

## **Title 57. Real Estate**

### **Chapter 1 Conveyances**

#### **57-1-1 Definitions.**

As used in this title:

- (1) "Certified copy" means a copy of a document certified by its custodian to be a true and correct copy of the document or the copy of the document maintained by the custodian, where the document or copy is maintained under the authority of the United States, the state of Utah or any of its political subdivisions, another state, a court of record, a foreign government, or an Indian tribe.
- (2) "Document" means every instrument in writing, including every conveyance, affecting, purporting to affect, describing, or otherwise concerning any right, title, or interest in real property, except wills and leases for a term not exceeding one year.
- (3) "Real property" or "real estate" means any right, title, estate, or interest in land, including all nonextracted minerals located in, on, or under the land, all buildings, fixtures and improvements on the land, and all water rights, rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, possessory rights, claims, including mining claims, privileges, and appurtenances belonging to, used, or enjoyed with the land or any part of the land.
- (4) "Stigmatized" means:
  - (a) the site or suspected site of a homicide, other felony, or suicide;
  - (b) the dwelling place of a person infected, or suspected of being infected, with the Human Immunodeficiency Virus, or any other infectious disease that the Utah Department of Health determines cannot be transferred by occupancy of a dwelling place; or
  - (c) property that has been found to be contaminated, and that the local health department has subsequently found to have been decontaminated in accordance with Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.

Amended by Chapter 249, 2004 General Session

#### **57-1-2 Words of inheritance not required to pass fee.**

The term "heirs," or other technical words of inheritance or succession, are not requisite to transfer a fee in real estate.

No Change Since 1953

#### **57-1-3 Grant of fee simple presumed.**

A fee simple title is presumed to be intended to pass by a conveyance of real estate, unless it appears from the conveyance that a lesser estate was intended.

No Change Since 1953

#### **57-1-4 Attempted conveyance of more than grantor owns -- Effect.**

A conveyance made by an owner of an estate for life or years, purporting to convey a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

No Change Since 1953

**57-1-5 Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.**

- (1)
  - (a)
    - (i) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.
    - (ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established between two or more people.
    - (iii) Joint tenancy may not be established between a person and an entity or organization, including:
      - (A) a corporation;
      - (B) a trustee of a trust; or
      - (C) a partnership.
    - (iv) Joint tenancy may not be established between an entity or organization and another entity or organization.
  - (b) Every ownership interest in real estate that does not qualify for the joint tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.
- (2)
  - (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.
  - (b)
    - (i) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or words of similar import declare a tenancy in common.
    - (ii) Use of words "and/or" in the context of an ownership interest declare a tenancy in common unless accompanied by joint tenancy language described in Subsection (2)(a), which creates a joint tenancy.
- (3) A person who owns real property creates a joint tenancy in himself or herself and another or others:
  - (a) by making a transfer to himself or herself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or
  - (b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).
- (4) In all cases, the interest of joint tenants shall be equal and undivided.
- (5)
  - (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or another, the joint tenancy is severed and converted into a tenancy in common.
  - (b) If there is more than one joint tenant remaining after a joint tenant severs a joint tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in joint tenancy.

- (6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.
- (7) Tenants by the entirety are considered to be joint tenants.
- (8) Tenants holding title as community property are considered to be joint tenants.

Amended by Chapter 88, 2011 General Session

**57-1-5.1 Termination of an interest in real estate -- Affidavit.**

- (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional interest in real estate may be terminated by an affidavit that:
  - (a) meets the requirements of Subsection (2); and
  - (b) is recorded in the office of the recorder of the county in which the affected property is located.
- (2) Each affidavit required by Subsection (1) shall:
  - (a) cite the interest that is being terminated;
  - (b) contain a legal description of the real property that is affected;
  - (c) reference the entry number and the book and page of the instrument creating the interest to be terminated; and
  - (d) if the termination is the result of a death, have attached as an exhibit, a copy of the death certificate or other document issued by a governmental agency as described in Section 75-1-107 certifying the death.
- (3) The affidavit required by Subsection (1) may be in substantially the following form:

"Affidavit

State of Utah                    )

) ss

County of \_\_\_\_\_)

I, (name of affiant), being of legal age and being first duly sworn, depose and state as follows: (The name of the deceased person), the decedent in the attached certificate of death or other document witnessing death is the same person as (the name of the deceased person) named as a party in the document dated (date of document) as entry \_\_\_\_\_ in book \_\_\_\_\_, page \_\_\_\_\_ in the records of the (name of county) County Recorder.

This affidavit is given to terminate the decedent's interest in the following described property located in \_\_\_\_\_ County, State of Utah: (description of the property).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of affiant)

Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary public"

Amended by Chapter 381, 2010 General Session

**57-1-10 After-acquired title passes.**

- (1) If any person conveys any real estate by conveyance purporting to convey the real estate in fee simple absolute, and at the time of the conveyance the person does not have the legal estate in the real estate, but afterwards acquires the legal estate:
  - (a) the legal estate subsequently acquired immediately passes to the grantee, the grantee's heirs, successors, or assigns; and

(b) the conveyance is as valid as if the legal estate had been in the grantor at the time of the conveyance.

(2) Subsection (1) does not apply to a conveyance by quitclaim deed.

Amended by Chapter 287, 2007 General Session

**57-1-11 Claimant out of possession may convey.**

Any person claiming title to any real estate may, notwithstanding there may be an adverse possession thereof, sell and convey his interest therein in the same manner and with the same effect as if he were in the actual possession thereof.

No Change Since 1953

**57-1-12 Form of warranty deed -- Effect.**

(1) Conveyances of land may be substantially in the following form:

**WARRANTY DEED**

\_\_\_\_ (here insert name), grantor, of \_\_\_\_ (insert place of residence), hereby conveys and warrants to \_\_\_\_ (insert name), grantee, of \_\_\_\_ (insert place of residence), for the sum of \_\_\_\_ dollars, the following described tract \_\_\_\_ of land in \_\_\_\_ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this \_\_\_\_\_(month\day\year).

(2) A warranty deed when executed as required by law shall have the effect of a conveyance in fee simple to the grantee, the grantee's heirs, and assigns:

- (a) of the premises named in the warranty deed;
- (b) of all the appurtenances, rights, and privileges belonging to the premises named in the warranty deed; and
- (c) with covenants from the grantor, the grantor's heirs, and personal representatives, that:
  - (i) the grantor lawfully owns fee simple title to and has the right to immediate possession of the premises;
  - (ii) the grantor has good right to convey the premises;
  - (iii) the grantor guarantees the grantee, the grantee's heirs, and assigns in the quiet possession of the premises;
  - (iv) the premises are free from all encumbrances; and
  - (v) the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the premises in the grantee, the grantee's heirs, and assigns against all lawful claims whatsoever.

(3) Any exception to the covenants described in Subsection (2)(c) may be briefly inserted in the warranty deed following the description of the land.

Amended by Chapter 55, 2007 General Session

**57-1-12.5 Form of special warranty deed -- Effect.**

(1) Conveyances of land may be substantially in the following form:

**SPECIAL WARRANTY DEED**

\_\_\_\_ (here insert name), grantor, of \_\_\_\_ (insert place of residence), hereby conveys and warrants against all who claim by, through, or under the grantor to \_\_\_\_ (insert name), grantee, of \_\_\_\_ (insert place of residence), for the sum of \_\_\_\_ dollars, the following described tract \_\_\_\_ of land in \_\_\_\_ County, Utah, to wit: (here describe the property).

Witness the hand of said grantor this \_\_\_\_\_(month\day\year).

- (2) A special warranty deed when executed as required by law shall have the effect of:
  - (a) a conveyance in fee simple to the grantee, the grantee's heirs, and assigns, of the property named in the special warranty deed, together with all the appurtenances, rights, and privileges belonging to the property; and
  - (b) a covenant from the grantor, the grantor's heirs, and personal representatives, that:
    - (i) the granted property is free from all encumbrances made by that grantor; and
    - (ii) the grantor, the grantor's heirs, and personal representatives will forever warrant and defend the title of the property in the grantee, the grantee's heirs, and assigns against any lawful claim and demand of the grantor and any person claiming or to claim by, through, or under the grantor.
- (3) Any exceptions to a covenant described in Subsection (2)(b) may be briefly inserted in the deed following the description of the land.

Enacted by Chapter 213, 2005 General Session

**57-1-13 Form of quitclaim deed -- Effect.**

- (1) A conveyance of land may also be substantially in the following form  
:

**"QUITCLAIM DEED**

\_\_\_\_ (here insert name), grantor, of \_\_\_\_ (insert place of residence), hereby quitclaims to \_\_\_\_ (insert name), grantee, of \_\_\_\_ (here insert place of residence), for the sum of \_\_\_\_ dollars, the following described tract \_\_\_\_ of land in \_\_\_\_ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this \_\_\_\_\_(month\day\year).

A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance."

- (2) For a boundary line agreement operating as a quitclaim deed as described in Section 57-1-45, the boundary line agreement shall include, in addition to a legal description of the agreed upon boundary line:
  - (a) the signature of each grantor;
  - (b) a sufficient acknowledgment for each grantor's signature; and
  - (c) the address of each grantee for assessment purposes.

Amended by Chapter 88, 2011 General Session

**57-1-14 Form of mortgage -- Effect.**

A mortgage of land may be substantially in the following form:

**MORTGAGE**

\_\_\_\_ (here insert name), mortgagor, of \_\_\_\_ (insert place of residence), hereby mortgages to \_\_\_\_ (insert name), mortgagee, of \_\_\_\_ (insert place of residence), for the sum of \_\_\_\_ dollars, the following described tract \_\_\_\_ of land in \_\_\_\_ County, Utah, to wit: (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of \_\_\_\_ dollars attorneys' fee in case of foreclosure.

Witness the hand of said mortgagor this \_\_\_\_\_(month\day\year).

A mortgage when executed as required by law shall have the effect of a conveyance of the land therein described, together with all the rights, privileges and appurtenances thereunto belonging, to the mortgagee, his heirs, assigns, and legal representatives, as security for the payment of the indebtedness thereon set forth, with covenants from the mortgagor of general warranty of title, and that all taxes and assessments levied and assessed upon the land described, during the continuance of the mortgage, will be paid previous to the day appointed for the sale of such lands for taxes; and may be foreclosed as provided by law upon any default being made in any of the conditions thereof as to payment of either principal, interest, taxes, or assessments.

Amended by Chapter 75, 2000 General Session

**57-1-15 Effect of recording assignment of mortgage.**

The recording of an assignment of a mortgage is not in itself considered notice of the assignment to the mortgagor, his heirs, or personal representatives so as to invalidate any payment made by them or either of them to the mortgagee.

Repealed and Re-enacted by Chapter 155, 1988 General Session

**57-1-19 Trust deeds -- Definitions of terms.**

As used in Sections 57-1-20 through 57-1-36:

- (1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest.
- (2) "Trustor" means the person conveying real property by a trust deed as security for the performance of an obligation.
- (3) "Trust deed" means a deed executed in conformity with Sections 57-1-20 through 57-1-36 and conveying real property to a trustee in trust to secure the performance of an obligation of the trustor or other person named in the deed to a beneficiary.
- (4) "Trustee" means a person to whom title to real property is conveyed by trust deed, or his successor in interest.
- (5) "Real property" has the same meaning as set forth in Section 57-1-1.
- (6) "Trust property" means the real property conveyed by the trust deed.

Amended by Chapter 155, 1988 General Session

**57-1-20 Transfers in trust of real property -- Purposes -- Effect.**

Transfers in trust of real property may be made to secure the performance of an obligation of the trustor or any other person named in the trust deed to a beneficiary. All right, title, interest and claim in and to the trust property acquired by the trustor, or the trustor's successors in interest, subsequent to the execution of the trust deed, shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed as if acquired before execution of the trust deed.

Amended by Chapter 236, 2001 General Session

**57-1-21 Trustees of trust deeds -- Qualifications.**

- (1)
  - (a) The trustee of a trust deed shall be:

- (i) any active member of the Utah State Bar who maintains a place within the state where the trustor or other interested parties may meet with the trustee to:
    - (A) request information about what is required to reinstate or payoff the obligation secured by the trust deed;
    - (B) deliver written communications to the lender as required by both the trust deed and by law;
    - (C) deliver funds to reinstate or payoff the loan secured by the trust deed; or
    - (D) deliver funds by a bidder at a foreclosure sale to pay for the purchase of the property secured by the trust deed;
  - (ii) any depository institution as defined in Section 7-1-103, or insurance company authorized to do business and actually doing business in Utah under the laws of Utah or the United States;
  - (iii) any corporation authorized to conduct a trust business and actually conducting a trust business in Utah under the laws of Utah or the United States;
  - (iv) any title insurance company or agency that:
    - (A) holds a certificate of authority or license under Title 31A, Insurance Code, to conduct insurance business in the state;
    - (B) is actually doing business in the state; and
    - (C) maintains a bona fide office in the state;
  - (v) any agency of the United States government; or
  - (vi) any association or corporation that is licensed, chartered, or regulated by the Farm Credit Administration or its successor.
- (b) For purposes of this Subsection (1), a person maintains a bona fide office within the state if that person maintains a physical office in the state:
- (i) that is open to the public;
  - (ii) that is staffed during regular business hours on regular business days; and
  - (iii) at which a trustor of a trust deed may in person:
    - (A) request information regarding a trust deed; or
    - (B) deliver funds, including reinstatement or payoff funds.
- (c) This Subsection (1) is not applicable to a trustee of a trust deed existing prior to May 14, 1963, nor to any agreement that is supplemental to that trust deed.
- (d) The amendments in Laws of Utah 2002, Chapter 209, to this Subsection (1) apply only to a trustee that is appointed on or after May 6, 2002.
- (2) The trustee of a trust deed may not be the beneficiary of the trust deed, unless the beneficiary is qualified to be a trustee under Subsection (1)(a)(ii), (iii), (v), or (vi).
- (3) The power of sale conferred by Section 57-1-23 may only be exercised by the trustee of a trust deed if the trustee is qualified under Subsection (1)(a)(i) or (iv).
- (4) A trust deed with an unqualified trustee or without a trustee shall be effective to create a lien on the trust property, but the power of sale and other trustee powers under the trust deed may be exercised only if the beneficiary has appointed a qualified successor trustee under Section 57-1-22.

Amended by Chapter 250, 2008 General Session

**57-1-21.5 Trustees of trust deeds -- Duties -- Prohibited conduct -- Penalties.**

- (1) Until a beneficiary under a trust deed or the beneficiary's agent provides a trustee of the trust deed written instructions directing the trustee to exercise powers under this chapter, the trustee has no duty or obligation to the beneficiary or to the agent of a beneficiary.

