the lot owners of the lots to which those common areas that are not rebuilt were
1745 allocated; or

1746 (iii) lien holders; and

1747 (c) the association shall distribute the remainder of the proceeds to all the lot owners or
1748 lien holders in proportion to the common expense liabilities of all the lots.

1749 (4) If the lot owners vote not to rebuild a lot:

1750 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote
1751 as if the lot had been condemned; and

1752 (b) the association shall prepare, execute, and submit for recording an amendment to
1753 the declaration reflecting the reallocations described in Subsection (4)(a).

1754 Section 41. Section **57-8a-501** is enacted to read:

1755 **Part 5. Association Board**

1756 **57-8a-501. Board acts for association.**

1757 Except as limited in a declaration, the association bylaws, or other provisions of this
1758 chapter, a board acts in all instances on behalf of the association.

1759 Section 42. Section **57-8a-502** is enacted to read:

1760 **57-8a-502. Meetings of the board.**

1761 (1) As used in this section, "meeting of the board" does not include a gathering of
1762 board members at which the board members do not conduct association business.

1763 (2) The board may take an action in any manner allowed under Title 16, Chapter 6a,
1764 Utah Revised Nonprofit Corporation Act, or this chapter.

1765 (3) Unless otherwise provided in a declaration or bylaw, Subsections (4) through (11)
1766 do not apply during the period of administrative control, as defined in Section 57-8a-104.

1767 (4) (a) (i) Except as provided in Subsection (4)(b) and Section 57-8a-503, a meeting of
1768 the board or a committee shall be open to lot owners.

1769 (ii) A board and its members may not use incidental or social gatherings of board
1770 members to evade the requirement of Subsection (4)(a)(i).

1771 (b) The board or a committee may hold a closed session during a board meeting or
1772 committee meeting if the purpose of the session is to:

1773 (i) consult with the association's attorney to obtain legal advice;

1774 (ii) discuss existing or potential litigation, mediation, arbitration, or administrative
1775 proceeding;

1776 (iii) discuss a labor or personnel matter;

1777 (iv) discuss a matter relating to initial contract negotiations, including the review of a
1778 bid or proposal;

1779 (v) discuss a matter involving a person, if the board determines that public knowledge
1780 of the matter would violate the person's privacy; or

1781 (vi) discuss a delinquent assessment.

1782 (5) A majority of the board members or any person designated in the bylaws may call a
1783 meeting of the board.

1784 (6) Unless otherwise provided in the declaration or bylaws, the board shall meet at
1785 least once per year.

1786 (7) (a) A physical meeting of the board at which some or all members appear in person
1787 shall be:

1788 (i) at the association, if possible in a common area; or

1789 (ii) in a location convenient to the association.

1790 (b) If a board meeting is held by telephone or through any other means of
1791 communication by which all persons participating in the meeting are able to hear each other
1792 during the meeting, the association shall provide:

1793 (i) a physical location with adequate facilities to permit those entitled to attend the
1794 ability to hear the proceedings; or

1795 (ii) information to enable those entitled to attend to call into the meeting using a
1796 telephone to access the meeting without incurring any access or long distance charge.

1797 (8) At a board meeting, the board shall provide a reasonable opportunity for lot owners

1798 to offer comments.

1799 (9) (a) A secretary or other officer specified in the bylaws, or an agent of the
1800 association specified in a resolution of the board, shall give notice of a board meeting to each
1801 board member and to lot owners unless:

1802 (i) the meeting has been included in a schedule previously given to lot owners;

1803 (ii) the meeting has been called to deal with an emergency; or

1804 (iii) the action is taken under Section 57-8a-503.

1805 (b) The notice to lot owners described in Subsection (9)(a) shall:

1806 (i) be given:

1807 (A) as required under Section 57-8a-214; and

1808 (B) not fewer than three business days before the day of the meeting;

1809 (ii) state the time of the meeting; and

1810 (iii) state the location of the meeting or, if there is no physical location for the meeting,

1811 provide the information required under Subsection (7)(b)(ii).

1812 (10) An association that enters a contract with a third party in violation of this section
1813 is bound by the contract if the third party:

1814 (a) relies on an action of the board; and

1815 (b) had no knowledge at the time of entering the contract that the action violates this
1816 section.

1817 (11) Notwithstanding noncompliance with this section, a board action is binding and
1818 valid unless set aside by a court.

1819 (12) A person challenging the validity of an action of the board for failure to comply
1820 with a provision of this section may not bring the challenge more than 60 days after:

1821 (a) the approval of the board minutes recording the board's action; and

1822 (b) distribution of the record of the board's action to lot owners.