- (2) Except as provided in Subsection (3), the following duties of a trustee may not be delegated:
  - (a) a preparation and execution of:
    - (i) a notice of default and election to sell;
    - (ii) a cancellation of notice of default and election to sell;
    - (iii) a notice of sale; and
    - (iv) a trustee's deed;
  - (b) the notification of foreclosure through publication, posting, and certified or registered mail;
  - (c) the receiving and responding to requests for reinstatement or payoff requirements; and
  - (d) the handling of reinstatement or payoff funds.
- (3) Nothing in this section is intended to prevent:
  - (a) a trustee from using clerical or office staff:
    - (i) that is under the trustee's direct and immediate supervision; and
    - (ii) to assist in the duties described in Subsection (2);
  - (b) a trustee from using the services of others for publication, posting, marketing, or advertising the sale; or
  - (c) a beneficiary of a trust deed or the servicing agent of the beneficiary from directly performing the functions described in Subsection (2)(c) or (d).
- (4) The amendments in Laws of Utah 2002, Chapter 209, to Subsection (3) do not apply to a foreclosure if the notice of default related to the foreclosure was filed before May 6, 2002.
- (5)
  - (a) Except as provided in Subsection (5)(c), a trustee may not solicit or receive any fee for referring business to a third party.
  - (b) A fee prohibited under Subsection (5)(a) includes:
    - (i) a commission;
    - (ii) a referral based fee, including a fee for the referral of:
      - (A) title work;
      - (B) posting services; or
      - (C) publishing services; or
    - (iii) a fee similar to a fee described in Subsection (5)(b)(i) or (ii).
  - (c) Subsection (5)(a) does not apply to:
    - (i) a fee received by a trustee for the trustee acting as co-legal counsel, if the trustee is otherwise permitted by law to receive fees as co-legal counsel; or
    - (ii) a nonpreferred participation in net profits based upon an ownership interest or franchise relationship that is not otherwise prohibited by law.
- (6) A trustee may not require the following to pay any costs that exceed the actual costs incurred by the trustee:
  - (a) a trustor reinstating or paying off a loan; or
  - (b) a beneficiary acquiring property through foreclosure.
- (7)
  - (a) A person that violates Subsection (5) or (6) is guilty of a class B misdemeanor.
  - (b) In addition to a person's liability under Subsection (7)(a), if a person violates Subsection (5) or (6), the person is liable to the trustor for an amount equal to the greater of:
    - (i) the actual damages of the trustor as a result of the violation; or
    - (ii) \$1,000.
  - (c) In an action brought under Subsection (7)(b), the party that does not prevail in the action that is brought under Subsection (7)(b) shall pay the attorney fees of the prevailing party.

Amended by Chapter 395, 2013 General Session

**57-1-22 Successor trustees -- Appointment by beneficiary -- Effect -- Substitution of trustee -- Recording -- Form.**

- (1)
- (a) The beneficiary may appoint a successor trustee at any time by filing an appointment of trustee or a substitution of trustee for record in the office of the county recorder of each county in which the trust property or a part of the trust property is located.
  - (b) The trustee appointed under Subsection (1)(a) has the power, duties, authority, and title described in the deed of trust.
  - (c) The beneficiary may, by express provision in the appointment of trustee or substitution of trustee, ratify and confirm an action taken on the beneficiary's behalf by the new trustee prior to the recording of the substitution of trustee.
- (2) An appointment of trustee or a substitution of trustee shall:
- (a) identify the trust deed by stating:
    - (i) the names of the original parties to the trust deed;
    - (ii) the date of recordation; and
    - (iii)
      - (A) the book and page where the trust deed is recorded; or
      - (B) the entry number;
  - (b) include the legal description of the trust property;
  - (c) state the name and address of the new trustee; and
  - (d) be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.
- (3)
- (a) If not previously recorded at the time of recording a notice of default, the successor trustee shall file for record, in the office of the county recorder of each county in which the trust property or some part of it is situated, the appointment of trustee or substitution of trustee.
  - (b) A copy of the appointment of trustee or the substitution of trustee shall be sent in the manner provided in Subsection 57-1-26(2) to any:
    - (i) person who requests a copy of any notice of default or notice of sale under Subsection 57-1-26(1)(a); and
    - (ii) person who is a party to the trust deed to whom a copy of a notice of default would be required to be mailed by Subsection 57-1-26(3).
- (4) An appointment of trustee or a substitution of trustee shall be in substantially the following form:
- "Appointment or Substitution of Trustee
- \_\_\_\_\_ (name and address of appointed or substituted trustee)
- \_\_\_\_\_ is hereby appointed trustee under the trust deed executed by \_\_\_\_\_ as trustor, in which \_\_\_\_\_ is named beneficiary and \_\_\_\_\_ as trustee, and filed for record \_\_\_\_\_ (month \day\year), and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, (Utah or filed for record \_\_\_\_\_ (month\day\year), with recorder's entry No. \_\_\_\_\_, \_\_\_\_\_ County), Utah.
- (Insert legal description)
- Signature \_\_\_\_\_
- (Certificate of Acknowledgment)"
- (5)
- (a) A trustee of a trust deed may, in accordance with this Subsection (5), resign as trustee by filing for record in the office of the recorder of each county in which the trust property is located, a resignation of trustee.

- (b) A trustee's resignation under this Subsection (5) takes effect upon the recording of a resignation of trustee.
- (c) A resignation of trustee shall be in substantially the following form: "Resignation of Trustee  
\_\_\_\_\_ (insert name and address of resigned trustee) hereby resigns as trustee under the trust deed executed by (insert name of trustor) as trustor, in which (insert name of the beneficiary) is named beneficiary and (insert name of trustee) as trustee, and filed for record (insert the month, day, and year the trust deed was recorded), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_\_ County, Utah or with recorder's entry no. \_\_\_\_\_, \_\_\_\_\_ County, Utah.  
(Insert legal description)  
Signature \_\_\_\_\_  
(Certificate of acknowledgment)"
- (d)
  - (i) Within three days after the day on which a trustee resigns under this Subsection (5), the trustee shall provide written notice of the trustee's resignation to each party in any legal action pending against the trustee that is related to or arises from the trustee's performance of a duty of a trustee.
  - (ii) Except as provided in Subsection (5)(d)(iv), within 10 days after the day on which a party is provided a notice described in Subsection (5)(d)(i), the party may move the court to substitute the beneficiary of the trust deed as defendant in the action in the place of the trustee until a successor trustee is appointed.
  - (iii) Except as provided in Subsection (5)(d)(iv), if, after the expiration of the time described in Subsection (5)(d)(ii), a party does not move the court to substitute the beneficiary or the successor trustee in place of the trustee as defendant, the court shall dismiss with prejudice all claims against the withdrawn trustee.
  - (iv) Subsection (5)(d)(ii) and (5)(d)(iii) do not apply to a cause of action against a trustee that alleges negligent or intentional misconduct by the withdrawn trustee.
- (e)
  - (i) The withdrawal of a trustee of a trust deed under this section does not affect the validity or the priority of the trust deed.
  - (ii) After a trustee withdraws under this part, only a qualified successor trustee appointed by the beneficiary under Section 57-1-22 may exercise trustee powers, including the power of sale.

Amended by Chapter 305, 2016 General Session

**57-1-22.1 Effect on trustee of a legal action involving a trust.**

- (1) A party in a legal action that involves a trust deed is not required to join the trustee as a party in the action unless the legal action pertains to a breach of the trustee's obligations under this chapter or under the trust deed.
- (2) A trustee of a trust deed is required to act pursuant to a court order against the trust deed beneficiary to the extent the order requires an action that the trustee is authorized to take under this chapter or under the trust deed.
- (3) If a party in a legal action that involves a trust deed joins the trustee in an action that does not pertain to the trustee's obligations under this chapter or under the trust deed, the court shall dismiss the action against the trustee and award the trustee reasonable attorney fees arising from the trustee being joined in the legal action.

Enacted by Chapter 305, 2016 General Session

**57-1-22.5 Notice of assignment of beneficial interest.**

- (1) A recorded notice of assignment of a beneficial interest, executed by the assigning beneficiary, is prima facie evidence of an assignment of the trust deed as described in the notice.
- (2) The notice of assignment of a beneficial interest shall:
  - (a) state:
    - (i) the names of the original parties to the trust deed;
    - (ii) the date the trust deed was recorded;
    - (iii)
      - (A) the book and page where the trust deed is recorded; or
      - (B) the entry number where the trust deed is recorded;
    - (iv) the legal description of the trust property; and
    - (v) the name and address of the new beneficiary; and
  - (b) be in substantially the following form:

**Notice of Assignment of Beneficial Interest**

The undersigned hereby gives notice that it assigned and transferred all of its rights, title, and interest under the trust deed described below, together with all of the indebtedness secured thereby, to

(insert name and address of current beneficiary)

The trust deed was executed by \_\_\_\_\_ as trustor, in which \_\_\_\_\_ was the named beneficiary, \_\_\_\_\_ was the named trustee, and it was filed for record \_\_\_\_\_ (month/date/year), (in Book \_\_, Page \_\_\_\_, Records of \_\_\_\_\_ County Recorder)/(as entry No. \_\_\_\_\_, \_\_\_\_\_ County), Utah. This notice of assignment of beneficial interest affects the property located in \_\_\_\_\_ County, State of Utah, and is described more specifically as follows:

(insert legal description)

Dated \_\_\_\_\_

Signature \_\_\_\_\_

(Certificate of Acknowledgment)

Enacted by Chapter 208, 2013 General Session

**57-1-23 Sale of trust property -- Power of trustee -- Foreclosure of trust deed.**

The trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) is given the power of sale by which the trustee may exercise and cause the trust property to be sold in the manner provided in Sections 57-1-24 and 57-1-27, after a breach of an obligation for which the trust property is conveyed as security; or, at the option of the beneficiary, a trust deed may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision for it in the trust deed.

Amended by Chapter 236, 2001 General Session

**57-1-23.5 Civil liability for unauthorized person who exercises power of sale.**

- (1) As used in this section:
  - (a) "Unauthorized person" means a person who does not qualify as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).
  - (b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized person.

- (2)
  - (a) An unauthorized person who conducts an unauthorized sale is liable to the trustor for the actual damages suffered by the trustor as a result of the unauthorized sale or \$2,000, whichever is greater.
  - (b) In an action under Subsection (2)(a), the court shall award a prevailing plaintiff the plaintiff's costs and attorney fees.

Enacted by Chapter 228, 2011 General Session

**57-1-24 Sale of trust property by trustee -- Notice of default.**

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

- (1) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default, identifying the trust deed by stating the name of the trustor named in the trust deed and giving the book and page, or the recorder's entry number, where the trust deed is recorded and a legal description of the trust property, and containing a statement that a breach of an obligation for which the trust property was conveyed as security has occurred, and setting forth the nature of that breach and of the trustee's election to sell or cause to be sold the property to satisfy the obligation;
- (2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and
- (3) after the lapse of at least three months the trustee shall give notice of sale as provided in Sections 57-1-25 and 57-1-26.

Amended by Chapter 236, 2001 General Session

**57-1-24.3 Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

- (1) As used in this section:
  - (a) "Beneficiary" means a financial institution that is the record owner of the beneficial interest under a trust deed, including a successor in interest.
  - (b) "Current address" means the address at which a person has agreed or requested to receive notices.
  - (c) "Default trustor" means a trustor under a trust deed that secures a loan that the beneficiary or servicer claims is in default.
  - (d) "Financial institution" means:
    - (i) a state or federally chartered:
      - (A) bank;
      - (B) savings and loan association;
      - (C) savings bank;
      - (D) industrial bank; or
      - (E) credit union; or
    - (ii) any other entity under the jurisdiction of the commissioner of financial institutions as provided in Title 7, Financial Institutions Act.
  - (e) "Foreclosure relief" means a mortgage modification program or other foreclosure relief option offered by a beneficiary or servicer.

- (f) "Loan" means an obligation incurred for personal, family, or household purposes, evidenced by a promissory note or other credit agreement for which a trust deed encumbering owner-occupied residential property is given as security.
  - (g) "Owner-occupied residential property" means real property that is occupied by its owner as the owner's primary residence.
  - (h) "Servicer" means an entity, retained by the beneficiary:
    - (i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan; or
    - (ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to residential mortgage loans.
  - (i) "Single point of contact" means a person who, as the designated representative of the beneficiary or servicer, is authorized to:
    - (i) coordinate and ensure effective communication with a default trustor concerning:
      - (A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust property; and
      - (B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and
    - (ii) represent the beneficiary or servicer with respect to all foreclosure proceedings initiated by the beneficiary or servicer relating to the trust property, including:
      - (A) the filing of a notice of default under Section 57-1-24 and any cancellation of a notice of default;
      - (B) the publication of a notice of trustee's sale under Section 57-1-25; and
      - (C) the postponement of a trustee's sale under Section 57-1-27 or this section.
- (2)
- (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary or servicer shall:
    - (i) designate a single point of contact; and
    - (ii) send written notice to the default trustor at the default trustor's current address or, if none is provided, the address of the property described in the trust deed.
  - (b) A notice under Subsection (2)(a)(ii) shall:
    - (i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of default;
    - (ii) state:
      - (A) the nature of the default;
      - (B) the total amount the default trustor is required to pay in order to cure the default and avoid the filing of a notice of default, itemized by the type and amount of each component part of the total cure amount; and
      - (C) a date, not fewer than 30 days after the day on which the beneficiary or servicer sends the notice, by which the default trustor must pay the amount to cure the default and avoid the filing of a notice of default;
    - (iii) disclose the name, telephone number, email address, and mailing address of the single point of contact designated by the beneficiary or servicer; and
    - (iv) direct the default trustor to contact the single point of contact regarding foreclosure relief available through the beneficiary or servicer for which a default trustor may apply, if the beneficiary or servicer offers foreclosure relief.
- (3) Before the expiration of the three-month period described in Subsection 57-1-24(2), a default trustor may apply directly with the single point of contact for any available foreclosure relief.
- (4) A default trustor shall, within the time required by the beneficiary or servicer, provide all financial and other information requested by the single point of contact to enable the beneficiary

- or servicer to determine whether the default trustor qualifies for the foreclosure relief for which the default trustor applies.
- (5) The single point of contact shall:
    - (a) inform the default trustor about and make available to the default trustor any available foreclosure relief;
    - (b) undertake reasonable and good faith efforts, consistent with applicable law, to consider the default trustor for foreclosure relief for which the default trustor is eligible;
    - (c) ensure timely and appropriate communication with the default trustor concerning foreclosure relief for which the default trustor applies; and
    - (d) notify the default trustor by written notice of the decision of the beneficiary or servicer regarding the foreclosure relief for which the default trustor applies.
  - (6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to the trust property of a default trustor who has applied for foreclosure relief until after the single point of contact provides the notice required by Subsection (5)(d).
  - (7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with respect to the trust property of a default trustor who has applied for foreclosure relief if, in the exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:
    - (a) determines that the default trustor does not qualify for the foreclosure relief for which the default trustor has applied; or
    - (b) elects not to enter into a written agreement with the default trustor to implement the foreclosure relief.
  - (8)
    - (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in order to allow further time for negotiations relating to foreclosure relief.
    - (b) A postponement of a trustee's sale under Subsection (8)(a) does not require the trustee to file for record a new or additional notice of default under Section 57-1-24.
  - (9) A beneficiary or servicer shall cause the cancellation of a notice of default filed under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:
    - (a) determines that the default trustor qualifies for the foreclosure relief for which the default trustor has applied; and
    - (b) enters into a written agreement with the default trustor to implement the foreclosure relief.
  - (10) This section may not be construed to require a beneficiary or servicer to:
    - (a) establish foreclosure relief; or
    - (b) approve an application for foreclosure relief submitted by a default trustor.
  - (11) A beneficiary and servicer shall each take reasonable measures to ensure that their respective practices in the foreclosure of owner-occupied residential property and any foreclosure relief with respect to a loan:
    - (a) comply with all applicable federal and state fair lending statutes; and
    - (b) ensure appropriate treatment of default trustors in the foreclosure process.
  - (12) A beneficiary or servicer is considered to have complied with the requirements of this section if the beneficiary or servicer designates and uses assigned personnel in compliance with 12 C.F.R. 1024, Real Estate Settlement Procedures Act, or other federal law, rules, regulations, guidance, or guidelines governing the beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, or the Consumer Financial Protection Bureau.
  - (13) The failure of a beneficiary or servicer to comply with a requirement of this section does not affect the validity of a trustee's sale of the trust property to:

- (a) a bona fide purchaser; or
  - (b) a beneficiary of the trust deed after the trust property is sold to a bona fide purchaser.
- (14) Subsection (13) does not affect:
- (a) a beneficiary's or a servicer's liability under applicable law; or
  - (b) a default trustor's right to pursue other available remedies, including money damages, against a beneficiary or a servicer.

Amended by Chapter 266, 2014 General Session

**57-1-25 Notice of trustee's sale -- Description of property -- Time and place of sale.**

- (1) The trustee shall give written notice of the time and place of sale particularly describing the property to be sold:
- (a) by publication of the notice:
    - (i)
      - (A) at least three times;
      - (B) at least once a week for three consecutive weeks;
      - (C) the last publication to be at least 10 days but not more than 30 days before the date the sale is scheduled; and
      - (D) in a newspaper having a general circulation in each county in which the property to be sold, or some part of the property to be sold, is situated; and
    - (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is scheduled;
  - (b) by posting the notice:
    - (i) at least 20 days before the date the sale is scheduled; and
    - (ii)
      - (A) in some conspicuous place on the property to be sold; and
      - (B) at the office of the county recorder of each county in which the trust property, or some part of it, is located; and
  - (c) if the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property:
    - (i) by posting the notice, including the statement required under Subsection (3)(b):
      - (A) on the primary door of each dwelling unit on the property to be sold, if the property to be sold has fewer than nine dwelling units; or
      - (B) in at least three conspicuous places on the property to be sold, in addition to the posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more dwelling units; or
    - (ii) by mailing the notice, including the statement required under Subsection (3)(b), to the occupant of each dwelling unit on the property to be sold.
- (2)
- (a) The sale shall be held at the time and place designated in the notice of sale.
  - (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.
  - (c) The place of sale shall be clearly identified in the notice of sale under Subsection (1) and shall be at a courthouse serving the county in which the property to be sold, or some part of the property to be sold, is located.
- (3)
- (a) The notice of sale shall be in substantially the following form:

**Notice of Trustee's Sale**

The following described property will be sold at public auction to the highest bidder, payable in lawful money of the United States at the time of sale, at (insert location of sale)

\_\_\_\_\_ on \_\_\_\_\_(month\day\year), at \_\_.m. of said day, for the purpose of foreclosing a trust deed originally executed by \_\_\_\_ (and \_\_\_\_\_, his wife,) as trustors, in favor of \_\_\_\_\_, covering real property located at \_\_\_\_\_, and more particularly described as:

(Insert legal description)

The current beneficiary of the trust deed is \_\_\_\_\_ and the record owners of the property as of the recording of the notice of default are \_\_\_\_\_ and \_\_\_\_\_.

Dated \_\_\_\_\_(month\day\year).

\_\_\_\_\_  
Trustee

- (b) If the stated purpose of the obligation for which the trust deed was given as security is to finance residential rental property, the notice required under Subsection (1)(c) shall include a statement, in at least 14-point font, substantially as follows: "Notice to Tenant

As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be sold at public auction to the highest bidder unless the default in the obligation secured by this property is cured. If the property is sold, you may be allowed under Utah Code Section 57-1-25.5 to continue to occupy your rental unit until your rental agreement expires, or until 45 days after the date you are served with a notice to vacate, whichever is later. If your rental or lease agreement expires after the 45-day period, you may need to provide a copy of your rental or lease agreement to the new owner to prove your right to remain on the property longer than 45 days after the sale of the property.

You must continue to pay your rent and comply with other requirements of your rental or lease agreement or you will be subject to eviction for violating your rental or lease agreement.

The new owner or the new owner's representative will probably contact you after the property is sold with directions about where to pay rent.

The new owner of the property may or may not want to offer to enter into a new rental or lease agreement with you at the expiration of the period described above."

- (4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a defect in that notice may not be the basis for challenging or invalidating a trustee's sale.
- (5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.

Amended by Chapter 325, 2016 General Session

**57-1-25.5 Foreclosure of residential rental property -- Effect on tenancy.**

(1) As used in this section:

- (a) "Bona fide residential rental agreement" means an agreement, for a property secured by a trust deed:
  - (i) that was the result of an arm's-length transaction;
  - (ii) established before:
    - (A) the trustee records a notice of default for the property under Section 57-1-24; or
    - (B) the trustee or beneficiary files an action to foreclose the trust property under Title 78B, Chapter 6, Part 9, Mortgage Foreclosure;
  - (iii) that provides an individual the right to exclusive use and occupancy of the residential property:
    - (A) on an at-will basis; or
    - (B) for a period specified by the agreement that is no longer than twelve months; and

- (iv) that requires the individual to pay rent in an amount that:
    - (A) is not substantially less than fair market rent for the property; or
    - (B) is less than fair market rent due to a federal, state, or local subsidy.
  - (b) "Bona fide tenant" means an individual who:
    - (i) has the right to occupy a residential property under a bona fide residential rental agreement;
    - (ii) is not the trustor; and
    - (iii) is not the trustor's child, spouse, or parent.
  - (c) "Foreclosed rental property" means a property that:
    - (i) is the subject of a bona fide residential rental agreement; and
    - (ii)
      - (A) is the subject of a trustee's sale as provided in this chapter; or
      - (B) is foreclosed under Title 78B, Chapter 6, Part 9, Mortgage Foreclosure.
  - (d) "New owner" means the immediate successor in interest of a foreclosed rental property following a foreclosure or trustee's sale of the property.
- (2)
- (a) Except as provided in Subsection (2)(b), a new owner assumes ownership of a foreclosed rental property subject to a bona fide tenant's right to occupy the foreclosed rental property:
    - (i) according to the terms of a bona fide residential rental agreement; and
    - (ii) until the end of the term of the bona fide residential rental agreement.
  - (b) Subject to Subsection (3), a new owner who intends to occupy a foreclosed rental property as the new owner's primary residence may terminate:
    - (i) the bona fide residential rental agreement; and
    - (ii) the bona fide tenant's occupancy of the foreclosed rental property.
- (3)
- (a) A new owner who terminates a bona fide tenant's occupancy of a foreclosed rental property shall serve, to the bona fide tenant, a notice to vacate:
    - (i) at least 45 days before the day on which the new owner requires the bona fide tenant to vacate the foreclosed rental property; and
    - (ii) as provided in Section 57-1-25.
  - (b) A notice to vacate under Subsection (3)(a) shall:
    - (i) be in at least 14-point font;
    - (ii) state the new owner's name, address, and contact information;
    - (iii) explain the reason the new owner requires the bona fide tenant to vacate the rental property;
    - (iv) state the date on which the bona fide tenant is required to vacate the rental property; and
    - (v) refer to this section as the law under which the notice to vacate is provided.
- (4) This section does not modify the requirements for termination of a federally subsidized tenancy.

Enacted by Chapter 325, 2016 General Session

**57-1-26 Requests for copies of notice of default and notice of sale -- Mailing by trustee or beneficiary -- Publication of notice of default -- Notice to parties of trust deed.**

- (1)
- (a) Any person desiring a copy of any notice of default and of any notice of sale under any trust deed shall file for record a duly acknowledged request for a copy of any notice of default and notice of sale:
    - (i) in the office of the county recorder of any county in which the trust property or any part of the trust property is situated; and

- (ii) at any time:
  - (A) subsequent to the filing for record of the trust deed; and
  - (B) prior to the filing for record of a notice of default.
- (b) Except as provided in Subsection (3), the request described in Subsection (1)(a) may not be included in any other recorded instrument.
- (c) The request described in Subsection (1)(a) shall:
  - (i) set forth the name and address of the one or more persons requesting copies of the notice of default and the notice of sale; and
  - (ii) identify the trust deed by stating:
    - (A) the names of the original parties to the trust deed;
    - (B) the date of filing for record of the trust deed;
    - (C)
      - (I) the book and page where the trust deed is recorded; or
      - (II) the recorder's entry number; and
    - (D) the legal description of the trust property.
- (d) The request described in Subsection (1)(a) shall be in substantially the following form:

"REQUEST FOR NOTICE

The undersigned requests that a copy of any notice of default and a copy of notice of sale under the trust deed filed for record \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, (or filed for record \_\_\_\_\_(month\day\year), with recorder's entry number \_\_\_\_\_, \_\_\_\_\_ County), Utah, executed by \_\_\_\_\_ and \_\_\_\_\_ as trustors, in which \_\_\_\_\_ is named as beneficiary and \_\_\_\_\_ as trustee, be mailed to \_\_\_\_\_ (insert name) \_\_\_\_\_ at \_\_\_\_\_ (insert address) \_\_\_\_\_.

(Insert legal description)

Signature \_\_\_\_\_

(Certificate of Acknowledgement)"

- (e) If a request for a copy of a notice of default and notice of sale is filed for record under this section, the recorder shall index the request in:
    - (i) the mortgagor's index;
    - (ii) mortgagee's index; and
    - (iii) abstract record.
  - (f) Except as provided in Subsection (3), the trustee under any deed of trust is not required to send notice of default or notice of sale to any person not filing a request for notice as described in this Subsection (1).
- (2)
- (a) Not later than 10 days after the day on which a notice of default is recorded, the trustee or beneficiary shall mail a signed copy of the notice of default:
    - (i) by certified or registered mail, return receipt requested, with postage prepaid;
    - (ii) with the recording date shown;
    - (iii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
    - (iv) directed to the address designated in the request.
  - (b) At least 20 days before the date of sale, the trustee shall mail a signed copy of the notice of the time and place of sale:
    - (i) by certified or registered mail, return receipt requested, with postage prepaid;
    - (ii) addressed to each person whose name and address are set forth in a request that has been recorded prior to the filing for record of the notice of default; and
    - (iii) directed to the address designated in the request.

- (3)
  - (a) Any trust deed may contain a request that a copy of any notice of default and a copy of any notice of sale under the trust deed be mailed to any person who is a party to the trust deed at the address of the person set forth in the trust deed.
  - (b) A copy of any notice of default and of any notice of sale shall be mailed to any person requesting the notice who is a party to the trust deed at the same time and in the same manner required in Subsection (2) as though a separate request had been filed by each person as provided in Subsection (1) except that a trustee shall include with a signed copy of a notice of default and the signed copy of a notice of sale the following information current as of the time the notice of default and the notice of sale is provided:
    - (i) the name of the trustee;
    - (ii) the mailing address of the trustee;
    - (iii) if the trustee maintains a bona fide office in the state meeting the requirements of Subsection 57-1-21(1)(b), the address of a bona fide office of the trustee meeting the requirements of Subsection 57-1-21(1)(b);
    - (iv) the hours during which the trustee can be contacted regarding the notice of default and notice of sale, which hours shall include the period during regular business hours in a regular business day; and
    - (v) a telephone number that the person may use to contact the trustee during the hours described in Subsection (3)(b)(iv).
- (4) If no address of the trustor is set forth in the trust deed and if no request for notice by the trustor has been recorded as provided in this section, no later than 15 days after the filing for record of the notice of default, a copy of the notice of default shall be:
  - (a) mailed to the address of the property described in the notice of default; or
  - (b) posted on the property.
- (5) The following shall not affect the title to trust property or be considered notice to any person that any person requesting copies of notice of default or of notice of sale has or claims any right, title or interest in, or lien or claim upon, the trust property:
  - (a) a request for a copy of any notice filed for record under Subsection (1) or (3);
  - (b) any statement or allegation in any request described in Subsection (5)(a); or
  - (c) any record of a request described in Subsection (5)(a).

Amended by Chapter 305, 2016 General Session

**57-1-27 Sale of trust property by public auction -- Postponement of sale.**

- (1)
  - (a) On the date and at the time and place designated in the notice of sale, the trustee or the attorney for the trustee shall sell the property at public auction to the highest bidder.
  - (b) The trustee, or the attorney for the trustee, shall conduct the sale and act as the auctioneer.
  - (c) The trustor, or the trustor's successor in interest, if present at the sale, may direct the order in which the trust property shall be sold, if the property consists of several known lots or parcels which can be sold separately.
  - (d) The trustee or attorney for the trustee shall follow the trustor's directions described in Subsection (1)(c).
  - (e) Any person, including the beneficiary or trustee, may bid at the sale.
  - (f) The trustee may bid for the beneficiary.
  - (g) A bid is considered an irrevocable offer.

- (h) The trustee may, in the trustee's discretion, require a successful bidder to make a deposit in an amount set forth in the notice of trustee's sale described in Section 57-1-25.
  - (i) If the highest bidder refuses to pay the amount bid by the highest bidder for the property, the trustee, or the attorney for the trustee, shall either:
    - (i) renounce the sale in the same manner as notice of the original sale is required to be given; or
    - (ii) sell the property to the next highest bidder.
  - (j) If a bidder refuses to pay the bid price:
    - (i) the bidder is liable for any loss occasioned by the refusal, including interest, costs, and trustee's and reasonable attorney fees;
    - (ii) the trustee or the attorney for the trustee may, after the bidder's refusal, reject any other bid of that person for the property;
    - (iii) the bidder forfeits the bidder's deposit; and
    - (iv) the bidder's deposit is treated as additional sale proceeds applied in accordance with Section 57-1-29.
- (2)
- (a) The person conducting the sale may, for any cause that the person considers expedient, postpone the sale.
  - (b) The person conducting the sale shall give notice of each postponement by public declaration at the time and place last appointed for the sale.
  - (c) No notice of the postponed sale in addition to the notice described in Subsection (2)(b) is required, unless the postponement is for longer than 45 days after the date designated in the original notice of sale.
  - (d) If the person conducting the sale postpones a sale for longer than the time period described in Subsection (2)(c), the person conducting the sale shall renounce the sale in the same manner required for the original notice of sale.