1823 Section 43. Section **57-8a-503** is enacted to read:

1824 **57-8a-503. Board action without a meeting.**

1825 A board may act without a meeting:

1826 (1) by following the procedures of Section 16-6a-813; or

1827 (2) to undertake ministerial actions or to implement an action that the board previously
1828 agreed to in an open meeting.

1829 Section 44. Section **57-8a-504** is enacted to read:

1830 **57-8a-504. Period of administrative control.**

1831 (1) Unless otherwise provided for in a declaration, a period of administrative control
1832 terminates on the first to occur of the following:

1833 (a) 60 days after 75% of the lots that may be created are conveyed to lot owners other
1834 than a declarant;

1835 (b) seven years after all declarants have ceased to offer lots for sale in the ordinary
1836 course of business; or

1837 (c) the day the declarant, after giving written notice to the lot owners, records an
1838 instrument voluntarily surrendering all rights to control activities of the association.

1839 (2) (a) A declarant may voluntarily surrender the right to appoint and remove a member
1840 of the board before the period of administrative control terminates under Subsection (1).

1841 (b) Subject to Subsection (2)(a), the declarant may require, for the duration of the
1842 period of administrative control, that actions of the association or board, as specified in a
1843 recorded instrument executed by the declarant, be approved by the declarant before they
1844 become effective.

1845 (3) (a) Upon termination of the period of administrative control, the lot owners shall
1846 elect a board consisting of an odd number of at least three members, a majority of whom shall
1847 be lot owners.

1848 (b) Unless the declaration provides for the election of officers by the lot owners, the
1849 board shall elect officers of the association.

1850 (c) The board members and officers shall take office upon election or appointment.

1851 Section 45. Section **57-8a-601** is enacted to read:

1852 **Part 6. Consolidation and Termination of Associations**

1853 **57-8a-601. Consolidation of multiple associations.**

1854 (1) Two or more associations may be consolidated into a single association as provided
1855 in Title 16, Chapter 6a, Part 11, Merger, and this section.

1856 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
1857 consolidation between two or more associations to consolidate into a single association is not
1858 effective unless it is approved by the lot owners of each of the consolidating associations by the
1859 highest percentage of allocated voting interests of the lot owners required by each association

1860 to amend its respective declaration, articles, or bylaws.

1861 (3) A declaration of consolidation under Subsection (2) shall:

1862 (a) be prepared, executed, and certified by the president of each of the consolidating
1863 associations; and

1864 (b) provide for the reallocation of the allocated interests in the consolidated association
1865 by stating:

1866 (i) the reallocations of the allocated interests in the consolidated association or the
1867 formulas used to reallocate the allocated interests; or

1868 (ii) (A) the percentage of overall allocated interests of the consolidated association that
1869 are allocated to all of the lots comprising each of the consolidating associations; and

1870 (B) that the portion of the percentages allocated to each lot formerly comprising a part
1871 of a consolidating association is equal to the percentages of allocated interests allocated to the
1872 lot by the declaration of the consolidating association.

1873 (4) A declaration of consolidation under Subsection (2) is not effective until it is
1874 recorded in the office of each applicable county recorder.

1875 (5) Unless otherwise provided in the declaration of consolidation, the consolidated
1876 association resulting from a consolidation under this section:

1877 (a) is the legal successor for all purposes of all of the consolidating associations;

1878 (b) the operations and activities of all of the consolidating associations shall be
1879 consolidated into the consolidated association; and

1880 (c) the consolidated association holds all powers, rights, obligations, assets, and
1881 liabilities of all consolidating associations.

1882 Section 46. Section **57-8a-602** is enacted to read:

1883 **57-8a-602. Termination of an association's governing documents.**

1884 (1) Unless the declaration provides otherwise or all the lots are taken by eminent
1885 domain:

1886 (a) this section governs termination of an association's governing documents, except as
1887 provided in Section 57-8a-601; and

1888 (b) termination of an association's governing documents requires the approval of any
1889 governmental entity that a covenant in the declaration makes an express beneficiary of the
1890 covenant.

1891 (2) (a) Subject to Subsection (1), an association's governing documents are terminated
1892 if lot owners of at least 75% of the allocated lot owner votes in the association agree to the
1893 termination.

1894 (b) In an association with no residential lots, the declaration may specify a percentage
1895 lower than 75% for the percentage of lot owners required to agree to a termination of the
1896 association's governing documents.