Amended by Chapter 305, 2016 General Session

**57-1-28 Sale of trust property by trustee -- Payment of bid -- Trustee's deed delivered to purchaser -- Recitals -- Effect.**

- (1)
- (a) The purchaser at the sale shall pay the price bid as directed by the trustee.
  - (b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to exceed the amount representing:
    - (i) the unpaid principal owed;
    - (ii) accrued interest as of the date of the sale;
    - (iii) advances for the payment of:
      - (A) taxes;
      - (B) insurance; and
      - (C) maintenance and protection of the trust property;
    - (iv) the beneficiary's lien on the trust property; and
    - (v) costs of sale, including reasonable trustee's and attorney's fees.
- (2)
- (a)
    - (i) Within five business days of the day the trustee receives payment of the price bid, the trustee shall:
      - (A) execute and submit the trustee's deed to the county recorder for recording; and

- (B) upon the purchaser's request, provide an unrecorded copy of the signed trustee's deed to the purchaser.
- (ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for any loss incurred by the purchaser because of the trustee's failure to comply with this Subsection (2)(a).
- (b) The trustee's deed may contain recitals of compliance with the requirements of Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the property described in the trustee's deed, including recitals concerning:
  - (i) any mailing, personal delivery, and publication of the notice of default;
  - (ii) any mailing and the publication and posting of the notice of sale; and
  - (iii) the conduct of sale.
- (c) The recitals described in Subsection (2)(b):
  - (i) constitute prima facie evidence of compliance with Sections 57-1-19 through 57-1-36; and
  - (ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for value and without notice.
- (3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest, and claim of the trustor and the trustor's successors in interest and of all persons claiming by, through, or under them, in and to the property sold, including all right, title, interest, and claim in and to the property acquired by the trustor or the trustor's successors in interest subsequent to the execution of the trust deed, which trustee's deed shall be considered effective and relate back to the time of the sale.
- (4) In accordance with Section 57-3-106, an interest of a purchaser in a trustee's deed that is recorded with the county recorder may not be divested if a person records an affidavit or other document purporting to rescind or cancel the trustee's deed.

Amended by Chapter 305, 2016 General Session

**57-1-29 Proceeds of trustee's sale -- Disposition.**

- (1)
  - (a) The trustee shall apply the proceeds of a trustee's sale in the following order:
    - (i) first, to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's and attorney fees actually incurred not to exceed any amount provided for in the trust deed;
    - (ii) second, to payment of the obligation secured by the trust deed; and
    - (iii)
      - (A) the balance, if any, to the person or persons legally entitled to the proceeds; or
      - (B) the trustee, in the trustee's discretion, may deposit the balance of the proceeds with the clerk of the district court of the county in which the sale took place.
  - (b) If the proceeds are deposited with the clerk of the district court, the trustee shall file an affidavit with the clerk setting forth the facts of the deposit and a list of all known claimants, including known addresses.
  - (c) Upon depositing the balance and filing the affidavit, the trustee is discharged from all further responsibility and the clerk shall deposit the proceeds with the state treasurer subject to the order of the district court.
- (2) The clerk shall give notice of the deposited funds to all claimants listed in the trustee's affidavit within 15 days of receiving the affidavit of deposit from the trustee.
- (3)
  - (a) Any claimant may file a petition for adjudication of priority to the funds.

- (b) A petitioner requesting funds under Subsection (3)(a) shall give notice of the petition to all claimants listed in the trustee's affidavit and to any other claimants known to the petitioner.
  - (c) The petitioner's notice under Subsection (3)(b) shall specify that all claimants have 45 days to contest the petition by affidavit or counter-petition.
  - (d) If no affidavit or counter-petition is filed within 45 days of the notice required by Subsection (3)(c), the court shall, without a hearing, enter an order directing the clerk of the court or the county treasurer to disburse the funds to the petitioner according to the petition.
- (4)
- (a) If a petition for adjudication is contested by affidavit or counter-petition, the district court shall, within 20 days, conduct a hearing to establish the priorities of the parties to the deposited funds and give notice to all known claimants of the date and time of the hearing.
  - (b) At a hearing under Subsection (4)(a), the court shall establish the priorities of the parties to the deposited funds and enter an order directing the clerk of the court or county treasurer to disburse the funds according to the court's determination.
- (5) A person having or claiming to have an interest in the disposition of funds deposited with the court under Subsection (1) who fails to appear and assert the person's claim is barred from any claim to the funds after the entry of the court's order under Subsection (4).

Amended by Chapter 230, 2008 General Session

**57-1-30 Sale of trust property by trustee -- Corporate stock evidencing water rights given to secure trust deed.**

Shares of corporate stock evidencing water rights used, intended to be used, or suitable for use on the trust property and which are hypothecated to secure an obligation secured by a trust deed may be sold with the trust property, or any part thereof, at the trustee's sale in the manner provided in this act.

Enacted by Chapter 181, 1961 General Session

**57-1-31 Trust deeds -- Default in performance of obligations secured -- Reinstatement -- Cancellation of recorded notice of default.**

(1) Whenever all or a portion of the principal sum of any obligation secured by a trust deed has, prior to the maturity date fixed in the obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust deed, including a default in the payment of interest or of any installment of principal, or by reason of failure of the trustor to pay, in accordance with the terms of the trust deed, taxes, assessments, premiums for insurance, or advances made by the beneficiary in accordance with terms of the obligation or of the trust deed, the trustor or the trustor's successor in interest in the trust property or any part of the trust property or any other person having a subordinate lien or encumbrance of record on the trust property or any beneficiary under a subordinate trust deed, at any time within three months of the filing for record of notice of default under the trust deed, if the power of sale is to be exercised, may pay to the beneficiary or the beneficiary's successor in interest the entire amount then due under the terms of the trust deed (including costs and expenses actually incurred in enforcing the terms of the obligation, or trust deed, and the trustee's and attorney's fees actually incurred) other than that portion of the principal as would not then be due had no default occurred, and thereby cure the existing default. After the beneficiary or beneficiary's successor in interest has been paid and the default cured, the obligation and trust deed shall be reinstated as if no acceleration had occurred.

- (2) If the default is cured and the trust deed reinstated in the manner provided in Subsection (1), and a reasonable fee is paid for cancellation, including the cost of recording the cancellation of notice of default, the trustee shall execute, acknowledge, and deliver a cancellation of the recorded notice of default under the trust deed; and any trustee who refuses to execute and record this cancellation within 30 days is liable to the person curing the default for all actual damages resulting from this refusal. A reconveyance given by the trustee or the execution of a trustee's deed constitutes a cancellation of a notice of default. Otherwise, a cancellation of a recorded notice of default under a trust deed is, when acknowledged, entitled to be recorded and is sufficient if made and executed by the trustee in substantially the following form:

Cancellation of Notice of Default

The undersigned hereby cancels the notice of default filed for record \_\_\_\_\_(month \day\year), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_ County, (or filed of record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_, \_\_\_\_ County), Utah, which notice of default refers to the trust deed executed by \_\_\_\_ and \_\_\_\_\_ as trustors, in which \_\_\_\_ is named as beneficiary and \_\_\_\_ as trustee, and filed for record \_\_\_\_\_(month\day\year), and recorded in Book \_\_\_\_, Page \_\_\_\_, Records of \_\_\_\_ County, (or filed of record \_\_\_\_\_(month\day\year), with recorder's entry No. \_\_\_\_, \_\_\_\_ County), Utah.

(legal description)

Signature of Trustee \_\_\_\_\_

Amended by Chapter 236, 2001 General Session

**57-1-31.5 Reinstatement or payoff statement -- Timeliness of request -- Trustee's duty to provide statement -- Statement to include accounting of costs and fees.**

- (1) As used in this section:
  - (a) "Approved delivery method" means delivery by:
    - (i) certified or registered United States mail with return receipt requested; or
    - (ii) a nationally recognized letter or package delivery or courier service operating in the state that provides a service for:
      - (A) tracking the delivery of an item; or
      - (B) documenting:
        - (I) that the item was received by the intended recipient; or
        - (II) a refusal to accept delivery of the item.
  - (b) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a trustee for or in consideration of:
    - (i) services;
    - (ii) personal or real property; or
    - (iii) other thing of value.
  - (c) "Interested party" means a person with a right under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.
  - (d) "Payoff statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required to pay off a loan secured by a trust deed.
  - (e) "Reinstatement statement" means a statement under Subsection (2) that an interested party requests in order to obtain the amount required under Subsection 57-1-31(1) to reinstate an obligation secured by a trust deed.
- (2)
  - (a)

- (i) An interested party may submit a written request to a trustee for a statement of the amount required to be paid:
  - (A) to reinstate an obligation secured by a trust deed; or
  - (B) to pay off a loan secured by a trust deed.
- (ii)
  - (A) A request for a reinstatement statement is not timely unless the trustee receives the request at least 10 business days before expiration of the three-month period under Section 57-1-31 to reinstate an obligation.
  - (B) A request for a payoff statement is not timely unless the trustee receives the request at least 10 business days before the trustee's sale.
- (iii) An interested party submitting a reinstatement statement or payoff statement to a trustee shall submit the statement to the trustee:
  - (A) at the address specified in the trust deed for notices to the trustee; or
  - (B) at an alternate address approved by the trustee for delivery of mail or notices.
- (iv) A trustee is considered to have received a request submitted under Subsection (2)(a)(i) if:
  - (A) the interested party submitted the request through an approved delivery method; and
  - (B) documentation provided under the approved delivery method indicates that:
    - (I) the request was delivered to the trustee; or
    - (II) delivery of the request was refused.
- (b)
  - (i) A trustee who receives a written request under Subsection (2)(a) shall provide the statement to the interested party.
  - (ii) A trustee is considered to have provided the statement requested under Subsection (2)(a) on the date that the trustee deposits the statement with an approved delivery method:
    - (A) with all delivery costs prepaid; and
    - (B) addressed to the interested party at the address provided in the request.
- (c)
  - (i) If the trustee provides a requested reinstatement statement later than five business days after the request is received, the time to reinstate under Section 57-1-31 is tolled from the date of the request to the date that the trustee provides the statement.
  - (ii) If, after scheduling a trustee's sale, the trustee fails to provide a requested payoff statement within five business days after the request is received, the trustee shall:
    - (A) cancel the trustee's sale; or
    - (B) postpone the trustee's sale to a date at least 10 business days after the trustee provides the statement.
- (3) A trustee shall include with each statement required under Subsection (2)(a):
  - (a) a detailed listing of any of the following that the trustor would be required to pay to reinstate or payoff the loan:
    - (i) attorney fees;
    - (ii) trustee fees; or
    - (iii) any costs including:
      - (A) title fees;
      - (B) publication fees; or
      - (C) posting fees; and
  - (b) subject to Subsection (4), a disclosure of:
    - (i) any relationship that the trustee has with a third party that provides services related to the foreclosure of the loan; and
    - (ii) whether the relationship described in Subsection (3)(b)(i) is created by:

- (A) an ownership interest in the third party; or
  - (B) contract or other agreement.
- (4) Subsection (3)(b) does not require a trustee to provide a trustor:
- (a) a copy of any contract or agreement described in Subsection (3)(b);
  - (b) specific detail as to the nature of the ownership interest described in Subsection (3)(b); or
  - (c) the amount of compensation the trustee receives related to the foreclosure of the loan under a relationship described in Subsection (3)(b).

Amended by Chapter 24, 2010 General Session

**57-1-32 Sale of trust property by trustee -- Action to recover balance due upon obligation for which trust deed was given as security -- Collection of costs and attorney's fees.**

At any time within three months after any sale of property under a trust deed as provided in Sections 57-1-23, 57-1-24, and 57-1-27, an action may be commenced to recover the balance due upon the obligation for which the trust deed was given as security, and in that action the complaint shall set forth the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale. Before rendering judgment, the court shall find the fair market value of the property at the date of sale. The court may not render judgment for more than the amount by which the amount of the indebtedness with interest, costs, and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale. In any action brought under this section, the prevailing party shall be entitled to collect its costs and reasonable attorney fees incurred.

Amended by Chapter 236, 2001 General Session

**57-1-33.1 Reconveyance of a trust deed -- Erroneous reconveyance.**

- (1)
- (a) When an obligation secured by a trust deed has been satisfied, the trustee shall, upon written request by the beneficiary, reconvey the trust property.
  - (b) At the time the beneficiary requests a reconveyance under Subsection (1)(a), the beneficiary shall deliver to the trustee or the trustee's successor in interest the trust deed and the note or other evidence that the obligation securing the trust deed has been satisfied.
- (2) The reconveyance under Subsection (1) may designate the grantee as "the person or persons entitled thereto."
- (3) If a reconveyance is erroneously recorded by a beneficiary, the effect of the reconveyance may be nullified and the trust deed reinstated by the recording of a corrective affidavit executed by the then current beneficiary describing the trust deed and setting forth the fact of the erroneous reconveyance. Upon the recording of a corrective affidavit or similar instrument, the trust deed has the same priority as it did prior to the erroneous reconveyance. However, any lien or interest that was recorded or attached to the trust deed property between the time of the recording of the erroneous reconveyance and the recording of the corrective affidavit or similar instrument has priority over the reinstated trust deed, unless the lien or interest was recorded or attached with actual knowledge that the trust deed had been reconveyed erroneously.

Amended by Chapter 236, 2001 General Session

**57-1-34 Sale of trust property by trustee -- Foreclosure of trust deed -- Limitation of actions.**

A person shall, within the period prescribed by law for the commencement of an action on an obligation secured by a trust deed:

- (1) commence an action to foreclose the trust deed; or
- (2) file for record a notice of default under Section 57-1-24.

Amended by Chapter 305, 2016 General Session

**57-1-35 Trust deeds -- Transfer of secured debts as transfer of security.**

The transfer of any debt secured by a trust deed shall operate as a transfer of the security therefor.

Enacted by Chapter 181, 1961 General Session

**57-1-36 Trust deeds -- Instruments entitled to be recorded -- Assignment of a beneficial interest.**

Any trust deed, substitution of trustee, assignment of a beneficial interest under a trust deed, notice of assignment of a beneficial interest, notice of default, trustee's deed, reconveyance of the trust property, and any instrument by which any trust deed is subordinated or waived as to priority, if acknowledged as provided by law, is entitled to be recorded. The recording of an assignment of a beneficial interest under a trust deed or a notice of assignment of a beneficial interest does not in itself impart notice of the assignment to the trustor, or the trustor's heirs or personal representatives, so as to invalidate any payment made by the trustor, or the trustor's heirs or personal representatives, to the person holding the note, bond, or other instrument evidencing the obligation by the trust deed.

Amended by Chapter 208, 2013 General Session

**57-1-37 Failure to disclose not a basis for liability.**

- (1) The failure of an owner of real property to disclose that the property being offered for sale is stigmatized is not a material fact that must be disclosed in the transaction of real property.
- (2) Neither an owner nor his agent is liable for failing to disclose that the property is stigmatized.

Amended by Chapter 5, 1991 General Session

**57-1-38 Release of security interest.**

- (1) As used in this section:
  - (a) "Revolving credit line" means an agreement between the borrower and a secured lender who agrees to loan the borrower money on a continuing basis so long as the outstanding principal amount owed by the borrower does not exceed a specified amount.
  - (b) "Secured lender" means:
    - (i) a mortgagee on a mortgage;
    - (ii) a beneficiary on a trust deed;
    - (iii) a person that holds or retains legal title to real property as security for financing the purchase of the real property under a real estate sales contract; and
    - (iv) any other person that holds or retains a security interest in real property to secure the repayment of a secured loan.
  - (c)

- (i) "Secured loan" means a loan or extension of credit, the repayment of which is secured by a mortgage, a trust deed, the holding or retention of legal title under a real estate sales contract, or other security interest in real property, whether or not the security interest is perfected.
  - (ii) A judgment award secured by a judgment lien is not of itself a secured loan. A subsequent written agreement between a judgment creditor and a judgment debtor concerning payment of the judgment is a secured loan if it otherwise qualifies under the definition in Subsection (1)(c)(i).
  - (d) "Security interest" means an interest in real property that secures payment or performance of an obligation. Security interest includes a lien or encumbrance.
  - (e) "Servicer" means a person that services and receives loan payments on behalf of a secured lender with respect to a secured loan.
- (2) This section may not be interpreted to validate, invalidate, alter, or otherwise affect the foreclosure of a mortgage, the exercise of a trustee's power of sale, the exercise of a seller's right of reentry under a real estate sales contract, or the exercise of any other power or remedy of a secured lender to enforce the repayment of a secured loan.
- (3) A secured lender or servicer who fails to release the security interest on a secured loan within 90 days after receipt of the final payment of the loan is liable to another secured lender on the real property or the owner or titleholder of the real property for:
- (a) the greater of \$1,000 or treble actual damages incurred because of the failure to release the security interest, including all expenses incurred in completing a quiet title action; and
  - (b) reasonable attorneys' fees and court costs.
- (4) A secured lender or servicer is not liable under Subsection (3) if the secured lender or servicer:
- (a) has established a reasonable procedure to release the security interest on a secured loan in a timely manner after the final payment on the loan;
  - (b) has complied with this procedure in good faith; and
  - (c) is unable to release the security interest within 90 days after receipt of the final payment because of the action or inaction of an agency or other person beyond its direct control.
- (5) A secured lender under a revolving credit line shall close the revolving credit line and release the security interest if the secured lender receives:
- (a) payment in full from a third party involved in a sale or loan transaction affecting the security interest; and
  - (b)
    - (i) a request from a third party for full payoff of the credit line; or
    - (ii) a written request to close the credit line.

Amended by Chapter 235, 2006 General Session

**57-1-39 Definitions.**

As used in Sections 57-1-40 and 57-1-44:

- (1) "Beneficiary" means the record owner of the beneficiary's interest under a trust deed, including successors in interest.
- (2) "Deliver" or "delivered" means by:
  - (a) overnight delivery by a reputable carrier;
  - (b) United States certified mail or express mail;
  - (c) hand delivery with receipt acknowledged in writing; or
  - (d) facsimile or electronic mail belonging to the beneficiary, mortgagee, or servicer.
- (3) "Mortgage" is as described in Section 57-1-14.

- (4) "Mortgagee" means the record owner of the mortgagee's interest under a mortgage, including a successor in interest.
- (5) "Satisfactory evidence of the full payment of the obligation secured by a trust deed or mortgage" means written information adequate, in the opinion of a title insurer or title agent, to establish that the obligation secured by the trust deed or mortgage has been paid in full.
- (6) "Servicer" means a person or entity that collects loan payments on behalf of a beneficiary or mortgagee.
- (7) "Title agent" means a title insurance producer licensed as an organization under Title 31A, Chapter 23a, Part 2, Producers and Consultants.
- (8) "Title insurer" means a title insurer authorized to conduct business in the state under Title 31A, Chapter 23a, Part 2, Producers and Consultants.
- (9) "Trust deed" is as defined in Subsection 57-1-19(3).

Amended by Chapter 250, 2006 General Session

**57-1-40 Reconveyance of trust deed or release of mortgage -- Procedures -- Forms.**

- (1) A title insurer or title agent may reconvey a trust deed or release a mortgage in accordance with the provisions of Subsections (2) through (6) if:
  - (a) the obligation secured by the trust deed or mortgage has been fully paid by the title insurer or title agent;
  - (b) the obligation secured by the trust deed or mortgage has been partially paid by the title insurer or title agent in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed; or
  - (c) the title insurer or title agent possesses satisfactory evidence that an event described in either Subsection (1)(a) or (b) has occurred.
- (2) A title insurer or title agent may reconvey a trust deed or release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.
- (3) After the obligation secured by the trust deed or mortgage is paid in full or is partially paid as described in Subsection (1)(b), the title insurer or title agent shall deliver a notice of intent to release or reconvey, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:
  - (a) the address specified in the trust deed or mortgage;
  - (b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;
  - (c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or
  - (d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.
- (4) The notice of intent to release or reconvey shall contain the name of the beneficiary or mortgagee and the servicer if loan payments on the trust deed or mortgage are collected by a servicer, the name of the title insurer or title agent, the date, and be substantially in the following form:

**NOTICE OF INTENT TO RELEASE OR RECONVEY**

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): \_\_\_\_\_

(Beneficiary or Mortgagee): \_\_\_\_\_

Recording information: \_\_\_\_\_

Entry Number: \_\_\_\_\_

Book Number: \_\_\_\_\_

Page Number: \_\_\_\_\_

2. The undersigned claims or possesses satisfactory evidence that the obligation secured by the trust deed or mortgage was paid in full or that the obligation secured by the trust deed or mortgage was partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed.

3. The undersigned will fully release the mortgage or reconvey the trust deed described in this notice unless, within 60 days from the date stated on this notice, the undersigned has received by certified mail a notice stating that the obligation secured by the trust deed or mortgage has not been paid in full, that payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer otherwise objects to the release of the mortgage or the reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

(5)

(a) If, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey in accordance with Subsections (3) and (4), a reconveyance of trust deed or release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid in full, that payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer, or that the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a reconveyance of a trust deed or release of a mortgage.

(b) A reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

RECONVEYANCE OF TRUST DEED

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby reconvey, without warranty, the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

a. has fully paid the obligation secured by the trust deed;

b. has partially paid the obligation secured by the trust deed in an amount agreed to by the beneficiary or servicer as sufficient to reconvey the trust deed;

c. possesses satisfactory evidence of full payment of the obligation secured by the trust deed; or

d. possesses satisfactory evidence of partial payment of the obligation secured by the trust deed in an amount agreed to by the beneficiary or servicer as sufficient to reconvey the trust deed.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to release or reconvey and a copy of the reconveyance.

3. The trust deed has not been reconveyed and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the beneficiary or servicer sent by certified mail that the obligation secured by the trust deed has not been paid in full, that payment of an amount less than the whole obligation secured by the trust deed was not agreed to or was not received by the beneficiary or servicer, or that the beneficiary or servicer objects to the reconveyance of the trust deed.

\_\_\_\_\_

(Notarization)

(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

**RELEASE OF MORTGAGE**

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state does hereby release the mortgage on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the trust property.)

The undersigned title insurer or title agent certifies as follows:

1. The undersigned title insurer or title agent:

- a. has fully paid the obligation secured by the mortgage;
- b. has partially paid the obligation secured by the mortgage in an amount agreed to by the mortgagee or servicer as sufficient to release the mortgage;
- c. possesses satisfactory evidence of full payment of the obligation secured by the mortgage; or

d. possesses satisfactory evidence of partial payment of the obligation secured by the mortgage in an amount agreed to by the mortgagee or servicer as sufficient to release the mortgage.

2. In accordance with the requirements of Utah Code Annotated Subsections 57-1-40(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer a notice of intent to release or reconvey.

3. The mortgage has not been released and the title insurer or title agent did not receive, within 60 days from the day on which the title insurer or title agent delivered the notice of intent to release or reconvey, a notice from the mortgagee or servicer sent by certified mail that the obligation secured by the mortgage has not been paid in full, that payment of an amount less than the whole obligation secured by the mortgage was not agreed to or was not received by the mortgagee or servicer, or that the mortgagee or servicer objects to the release of the mortgage.

\_\_\_\_\_

(Notarization)

(Signature of title insurer or title agent)

(d)

(i) A release of mortgage or reconveyance of trust deed that is executed and notarized in accordance with Subsection (5)(b) or (c) is entitled to recordation.

- (ii)
  - (A) Except as provided in Subsection (5)(d)(ii)(B), a reconveyance of a trust deed or release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the release or reconveyance procedure not disclosed in the release of mortgage or reconveyance of trust deed.
  - (B) If the title insurer's or title agent's signature on a release of mortgage or reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the release of mortgage or reconveyance of trust deed is void.
- (6) A release of mortgage or reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation that was secured by the trust deed or mortgage at the time the trust deed was reconveyed or the mortgage was released.
- (7) This section does not limit or modify the application of Section 57-1-33.1.

Amended by Chapter 403, 2013 General Session

**57-1-40.5 Partial reconveyance of trust deed or release of mortgage -- Procedures -- Forms.**

- (1)
  - (a) If a trustor or mortgagor pledges more than one parcel of real property as collateral under a trust deed or mortgage, the beneficiary, mortgagee, or servicer may agree for a sum certain to release a portion of the real property pledged on the trust deed or mortgage when a sum certain is paid.
  - (b) When the sum certain is paid, a title insurer or title agent may partially convey a trust deed or partially release a mortgage in accordance with the provisions of Subsections (2) through (6) if:
    - (i) the sum certain that is part of the obligation secured by the trust deed or mortgage has been paid by the title insurer or title agent to release or reconvey a portion of the real property pledged as collateral; or
    - (ii) the title insurer or title agent possesses satisfactory evidence of the payment of the sum certain thus authorizing release or reconveyance of a portion of the real property pledged.
- (2) A title insurer or title agent may partially reconvey a trust deed or partially release a mortgage under Subsection (1) regardless of whether the title insurer or title agent is named as a trustee under a trust deed or has the authority to release a mortgage.
- (3) At the time the obligation secured by the trust deed or mortgage is paid as required by Subsection (1), or at any later time, the title insurer or title agent shall deliver a notice of intent to partially release or partially reconvey, and a copy of the partial release or partial reconveyance that is to be recorded, as described in Subsection (4), to the beneficiary, mortgagee, or servicer at:
  - (a) the address specified in the trust deed or mortgage;
  - (b) any address for the beneficiary or mortgagee specified in the last recorded assignment of the trust deed or mortgage;
  - (c) any address for the beneficiary, mortgagee, or servicer specified in a request for notice recorded under Section 57-1-26; or
  - (d) the address shown on any payoff statement received by the title insurer or agent from the beneficiary, mortgagee, or servicer.
- (4) The notice of intent to partially release or partially reconvey shall:
  - (a) contain the name of:
    - (i) the beneficiary or mortgagee;
    - (ii) the servicer, if any;

- (iii) the title insurer or title agent;
- (b) contain the date; and
- (c) be substantially in the following form:

**NOTICE OF INTENT TO PARTIALLY RELEASE OR PARTIALLY RECONVEY**

Notice is hereby given to you as follows:

1. This notice concerns the (trust deed or mortgage) described as follows:

(Trustor or Mortgagor): \_\_\_\_\_

(Beneficiary or Mortgagee): \_\_\_\_\_

Recording Information: \_\_\_\_\_

Entry Number: \_\_\_\_\_

Book Number: \_\_\_\_\_

Page Number: \_\_\_\_\_

2. To release only a portion of the real property pledged as collateral, the undersigned claims to have paid or possess satisfactory evidence of the payment of a sum certain necessary to release or reconvey a specific portion of the real property pledged as collateral under the mortgage or trust deed.

3. Within 60 days after the date stated on this notice, the undersigned will partially release the mortgage or partially reconvey the trust deed described in this notice unless the undersigned receives by certified mail a notice stating that the sum certain that is part of the obligation secured by the trust deed or mortgage has not been paid or that you otherwise object to the partial release of the mortgage or the partial reconveyance of the trust deed. Notice shall be mailed to the address stated on this form.

4. A copy of the partial release of mortgage or partial reconveyance of trust deed is enclosed with this Notice.

(Signature of title insurer or title agent)

(Address of title insurer or title agent)

- (5)
  - (a) If, within 60 days after the day on which the title insurer or title agent delivered the notice of intent to partially release or partially reconvey in accordance with Subsections (3) and (4), a partial reconveyance of trust deed or partial release of mortgage is not recorded, and the beneficiary, mortgagee, or servicer does not send by certified mail to the title insurer or title agent a notice that the obligation secured by the trust deed or mortgage has not been paid or that the beneficiary, mortgagee, or servicer objects to the partial release of the mortgage or partial reconveyance of the trust deed, the title insurer or title agent may execute, acknowledge, and record a partial reconveyance of a trust deed or partial release of a mortgage.
  - (b) A partial reconveyance of a trust deed under Subsection (5)(a) shall be in substantially the following form:

**PARTIAL RECONVEYANCE OF TRUST DEED**

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state reconveys, without warranty, only on the following trust property located in (name of county) County, state of Utah, that is covered by a trust deed naming (name of trustor) as trustor, and (name of beneficiary) as beneficiary and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the specific trust property to be reconveyed.)

The undersigned title insurer or title agent certifies as follows:

1. To release only this portion of the real property pledged as collateral, the undersigned has paid or possesses satisfactory evidence of the payment of a sum certain

necessary to reconvey a specific portion of the real property pledged as collateral under the trust deed.

2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4), the title insurer or title agent delivered to the beneficiary or servicer, a notice of intent to partially release or partially reconvey and a copy of the partial reconveyance.

3. The trust deed has not been reconveyed, as to this property, and the title insurer or title agent did not receive, within 60 days after the day the title insurer or title agent delivered the notice of intent to partially release or partially reconvey, a notice from the beneficiary or servicer sent by certified mail stating the sum certain necessary to reconvey a specific portion of the real property pledged as collateral under the trust deed or that the beneficiary or servicer objects to the partial reconveyance of the trust deed.

\_\_\_\_\_  
(Notarization)

\_\_\_\_\_  
(Signature of title insurer or title agent)

(c) A release of a mortgage under Subsection (5)(a) shall be in substantially the following form:

**PARTIAL RELEASE OF MORTGAGE**

(Name of title insurer or title agent), a (title insurer or title agent) authorized to conduct business in the state partially releases the mortgage only on the following property located in (name of county) County, state of Utah, that is covered by a mortgage naming (name of mortgagor) as mortgagor, and (name of mortgagee) as mortgagee and was recorded on (date) in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry Number \_\_\_\_\_: (insert a description of the specific property.)

The undersigned title insurer or title agent certifies as follows:

1. To release only this portion of the real property pledged as collateral, the undersigned has paid or possesses satisfactory evidence of the payment of a sum certain necessary to release a specific portion of the real property pledged as collateral under the mortgage.
2. In accordance with the requirements of Utah Code Subsections 57-1-40.5(3) and (4), the title insurer or title agent delivered to the mortgagee or servicer, a notice of intent to partially release or partially reconvey and a copy of the partial release.
3. The trust deed has not been released, as to this property, and the title insurer or title agent did not receive, within 60 days after the day the title insurer or title agent delivered the notice of intent to partially release or partially reconvey, a notice from the beneficiary or servicer sent by certified mail stating the sum certain necessary to release a specific portion of the real property pledged as collateral under the mortgage or that the mortgagee or servicer objects to the partial release of the mortgage.