1897 (3) (a) A declaration of termination of an association's governing documents under
1898 Subsection (2):

1899 (i) shall:

1900 (A) be executed in the same manner as a deed;

1901 (B) contain a certification by the board that the termination has been agreed to by at
1902 least the allocated voting interests of the lot owners in the association required under
1903 Subsection (2):

1904 (C) specify a date by which the agreement is required to be recorded; and

1905 (D) provide that the agreement is void if it is not recorded by that date; and

1906 (ii) is not effective until it is recorded in the office of each applicable county recorder.

1907 (b) An association shall submit a termination agreement under this section to the office
1908 of each applicable county recorder for recording.

1909 (4) (a) A declaration of termination may require all of the common areas, limited
1910 common areas, and lots of an association to be sold following termination, if the association
1911 includes only lots that are attached.

1912 (b) A declaration of termination under Subsection (4)(a) that requires common areas
1913 and lots to be sold shall set the minimum terms for a sale of real estate in the association.

1914 (5) (a) A declaration of termination for an association containing one or more dwelling
1915 units that are not attached may provide for the sale of the common areas that are not affixed to
1916 the lots.

1917 (b) A declaration of termination under Subsection (5)(a) may not require that the lots
1918 be sold following termination, unless:

1919 (i) the declaration as originally recorded requires that all the lots be sold following
1920 termination; or

1921 (ii) all the lot owners give their consent in the same manner as a deed.

1922 (6) (a) Subject to Subsection (6)(b), while termination proceedings are pending and
1923 before a declaration of termination becomes effective, an association may, on behalf of the lot
1924 owners, contract for the sale of:

1925 (i) the common areas, limited common areas, and lots of an association that includes
1926 only lots that are attached;

1927 (ii) the common areas and limited common areas of an association that contains one or
1928 more lots that are not attached; or

1929 (iii) lots of an association that contains one or more lots that are not attached, if:

1930 (A) the declaration as originally recorded requires that all the lots be sold following
1931 termination; or

1932 (B) all the lot owners give consent in the same manner as a deed.

1933 (b) A contract under Subsection (6)(a) is not binding on the lot owners until:

1934 (i) approved by the lot owners holding the required voting interests as required under
1935 Subsection (2); and

1936 (ii) the requirements of Subsections (4)(b) and (5)(b) are met.

1937 (c) (i) Title to real estate to be sold after termination of an association's governing
1938 documents vests in the association as trustee for the holders of all interests in the lots.

1939 (ii) After title to real estate vests under Subsection (6)(c)(i), the association has the
1940 power to effect the sale of the real estate as provided in this section.

1941 (d) Until a sale of real estate under this section is concluded and the proceeds are
1942 distributed, the association continues in existence and maintains all powers the association had
1943 before termination.

1944 (e) Proceeds from the sale of real property or personal property under this section shall
1945 be distributed:

1946 (i) to lot owners and lien holders as their interests appear:

1947 (A) for real property, in the records of the county in which the property is situated; and

1948 (B) for personal property, in the records of the Department of Commerce; and

1949 (ii) in accordance with Subsections (9) and (10).

1950 (f) (i) Unless otherwise specified in the declaration of termination, a lot owner,
1951 including the lot owner's successor in interest, has an exclusive right to occupy the real estate
1952 that formerly constituted the lot as long as the association holds title to the real estate as

1953 provided in this Subsection (6).

1954 (ii) During the occupancy period described in Subsection (6)(f)(i), a lot owner,
1955 including a lot owner's successor in interest, remains liable for all assessments and other
1956 obligations that this chapter or the declaration imposes on lot owners.

1957 (7) (a) If the real estate over which the association has authority is not to be sold
1958 following termination:

1959 (i) title to the common areas vests in the lot owners as tenants in common in proportion
1960 to the lot owners' interests under Subsection (10); and

1961 (ii) a lien on a lot shifts and encumbers the resulting tenant-in-common estate
1962 according to a lot owner's tenant-in-common interest in the project in the priority that the lien
1963 would have under state law.

1964 (b) While the tenancy in common under Subsection (7)(a) exists, a lot owner, including
1965 the lot owner's successor in interest, has an exclusive right to occupy the portion of the real
1966 estate that formerly constituted the lot.

1967 (8) Following termination of an association, the association shall hold proceeds from
1968 any sale of real estate and proceeds from any sale of the association of lot owners' personal
1969 property assets as trustee for:

1970 (a) the lot owners; and

1971 (b) the holder of a lien described in Subsection (7)(a)(iii).