\_\_\_\_\_  
(Notarization)

\_\_\_\_\_  
(Signature of title insurer or title agent)

(d)

- (i) A partial release of mortgage or partial reconveyance of trust deed that is executed or notarized in accordance with Subsection (5)(b) or (c) is entitled to be recorded.
- (ii)
  - (A) Except as provided in Subsection (5)(d)(ii)(B), a partial reconveyance of a trust deed or partial release of a mortgage that is recorded under Subsection (5)(d)(i) is valid regardless of any deficiency in the partial release or reconveyance procedure not disclosed in the partial release of mortgage or partial reconveyance of trust deed.
  - (B) If the title insurer's or title agent's signature on a partial release of mortgage or partial reconveyance of trust deed recorded under Subsection (5)(d)(ii)(A) is forged, the partial release of the mortgage or partial reconveyance of trust deed is void.

- (6) A partial release of mortgage or partial reconveyance of trust deed under this section does not, by itself, discharge any promissory note or other obligation secured by the trust deed or mortgage at the time the trust deed is partially reconveyed or the mortgage is partially released.

Enacted by Chapter 250, 2006 General Session

**57-1-41 Objections to reconveyance or release.**

A title insurer or title agent may not record a reconveyance of trust deed or release of mortgage if, within 60 days from the day on which the title insurer or title agent delivered or mailed the notice of intent to release or reconvey in accordance with Subsections 57-1-40(3) and (4), the beneficiary, mortgagee, or servicer sends a notice that:

- (1) the obligation secured by the trust deed or mortgage has not been paid in full;
- (2) payment of an amount less than the whole obligation was not agreed to or was not received by the beneficiary, mortgagee, or servicer; or
- (3) the beneficiary, mortgagee, or servicer objects to the release of the mortgage or reconveyance of the trust deed under Subsection 57-1-40(5)(a).

Amended by Chapter 403, 2013 General Session

**57-1-42 Liability of title insurer or title agent.**

A title insurer or title agent purporting to act under the provisions of Section 57-1-40 who reconveys a trust deed or releases a mortgage is liable to the beneficiary or mortgagee for the damages suffered as a result of the reconveyance if:

- (1) the obligation secured by the trust deed or mortgage:
  - (a) has not been fully paid; or
  - (b) has not been partially paid in an amount agreed to by the beneficiary, mortgagee, or servicer as sufficient to release the mortgage or reconvey the trust deed; and
- (2)
  - (a) the title insurer or title agent failed to comply with the provisions of Sections 57-1-40 and 57-1-41; or
  - (b) the title insurer or title agent acted with gross negligence or in bad faith in reconveying the trust deed.

Amended by Chapter 403, 2013 General Session

**57-1-43 Application of provisions.**

The provisions of Sections 57-1-39 through 57-1-42 apply to any obligation secured by a trust deed or mortgage that was paid prior to, on, or after May 1, 1995.

Enacted by Chapter 185, 1995 General Session

**57-1-44 Other sections not affected.**

Sections 57-1-39 through 57-1-43 do not excuse a beneficiary, mortgagee, trustee, secured lender, or servicer from complying with the provisions of Section 57-1-38.

Enacted by Chapter 185, 1995 General Session

**57-1-45 Boundary line agreements.**

- (1) If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.
- (2) A boundary line agreement described in Subsection (1) shall include:
  - (a) a legal description of the agreed upon boundary line;
  - (b) the signature of each grantor;
  - (c) a sufficient acknowledgment for each grantor's signature; and
  - (d) the address of each grantee for assessment purposes.

Amended by Chapter 88, 2011 General Session

**57-1-46 Transfer fee and reinvestment fee covenants.**

- (1) As used in this section:
  - (a) "Association expenses" means expenses incurred by a common interest association for:
    - (i) the administration of the common interest association;
    - (ii) the purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair, or replacement of association facilities, including expenses for taxes, insurance, operating reserves, capital reserves, and emergency funds;
    - (iii) providing, establishing, creating, or managing a facility, activity, service, or program for the benefit of property owners, tenants, common areas, the burdened property, or property governed by the common interest association; or
    - (iv) other facilities, activities, services, or programs that are required or permitted under the common interest association's organizational documents.
  - (b) "Association facilities" means any real property, improvements on real property, or personal property owned, leased, constructed, developed, managed, or used by a common interest association, including common areas.
  - (c) "Burdened property" means the real property that is subject to a reinvestment fee covenant or transfer fee covenant.
  - (d) "Common areas" means areas described within:
    - (i) the definition of "common areas and facilities" under Section 57-8-3; and
    - (ii) the definition of "common areas" under Section 57-8a-102.
  - (e) "Common interest association":
    - (i) means:
      - (A) an association, as defined in Section 57-8a-102;
      - (B) an association of unit owners, as defined in Section 57-8-3; or
      - (C) a nonprofit association; and
    - (ii) includes a person authorized by an association, association of unit owners, or nonprofit association, as the case may be.
  - (f) "Large master planned development" means an approved development:
    - (i) of at least 500 acres or 500 units; and
    - (ii) that includes a commitment to fund, construct, develop, or maintain:
      - (A) common infrastructure;
      - (B) association facilities;
      - (C) community programming;
      - (D) resort facilities;

- (E) open space; or
- (F) recreation amenities.
- (g) "Nonprofit association" means a nonprofit corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve, govern, manage, or maintain burdened property.
- (h) "Organizational documents":
  - (i) for an association, as defined in Section 57-8a-102, means governing documents as defined in Section 57-8a-102;
  - (ii) for an association of unit owners, as defined in Section 57-8-3, means a declaration as defined in Section 57-8-3; and
  - (iii) for a nonprofit association:
    - (A) means a written instrument by which the nonprofit association exercises powers or manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit association; and
    - (B) includes articles of incorporation, bylaws, plats, charters, the nonprofit association's rules, and declarations of covenants, conditions, and restrictions.
- (i) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:
  - (i) affects real property; and
  - (ii) obligates a future buyer or seller of the real property to pay to a common interest association, upon and as a result of a transfer of the real property, a fee that is dedicated to benefitting the burdened property, including payment for:
    - (A) common planning, facilities, and infrastructure;
    - (B) obligations arising from an environmental covenant;
    - (C) community programming;
    - (D) resort facilities;
    - (E) open space;
    - (F) recreation amenities;
    - (G) charitable purposes; or
    - (H) association expenses.
- (j) "Transfer fee covenant":
  - (i) means an obligation, however denominated, expressed in a covenant, restriction, agreement, or other instrument or document:
    - (A) that affects real property;
    - (B) that is imposed on a future buyer or seller of real property, other than a person who is a party to the covenant, restriction, agreement, or other instrument or document; and
    - (C) to pay a fee upon and as a result of a transfer of the real property; and
  - (ii) does not include:
    - (A) an obligation imposed by a court judgment, order, or decree;
    - (B) an obligation imposed by the federal government or a state or local government entity; or
    - (C) a reinvestment fee covenant.
- (2) A transfer fee covenant recorded on or after March 16, 2010 is void and unenforceable.
- (3)
  - (a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not be sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a common interest association that was formed to benefit the burdened property.
  - (b) A common interest association may assign or pledge to a lender the right to receive payment under a reinvestment fee covenant if:
    - (i) the assignment or pledge is as collateral for a credit facility; and

- (ii) the lender releases the collateral interest upon payment in full of all amounts that the common interest association owes to the lender under the credit facility.
- (4) A reinvestment fee covenant recorded on or after March 16, 2010 is not enforceable if the reinvestment fee covenant is intended to affect property that is the subject of a previously recorded transfer fee covenant or reinvestment fee covenant.
- (5) A reinvestment fee covenant recorded on or after March 16, 2010 may not obligate the payment of a fee that exceeds .5% of the value of the burdened property, unless the burdened property is part of a large master planned development.
- (6)
  - (a) A reinvestment fee covenant recorded on or after March 16, 2010 is void and unenforceable unless a notice of reinvestment fee covenant, separate from the reinvestment fee covenant, is recorded in the office of the recorder of each county in which any of the burdened property is located.
  - (b) A notice under Subsection (6)(a) shall:
    - (i) state the name and address of the common interest association to which the fee under the reinvestment fee covenant is required to be paid;
    - (ii) include the notarized signature of the common interest association's authorized representative;
    - (iii) state that the burden of the reinvestment fee covenant is intended to run with the land and to bind successors in interest and assigns;
    - (iv) state that the existence of the reinvestment fee covenant precludes the imposition of an additional reinvestment fee covenant on the burdened property;
    - (v) state the duration of the reinvestment fee covenant;
    - (vi) state the purpose of the fee required to be paid under the reinvestment fee covenant; and
    - (vii) state that the fee required to be paid under the reinvestment fee covenant is required to benefit the burdened property.
  - (c) A recorded notice of reinvestment fee covenant that substantially complies with the requirements of Subsection (6)(b) is valid and effective.
- (7)
  - (a) A reinvestment fee covenant or transfer fee covenant recorded before March 16, 2010 is not enforceable after May 31, 2010, unless:
    - (i) a notice that is consistent with the notice described in Subsection (6) is recorded in the office of the recorder of each county in which any of the burdened property is located; or
    - (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the burdened property is located.
  - (b) A notice under Subsection (7)(a)(ii) shall:
    - (i) include the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or the beneficiary's authorized representative;
    - (ii) state the name and current address of the beneficiary under the reinvestment fee covenant or transfer fee covenant;
    - (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is intended to run with the land and to bind successors in interest and assigns; and
    - (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.
  - (c) A recorded notice of reinvestment fee covenant or transfer fee covenant that substantially complies with the requirements of Subsection (7)(b) is valid and effective.
- (8) A reinvestment fee covenant recorded on or after March 16, 2010 may not be enforced upon:
  - (a) an involuntary transfer;

- (b) a transfer that results from a court order;
- (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;
- (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- (e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.

Enacted by Chapter 16, 2010 General Session

## **Chapter 2 Acknowledgments**

### **57-2-10 Proof of execution -- How made.**

The proof of the execution of any conveyance whereby real estate is conveyed or may be affected shall be:

- (1) by the testimony of a subscribing witness, if there is one; or,
- (2) when all the subscribing witnesses are dead, or cannot be had, by evidence of the handwriting of the party, and of a subscribing witness, if there is one, given by a credible witness to each signature.

No Change Since 1953

### **57-2-11 Witness must be known or identified.**

No proof by a subscribing witness shall be taken unless such witness shall be personally known to the officer taking the proof to be the person whose name is subscribed to the conveyance as a witness thereto, or shall be proved to be such by the oath or affirmation of a credible witness personally known to such officer.

No Change Since 1953

### **57-2-12 Certificate of proof by subscribing witness.**

No certificate of such proof shall be made unless such subscribing witness shall prove that the person whose name is subscribed thereto as a party is the person described in, and who executed, the same; that such person executed the conveyance, and that such person subscribed his name thereto as a witness thereof at the request of the maker of such instrument.

No Change Since 1953

### **57-2-13 Form for certificate of proof.**

The certificate of proof shall be substantially in the following form, to wit:

State of Utah, County of \_\_\_\_\_

On this \_\_\_\_\_ (month\day\year), before me personally appeared \_\_\_\_\_, personally known to me (or satisfactorily proved to me by the oath of \_\_\_\_\_, a competent and credible witness for that purpose, by me duly sworn) to be the same person whose name is subscribed to the above

instrument as a witness thereto, who, being by me duly sworn, deposed and said that he resides in \_\_\_\_\_, county of \_\_\_\_\_, and state of Utah; that he was present and saw \_\_\_\_\_, personally known to him to be the signer of the above instrument as a party thereto, sign and deliver the same, and heard him acknowledge that he executed the same, and that he, the deponent, thereupon signed his name as a subscribing witness thereto at the request of said \_\_\_\_\_.

Amended by Chapter 75, 2000 General Session

**57-2-14 Proof of handwriting.**

No proof by evidence of the handwriting of a party, or of the subscribing witness or witnesses, shall be taken unless the officer taking the same shall be satisfied that all the subscribing witnesses to such conveyance are dead, out of the jurisdiction, or cannot be had to prove the execution thereof.

No Change Since 1953

**57-2-15 Evidence required for certificate of proof.**

No certificate of any such proof shall be made unless a competent and credible witness shall state on oath or affirmation that he personally knew the person whose name is subscribed thereto as a party, well knows his signature, stating his means of knowledge, and believes the name of the party subscribed thereto as a party was subscribed by such person; nor unless a competent and credible witness shall in like manner state that he personally knew the person whose name is subscribed to such conveyance as a witness, well knows his signature, stating his means of knowledge, and believes the name subscribed thereto as a witness was thereto subscribed by such person.

No Change Since 1953

**57-2-16 Subpoena to subscribing witness.**

Upon the application of any grantee in any conveyance required by law to be recorded, or of any person claiming under such grantee, verified under the oath of the applicant, that any witness to such conveyance residing in the county where such application is made refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or proof of such conveyance may issue a subpoena requiring such witness to appear before such officer and testify touching the execution thereof.

No Change Since 1953

**57-2-17 Disobedience of subpoenaed witness -- Contempt -- Proof aliunde.**

Every person who, being served with a subpoena, shall without reasonable cause refuse or neglect to appear, or, appearing, shall refuse to answer upon oath touching the matters aforesaid, shall be liable to the party injured for such damages as may be sustained by him on account of such neglect or refusal, and may also be dealt with for contempt as provided by law; but no person shall be required to attend who resides out of the county in which the proof is to be taken, nor unless his reasonable expenses shall have first been tendered to him; provided, that if it shall appear to the satisfaction of the officer so authorized to take such acknowledgment that such subscribing witness purposely conceals himself, or keeps out of the way, so that he cannot be

served with a subpoena or taken on attachment after the use of due diligence to that end, or in case of his continued failure or refusal to testify for the space of one hour after his appearance shall have been compelled by process, then said conveyance or other instrument may be proved and admitted to record in the same manner as if such subscribing witness thereto were dead.

No Change Since 1953

## **Chapter 2a**

### **Recognition of Acknowledgments Act**

#### **57-2a-1 Short title.**

This chapter is known as the "Recognition of Acknowledgments Act."

Enacted by Chapter 155, 1988 General Session

#### **57-2a-2 Definitions.**

As used in this chapter:

- (1) "Acknowledged before me" means:
  - (a) that the person acknowledging appeared before the person taking the acknowledgment;
  - (b) that he acknowledged he executed the document;
  - (c) that, in the case of:
    - (i) a natural person, he executed the document for the purposes stated in it;
    - (ii) a corporation, the officer or agent acknowledged he held the position or title set forth in the document or certificate, he signed the document on behalf of the corporation by proper authority, and the document was the act of the corporation for the purpose stated in it;
    - (iii) a partnership, the partner or agent acknowledged he signed the document on behalf of the partnership by proper authority, and he executed the document as the act of the partnership for the purposes stated in it;
    - (iv) a person acknowledging as principal by an attorney in fact, he executed the document by proper authority as the act of the principal for the purposes stated in it; or
    - (v) a person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he signed the document by proper authority, and he executed the document in the capacity and for the purposes stated in it; and
  - (d) that the person taking the acknowledgment:
    - (i) either knew or had satisfactory evidence that the person acknowledging was the person named in the document or certificate; and
    - (ii) in the case of a person executing a document in a representative capacity, either had satisfactory evidence or received the sworn statement or affirmation of the person acknowledging that the person had the proper authority to execute the document.
- (2) "Notarial act" means any act a notary public is authorized by state law to perform, including administering oaths and affirmations, taking acknowledgments of documents, and attesting documents.

Enacted by Chapter 155, 1988 General Session

#### **57-2a-3 Persons authorized to perform notarial acts.**

- (1) Notarial acts performed in this state shall be performed by:
  - (a) a judge or court clerk having a seal;
  - (b) a notary public; or
  - (c) a county clerk or county recorder.
- (2) The following persons authorized under the laws and regulations of other governments may perform notarial acts outside this state for use in this state with the same effect as if performed by a notary public of this state:
  - (a) a notary public authorized to perform notarial acts in the place where the act is performed;
  - (b) a judge, clerk, or deputy clerk of any court of record in the place where the notarial act is performed;
  - (c) an officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place where the act is performed;
  - (d) a commissioned officer in active service with the Armed Forces of the United States and any other person authorized by regulation of the Armed Forces to perform notarial acts if the notarial act is performed for any of his dependents, a merchant seaman of the United States, a member of the Armed Forces of the United States, or any other person serving with or accompanying the Armed Forces of the United States; or
  - (e) any other person authorized to perform notarial acts in the place where the act is performed.

Amended by Chapter 88, 1989 General Session

**57-2a-4 Proof of authority -- Prima facie evidence.**

- (1) Except as provided in Subsections (2) and (3), the signature, title or rank, branch of service, and serial number, if any, of any person described in Subsection 57-2a-3(2) are sufficient proof of his authority to perform a notarial act. Further proof of his authority is not required.
- (2) Proof of the authority of a person to perform a notarial act under the laws or regulations of a foreign country is sufficient if:
  - (a) a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;
  - (b) the official seal of the person performing the notarial act is affixed to the document; or
  - (c) the title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.
- (3) The signature and title or rank of the person performing the notarial act are prima facie evidence that he is a person with the designated title and that his signature is genuine.

Amended by Chapter 306, 2007 General Session

**57-2a-5 Certificate.**

A person taking an acknowledgment shall cause a certificate in a form acceptable under Section 57-2a-6 or 57-2a-7 to be endorsed on or attached to the document or other written instrument.

Enacted by Chapter 155, 1988 General Session

**57-2a-6 Form of certificate.**

The form of a certificate of acknowledgment used by a person whose authority is recognized under Section 57-2a-3 shall be accepted if:

- (1) the certificate is in a form prescribed by the laws or rules of this state;
- (2) the certificate is in a form prescribed by the laws or regulations applicable in the place where the acknowledgment is taken; or
- (3) the certificate contains the words "acknowledged before me," or their substantial equivalent.

Enacted by Chapter 155, 1988 General Session

**57-2a-7 Form of acknowledgment.**

- (1) The form of acknowledgment set forth in this section, if properly completed, is sufficient under any law of this state. It is known as "Statutory Short Form of Acknowledgment." This section does not preclude the use of other forms.

State of \_\_\_\_\_ )  
 ) ss.

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this (date) by (person acknowledging, title or representative capacity, if any).

	_____
(Seal)	(Signature of Person Taking Acknowledgment)
My commission expires:	(Title)
_____	Residing at:
	_____

- (2) The phrases "My commission expires" and "Residing at" may be omitted if this information is included in the notarial seal.

Amended by Chapter 306, 2007 General Session

**Chapter 3**  
**Recording of Documents**  
**Part 1**  
**General Provisions**

**57-3-101 Certificate of acknowledgment, proof of execution, jurat, or other certificate required -- Notarial acts affecting real property -- Right to record documents unaffected by subdivision ordinances.**

- (1) A certificate of the acknowledgment of any document, or of the proof of the execution of any document, or a jurat as defined in Section 46-1-2, or other notarial certificate containing the words "subscribed and sworn" or their substantial equivalent, that is signed and certified by the officer taking the acknowledgment, proof, or jurat, as provided in this title, entitles the document and the certificate to be recorded in the office of the recorder of the county where the real property is located.
- (2) Notarial acts affecting real property in this state shall also be performed in conformance with Title 46, Chapter 1, Notaries Public Reform Act.

- (3) Nothing in the provisions of Title 10, Chapter 9a, Part 6, Subdivisions, and Title 17, Chapter 27a, Part 6, Subdivisions, shall prohibit the recording of a document which is otherwise entitled to be recorded under the provisions of this chapter.

Amended by Chapter 254, 2005 General Session

**57-3-102 Record imparts notice -- Change in interest rate -- Validity of document -- Notice of unnamed interests -- Conveyance by grantee.**

- (1) Each document executed, acknowledged, and certified, in the manner prescribed by this title, each original document or certified copy of a document complying with Section 57-4a-3, whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4, and each financing statement complying with Section 70A-9a-502, whether or not acknowledged shall, from the time of recording with the appropriate county recorder, impart notice to all persons of their contents.
- (2) If a recorded document was given as security, a change in the interest rate in accordance with the terms of an agreement pertaining to the underlying secured obligation does not affect the notice or alter the priority of the document provided under Subsection (1).
- (3) This section does not affect the validity of a document with respect to the parties to the document and all other persons who have notice of the document.
- (4) The fact that a recorded document recites only a nominal consideration, names the grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the terms of the trust does not charge any third person with notice of any interest of the grantor or of the interest of any other person not named in the document.
- (5) The grantee in a recorded document may convey the interest granted to him free and clear of all claims not disclosed in the document in which he appears as grantee or in any other document recorded in accordance with this title that sets forth the names of the beneficiaries, specifies the interest claimed, and describes the real property subject to the interest.

Amended by Chapter 252, 2000 General Session

**57-3-103 Effect of failure to record.**

Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:

- (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and
- (2) the subsequent purchaser's document is first duly recorded.

Renumbered and Amended by Chapter 61, 1998 General Session

**57-3-104 Certified copies entitled to record in another county -- Effect.**

- (1)
  - (a) A document of record in a county recorder's office that is certified by the county recorder may be recorded in the office of the county recorder of another county.
  - (b) The recording of a certified copy in the office of the county recorder of another county has the same force and effect as if the original document had been recorded in the other county.
- (2) A certified copy of a document may not be submitted for recording under Subsection (1) in the office of the same county recorder that issued the certified copy.

Amended by Chapter 211, 2003 General Session

**57-3-105 Legal description of real property and names and addresses required in documents.**

- (1) Except as otherwise provided by statute, a person may not present a document for recording unless the document complies with this section.
- (2) A document executed after July 1, 1983, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document contains a legal description of the real property.
- (3)
  - (a) A document conveying title to real property presented for recording after July 1, 1981, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document names the grantees and recites a mailing address to be used for assessment and taxation in addition to the legal description required under Subsection (2).
  - (b) The address of the management committee may be used as the mailing address of a grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest as defined by Section 57-19-2.
- (4) A person may not present and a county recorder may refuse to accept a document for recording if the document does not conform to this section.
- (5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be recorded in the office of the recorder of the county in which the property described in the master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

Amended by Chapter 88, 2011 General Session

**57-3-106 Original documents required -- Captions -- Legibility.**

- (1) A person may not present and a county recorder may refuse to accept a document for recording if the document does not comply with this section.
- (2)
  - (a) Unless otherwise provided, a document presented for recording in the office of the county recorder shall:
    - (i)
      - (A) be an original; or
      - (B) be an electronic document that satisfies the requirements under Title 17, Chapter 21a, Uniform Real Property Electronic Recording Act;
    - (ii) contain a brief caption on the first page of the document stating the nature of the document; and
    - (iii) contain a legal description of the property as required under Section 57-3-105.
  - (b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (2)(a)(ii) shall state that the document is a master form.
- (3) A court judgment or an abstract of a court judgment presented for recording in the office of the county recorder in compliance with Section 78B-5-202 shall:
  - (a) be an original, a certified copy, or an electronic document that satisfies the requirements under Title 17, Chapter 21a, Uniform Real Property Electronic Recording Act; and
  - (b) include the information identifying the judgment debtor as referred to in Subsection 78B-5-201(4)(b) either:

- (i) in the judgment or abstract of judgment; or
  - (ii) as a separate information statement of the judgment creditor as referred to in Subsection 78B-5-201(5).
- (4) A judgment, abstract of judgment, or separate information statement of the judgment creditor does not require an acknowledgment, a legal description, or notarization to be recorded.
- (5) A foreign judgment or an abstract of a foreign judgment recorded in the office of a county recorder shall include the affidavit as required in Section 78B-5-303.
- (6) Any document recorded in the office of the county recorder to release, assign, renew, or extend a judgment lien shall include:
- (a) the name of any judgment creditor, debtor, assignor, or assignee;
  - (b) the date on which the instrument creating the lien was recorded in the office of the county recorder;
  - (c) the entry number and book and page of the recorded instrument creating the judgment lien; and
  - (d) the date on which the document is recorded.
- (7) A document presented for recording shall be sufficiently legible for the recorder to make certified copies of the document.
- (8)
- (a)
    - (i) A document that is of record in the office of the appropriate county recorder in compliance with this chapter may not be recorded again in that same county recorder's office unless the original document has been reexecuted by all parties who executed the document.
    - (ii) Unless exempt by statute, an original document that is reexecuted shall contain the appropriate acknowledgment, proof of execution, jurat, or other notarial certification for all parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments.
    - (iii) A document submitted for rerecording shall contain a brief statement explaining the reason for rerecording.
  - (b) A person may not present and a county recorder may refuse to accept a document for rerecording if that document does not conform to this section.
  - (c) This Subsection (8) applies only to documents executed after July 1, 1998.
- (9) Minor typographical or clerical errors in a document of record may be corrected by the recording of an affidavit or other appropriate instrument.
- (10)
- (a) Except as required by federal law, or by agreement between a borrower under the trust deed and a grantee under the trustee's deed, and subject to Subsection (10)(b), neither the recordation of an affidavit under Subsection (9) nor the reexecution and rerecording of a document under Subsection (8):
    - (i) divests a grantee of any real property interest;
    - (ii) alters an interest in real property; or
    - (iii) returns to the grantor an interest in real property conveyed by statute.
  - (b) A person who reexecutes and rerecords a document under Subsection (8), or records an affidavit under Subsection (9), shall include with the document or affidavit a notice containing the name and address to which real property valuation and tax notices shall be mailed.

Amended by Chapter 89, 2014 General Session  
Amended by Chapter 151, 2014 General Session

**57-3-107 Unenforceable covenants -- Definition -- Inclusion in recorded document.**

- (1) As used in this chapter, "unenforceable covenant" means a restriction on alienation of real property, whether recited in a document to be recorded under this chapter, or recited in a document of record under this chapter, which is based on race, gender, national origin, marital status, or a similar classification determined to be unenforceable under state or federal law.
- (2) A document which recites an unenforceable covenant may be recorded as provided in this chapter.
- (3) Any unenforceable covenant recited in a document to be recorded under this chapter or recited in a document of record is considered void, but does not invalidate the remainder of the document.

Amended by Chapter 163, 1999 General Session

**57-3-108 Financing statements not subject to title.**

This title does not apply to a financing statement filed or recorded in a filing office described in Subsection 70A-9a-501(1)(a) that:

- (1) covers as-extracted collateral or timber to be cut; or
- (2)
  - (a) is filed as a fixture filing; and
  - (b) covers goods that are or are to become fixtures.

Enacted by Chapter 252, 2000 General Session

**57-3-109 Water rights addenda.**

- (1) As used in this section:
  - (a) "Applicable deed" means a deed executed on or after July 1, 2011:
    - (i) conveying fee simple title to land; or
    - (ii) conveying title to water rights without conveying title to land.
  - (b) "Water rights addendum" means a written document that:
    - (i) is an addendum to an applicable deed;
    - (ii) is in a form approved by the Legislature in a joint resolution; and
    - (iii)
      - (A) identifies and describes the water rights transferred under an applicable deed; or
      - (B) states that no water rights are transferred under an applicable deed.
- (2) Beginning July 1, 2011, a person submitting an applicable deed to a county recorder's office for recording may also submit a water rights addendum as an addendum to the applicable deed.
- (3)
  - (a) A grantor shall complete and sign a water rights addendum submitted under Subsection (2).
  - (b)
    - (i) A grantee shall sign a water rights addendum to acknowledge receipt of a copy of the water rights addendum.
    - (ii) A grantee's signature on a water rights addendum may be by facsimile or electronic means.
- (4) The state engineer shall use and make available to the public the water rights addendum form approved by the Legislature.
- (5) Upon recording an applicable deed with a water rights addendum, a county recorder shall transmit a paper or electronic copy of the deed and water rights addendum to the state engineer.

Enacted by Chapter 70, 2010 General Session

## **Part 2**

### **Master Mortgage and Trust Deeds**

#### **57-3-201 Definitions.**

As used in this part, "master form" means a mortgage or trust deed used as a master or similar standardized form that is drafted and recorded in accordance with this part to be incorporated in whole or in part into multiple mortgages or trust deeds.

Enacted by Chapter 61, 1998 General Session

#### **57-3-202 Recording master mortgage and trust deed -- Requirements for master form -- Indexing by county recorder.**

- (1)
  - (a) A person may record a master form in the office of the county recorder.
  - (b) A person who files a master form shall state in the caption required under Section 57-3-106 that the instrument is a master form.
- (2) A master form is not required to:
  - (a) contain identification or description of any specific real property; or
  - (b) name a specific:
    - (i) mortgagor;
    - (ii) trustor; or
    - (iii) trustee.
- (3) A master form shall:
  - (a) name a specific mortgagee or beneficiary;
  - (b) contain an acknowledgment, proof, or certification; and
  - (c) identify the person causing the recording of the master form.
- (4) A county recorder shall:
  - (a) index a master form in the same manner as the county recorder indexes mortgages and trust deeds in accordance with Section 17-21-6; and
  - (b) indicate on all indices and records of the county referencing the master form that the instrument is a master form.
- (5)
  - (a) If a county recorder receives a document for recording that contains both a master form and a mortgage or trust deed, the county recorder:
    - (i) is not required to:
      - (A) separate the master form from the mortgage or trust deed; or
      - (B) record the master form and the mortgage or trust deed as separate instruments; but
    - (ii) may separate the master form from the mortgage or trust deed and record only the master form if the unrecorded portion is clearly designated or marked as a section not recorded.
  - (b) A master form recorded under Subsection (5)(a), is considered as a master form under this part for purposes of the incorporation by reference of a previously recorded master form.