1972 (9) (a) Following the termination of an association's governing documents, a creditor of
1973 the association holding a lien on a lot may enforce the lien in the same manner as any lien
1974 holder, if the lien was recorded before termination.

1975 (b) A creditor of the association, other than a creditor described in Subsection (9)(a),
1976 shall be treated as if the creditor had perfected a lien on the lots immediately before
1977 termination.

1978 (10) (a) (i) Subject to Subsection (10)(b), the respective interests of the lot owners
1979 referred to in Subsections (6) through (9) are the fair market value, as determined by one or
1980 more independent appraisers selected by the association, of:

1981 (A) the lot owner's lot;

1982 (B) allocated interests; and

1983 (C) any limited common areas immediately before termination of the association.

1984 (ii) (A) The association shall distribute the independent appraiser's decision described
1985 in Subsection (10)(a)(i) to the lot owners.

1986 (B) An independent appraiser's decision is final unless the lot owners of lots allocated
1987 at least 25% of the allocated lot owner votes of the association disapprove the independent
1988 appraiser's decision within 45 days after the association distributes the decision to the lot
1989 owners.

1990 (iii) A lot owner's proportionate interest is determined by dividing the fair market value
1991 of the lot owner's lot and allocated interests by the total fair market value of all lots and
1992 allocated interests of all lots.

1993 (b) If a lot or limited common area is destroyed to the extent that the lot or limited
1994 common area may not be appraised to determine the fair market value of the lot or limited
1995 common area before the destruction, a lot owner's interest is a lot owner's respective common
1996 expense liability immediately before the termination.

1997 (11) (a) (i) Except as provided in Subsection (11)(b):

1998 (A) the foreclosure or enforcement of a lien or encumbrance against the entire
1999 association does not terminate the association;

2000 (B) foreclosure or enforcement of a lien or encumbrance against a portion of an
2001 association, other than withdrawable real estate, does not withdraw that portion from the
2002 association; and

2003 (C) subject to Subsection (11)(a)(ii), foreclosure or enforcement of a lien or
2004 encumbrance against withdrawable real estate, or against common areas that the association
2005 has subjected to a security interest under Section 57-8a-227, does not withdraw the real estate
2006 from the association.

2007 (ii) A person taking title to withdrawable real estate or common areas through a
2008 foreclosure or lien or encumbrance enforcement described in Subsection (11)(a)(i)(C) may
2009 require the association to adopt a declaration amendment and plat amendment that exclude the
2010 real estate from the association.

2011 (b) A person foreclosing a lien or encumbrance against real estate over which an
2012 association has authority may, upon foreclosure, record an instrument that excludes the real
2013 estate from the association if the foreclosed lien or encumbrance:

2014 (i) has priority over the declaration; and

2015 (ii) has not previously been partially released.

2016 Section 47. Section **76-6-206** is amended to read:

2017 **76-6-206. Criminal trespass.**

2018 (1) As used in this section, "enter" means intrusion of the entire body.

2019 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
2020 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section
2021 76-10-2402 regarding commercial obstruction:

2022 (a) the person enters or remains unlawfully on property and:

2023 (i) intends to cause annoyance or injury to any person or damage to any property,
2024 including the use of graffiti as defined in Section 76-6-107;

2025 (ii) intends to commit any crime, other than theft or a felony; or

2026 (iii) is reckless as to whether his presence will cause fear for the safety of another;

2027 (b) knowing the person's entry or presence is unlawful, the person enters or remains on
2028 property as to which notice against entering is given by:

2029 (i) personal communication to the actor by the owner or someone with apparent
2030 authority to act for the owner;

2031 (ii) fencing or other enclosure obviously designed to exclude intruders; or

2032 (iii) posting of signs reasonably likely to come to the attention of intruders; or

2033 (c) the person enters a condominium unit in violation of Subsection 57-8-7[(7)](8).

2034 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was
2035 committed in a dwelling, in which event it is a class A misdemeanor.

2036 (b) A violation of Subsection (2)(c) is an infraction.

2037 (4) It is a defense to prosecution under this section that:

2038 (a) the property was open to the public when the actor entered or remained; and

2039 (b) the actor's conduct did not substantially interfere with the owner's use of the
2040 property.

2041 Section 48. **Repealer.**

2042 This bill repeals:

2043 Section **57-8a-221, Reincorporation of terminated or dissolved association.**

Legislative Review Note
as of 6-26-12 3:48 PM

Office of Legislative Research and General Counsel