Enacted by Chapter 61, 1998 General Session

**57-3-203 Authorization to incorporate master form by reference -- Referencing a master form -- Prohibiting the reference of legal descriptions.**

- (1)
  - (a) After a master form is recorded in accordance with Section 57-3-202, any provision of that master form may be incorporated in a mortgage or trust deed without setting the provision in full by making reference to the master form in the manner provided in this section.
  - (b) The incorporation of a provision of a master form is effective for purposes of this chapter only if it complies with the provision of this section.
- (2) To incorporate a provision of a master form:
  - (a) the master form shall be of record in any county in which the mortgage or trust deed incorporating the master form provision is recorded;
  - (b) the mortgage or trust deed incorporating the master form provision shall contain a statement for each county in which the mortgage or trust deed is to be recorded that:
    - (i) gives the specific date on which the referenced master form was recorded in that county;
    - (ii) identifies the referenced master form by reference to the indexing information for the referenced master form from the county records of that county, providing:
      - (A) the entry number; and
      - (B) the book and first page number of the records or book where the recorded master form appears; and
    - (iii) if less than all of the provisions of the referenced master form are incorporated, identifies by paragraph, section, or other method which provision is incorporated into the mortgage or trust deed.
- (3) In the absence of a statement identifying which provision is to be incorporated as described in Subsection (2)(b)(iii), the entire referenced master form is considered incorporated.
- (4) A party may not incorporate by reference the legal description of the real property affected by the mortgage or trust deed being recorded.

Enacted by Chapter 61, 1998 General Session

**57-3-204 Constructive notice -- Effect as between direct parties to mortgage or trust deed.**

- (1) The recording of a mortgage or trust deed that incorporates a provision of a master form in accordance with Section 57-3-203, operates as constructive notice of the mortgage or trust deed, including all incorporated provisions of the referenced master form.
- (2) Nothing in this part modifies the law regarding the effectiveness of a mortgage, trust deed, or contract as between:
  - (a) the mortgagor and mortgagee of the mortgage; or
  - (b) the trustor, beneficiary, and trustee under a trust deed.

Enacted by Chapter 61, 1998 General Session

**Chapter 4a  
Effects of Recording**

**57-4a-1 Document recordable despite defects.**

Each document executed and acknowledged on or before July 1, 1988, may be recorded in the office of the county recorder regardless of any defect or irregularity in its execution, attestation, or acknowledgment.

Enacted by Chapter 155, 1988 General Session

**57-4a-2 Recorded document imparts notice of contents despite defects.**

A recorded document imparts notice of its contents regardless of any defect, irregularity, or omission in its execution, attestation, or acknowledgment. A certified copy of a recorded document is admissible as evidence to the same extent the original document would be admissible as evidence.

Enacted by Chapter 155, 1988 General Session

**57-4a-3 Document recordable without acknowledgment.**

A document or a certified copy of a document may be recorded without acknowledgment if:

- (1) it was executed under law existing at the time of execution;
- (2) it evidences or affects title to real property; and
- (3) it was issued under the authority of:
  - (a) the United States, another state, a court of record, a foreign government, or an Indian tribe; or
  - (b) this state or any of its political subdivisions but, any document executed under the authority of this state or any of its political subdivisions after July 1, 1988, may not be recorded unless it includes a certificate of acknowledgement or jurat.

Amended by Chapter 88, 1989 General Session

**57-4a-4 Presumptions.**

- (1) A recorded document creates the following presumptions regarding title to the real property affected:
  - (a) the document is genuine and was executed voluntarily by the person purporting to execute it;
  - (b) the person executing the document and the person on whose behalf it is executed are the persons they purport to be;
  - (c) the person executing the document was neither incompetent nor a minor at any relevant time;
  - (d) delivery occurred notwithstanding any lapse of time between dates on the document and the date of recording;
  - (e) any necessary consideration was given;
  - (f) the grantee, transferee, or beneficiary of an interest created or described by the document acted in good faith at all relevant times;
  - (g) a person executing a document as an agent, attorney in fact, officer of an organization, or in a fiduciary or official capacity:
    - (i) held the position he purported to hold and acted within the scope of his authority;
    - (ii) in the case of an officer of an organization, was authorized under all applicable laws to act on behalf of the organization; and
    - (iii) in the case of an agent, his agency was not revoked, and he acted for a principal who was neither incompetent nor a minor at any relevant time;
  - (h) a person executing the document as an individual:
    - (i) was unmarried on the effective date of the document; or

- (ii) if it otherwise appears from the document that the person was married on the effective date of the document, the grantee was a bona fide purchaser and the grantor received adequate and full consideration in money or money's worth so that the joinder of the nonexecuting spouse was not required under Sections 75-2-201 through 75-2-207;
  - (i) if the document purports to be executed pursuant to or to be a final determination in a judicial or administrative proceeding, or to be executed pursuant to a power of eminent domain, the court, official body, or condemnor acted within its jurisdiction and all steps required for the execution of the document were taken; and
  - (j) recitals and other statements of fact in a document, including without limitation recitals concerning mergers or name changes of organizations, are true.
- (2) The presumptions stated in Subsection (1) arise even though the document purports only to release a claim or to convey any right, title, or interest of the person executing it or the person on whose behalf it is executed.

Amended by Chapter 88, 1989 General Session

## **Chapter 6 Occupying Claimants**

### **57-6-1 Stay of execution of judgment of possession.**

Where an occupant of real estate has color of title to the real estate, and in good faith has made valuable improvements on the real estate, and is afterwards in a proper action found not to be the owner, no execution shall issue to put the owner in possession of the real estate after the filing of a complaint as hereinafter provided, until the provisions of this chapter have been complied with.

Amended by Chapter 299, 1995 General Session

### **57-6-2 Claimant to commence action -- Complaint -- Trial of issues.**

Such complaint must set forth the grounds on which the defendant seeks relief, stating as accurately as practicable the value of the real estate, exclusive of the improvements thereon made by the claimant or his grantors, and the value of such improvements. The issues joined thereon must be tried as in law actions, and the value of the real estate and of such improvements must be separately ascertained on the trial.

No Change Since 1953

### **57-6-3 Rights of parties -- Acquiring other's interest or holding as tenants in common.**

The plaintiff in the main action may thereupon pay the appraised value of the improvements and take the property, but should he fail to do so after a reasonable time, to be fixed by the court, the defendant may take the property upon paying its value, exclusive of the improvements. If this is not done within a reasonable time, to be fixed by the court, the parties will be held to be tenants in common of all the real estate, including the improvements, each holding an interest proportionate to the values ascertained on the trial.

No Change Since 1953

**57-6-4 Certain persons considered to hold under color of title.**

- (1) A purchaser in good faith at any judicial or tax sale made by the proper person or officer has color of title within the meaning of this chapter, whether or not the person or officer has sufficient authority to sell, unless the want of authority was known to the purchaser at the time of the sale.
- (2)
  - (a) Any person has color of title who has occupied a tract of real estate by himself, or by those under whom he claims, for the term of five years, or who has occupied it for less time, if he, or those under whom he claims, have at any time during the occupancy with the knowledge or consent, express or implied, of the real owner made any valuable improvements on the real estate, or if he or those under whom he claims have at any time during the occupancy paid the ordinary county taxes on the real estate for any one year, and two years have elapsed without a repayment by the owner, and the occupancy is continued up to the time at which the action is brought by which the recovery of the real estate is obtained.
  - (b) The person's rights shall pass to his assignees or representatives.
- (3) Nothing in this chapter shall be construed to give tenants color of title against their landlords or give any person a claim under color of title to school and institutional trust lands as defined in Section 53C-1-103.

Amended by Chapter 39, 2005 General Session

**57-6-5 Settlers under state or federal law or contract deemed occupying claimants.**

When any person has settled upon any real estate and occupied the same for three years under or by virtue of any law or contract with the proper officers of the state for the purchase thereof, or under any law of, or by virtue of any purchase from, the United States, and shall have made valuable improvements thereon, and shall be found not to be the owner thereof, or not to have acquired a right to purchase the same from the state or the United States, such person shall be an occupying claimant within the meaning of this chapter.

No Change Since 1953

**57-6-6 Setoff against claim for improvements.**

In the cases above provided for, if the occupying claimant has committed any injury to the real estate by cutting timber, or otherwise, the plaintiff may set the same off against any claim for improvements made by the claimant.

No Change Since 1953

**57-6-7 When execution on judgment of possession may issue.**

The plaintiff in the main action is entitled to an execution to put him in possession of his property in accordance with the provisions of this chapter, but not otherwise.

No Change Since 1953

**57-6-8 Improvements made by occupants of land granted to state.**

Any person having improvements on any real estate granted to the state in aid of any work of internal improvement, whose title thereto is questioned by another, may remove such

improvements without injury otherwise to such real estate, at any time before he is evicted therefrom, or he may claim and have the benefit of this chapter by proceeding as herein directed.

No Change Since 1953

## **Chapter 8**

### **Condominium Ownership Act**

#### **57-8-1 Short title.**

This act shall be known and may be cited as the "Condominium Ownership Act."

Enacted by Chapter 111, 1963 General Session

#### **57-8-2 Applicability of chapter.**

This act shall be applicable only to property which the sole owner or all the owners submit to the provisions of the act by duly executing and recording a declaration as provided in the act.

Enacted by Chapter 111, 1963 General Session

#### **57-8-3 Definitions.**

As used in this chapter:

- (1) "Assessment" means any charge imposed by the association, including:
  - (a) common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter; and
  - (b) an amount that an association of unit owners assesses to a unit owner under Subsection 57-8-43(9)(g).
- (2) "Association of unit owners" or "association" means all of the unit owners:
  - (a) acting as a group in accordance with the declaration and bylaws; or
  - (b) organized as a legal entity in accordance with the declaration.
- (3) "Building" means a building, containing units, and comprising a part of the property.
- (4) "Commercial condominium project" means a condominium project that has no residential units within the project.
- (5) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:
  - (a) the land included within the condominium project, whether leasehold or in fee simple;
  - (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;
  - (c) the basements, yards, gardens, parking areas, and storage spaces;
  - (d) the premises for lodging of janitors or persons in charge of the property;
  - (e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
  - (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
  - (g) such community and commercial facilities as may be provided for in the declaration; and
  - (h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

- (6) "Common expenses" means:
  - (a) all sums lawfully assessed against the unit owners;
  - (b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;
  - (c) expenses agreed upon as common expenses by the association of unit owners; and
  - (d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.
- (7) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.
- (8) "Condominium" means the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.
- (9) "Condominium plat" means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.
- (10) "Condominium project" means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.
- (11) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.
- (12) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.
- (13) "Convertible land" means a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in accordance with this chapter.
- (14) "Convertible space" means a portion of the structure within the condominium project, which portion may be converted into one or more units or common areas and facilities, including limited common areas and facilities in accordance with this chapter.
- (15) "Declarant" means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.
- (16) "Declaration" means the instrument by which the property is submitted to the provisions of this act, as it from time to time may be lawfully amended.
- (17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.
- (18) "Expandable condominium" means a condominium project to which additional land or an interest in it may be added in accordance with the declaration and this chapter.
- (19) "Gas corporation" means the same as that term is defined in Section 54-2-1.
- (20) "Governing documents":
  - (a) means a written instrument by which an association of unit owners may:
    - (i) exercise powers; or

- (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association of unit owners; and
- (b) includes:
  - (i) articles of incorporation;
  - (ii) bylaws;
  - (iii) a plat;
  - (iv) a declaration of covenants, conditions, and restrictions; and
  - (v) rules of the association of unit owners.
- (21) "Independent third party" means a person that:
  - (a) is not related to the unit owner;
  - (b) shares no pecuniary interests with the unit owner; and
  - (c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.
- (22) "Leasehold condominium" means a condominium project in all or any portion of which each unit owner owns an estate for years in his unit, or in the land upon which that unit is situated, or both, with all those leasehold interests to expire naturally at the same time. A condominium project including leased land, or an interest in the land, upon which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.
- (23) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.
- (24) "Majority" or "majority of the unit owners," unless otherwise provided in the declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.
- (25) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.
- (26)
  - (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.
  - (b) "Means of electronic communication" includes:
    - (i) web conferencing;
    - (ii) video conferencing; and
    - (iii) telephone conferencing.
- (27) "Meeting" means a gathering of a management committee, whether in person or by means of electronic communication, at which the management committee can take binding action.
- (28) "Mixed-use condominium project" means a condominium project that has both residential and commercial units in the condominium project.
- (29) "Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.
- (30) "Period of administrative control" means the period of control described in Subsection 57-8-16.5(1).

- (31) "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.
- (32) "Property" means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
- (33) "Record," "recording," "recorded," and "recorder" have the meaning stated in Chapter 3, Recording of Documents.
- (34) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number. Certain spaces within the units including attic, basement, or garage space may be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all units in the condominium project and if that basis is described in the declaration.
- (35) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in Section 57-19-2.
- (36) "Unconstructed unit" means a unit that:
  - (a) is intended, as depicted in the condominium plat, to be fully or partially contained in a building; and
  - (b) is not constructed.
- (37)
  - (a) "Unit" means a separate part of the property intended for any type of independent use, which is created by the recording of a declaration and a condominium plat that describes the unit boundaries.
  - (b) "Unit" includes one or more rooms or spaces located in one or more floors or a portion of a floor in a building.
  - (c) "Unit" includes a convertible space, in accordance with Subsection 57-8-13.4(3).
- (38) "Unit number" means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.
- (39) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

Amended by Chapter 210, 2016 General Session

Amended by Chapter 255, 2016 General Session

#### **57-8-4 Status of the units.**

Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

Enacted by Chapter 111, 1963 General Session

**57-8-4.5 Removing or altering partition or creating aperture between adjoining units.**

- (1) Subject to the declaration, a unit owner may, after acquiring an adjoining unit that shares a common wall with the unit owner's unit:
  - (a) remove or alter a partition between the unit owner's unit and the acquired unit, even if the partition is entirely or partly common areas and facilities; or
  - (b) create an aperture to the adjoining unit or portion of a unit.
- (2) A unit owner may not take an action under Subsection (1) if the action would:
  - (a) impair the structural integrity or mechanical systems of the building or either unit;
  - (b) reduce the support of any portion of the common areas and facilities or another unit; or
  - (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local government land use ordinance, or a building code.
- (3) The management committee may require a unit owner to submit, at the unit owner's expense, a registered professional engineer's or registered architect's opinion stating that a proposed change to the unit owner's unit will not:
  - (a) impair the structural integrity or mechanical systems of the building or either unit;
  - (b) reduce the support or integrity of common areas and facilities; or
  - (c) compromise structural components.
- (4) The management committee may require a unit owner to pay all of the legal and other expenses of the association of unit owners related to a proposed alteration to the unit or building under this section.
- (5) An action under Subsection (1) does not change an assessment or voting right attributable to the unit owner's unit or the acquired unit, unless the declaration provides otherwise.

Enacted by Chapter 152, 2013 General Session

**57-8-5 Recognized tenancy relationships.**

Any unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.

Enacted by Chapter 111, 1963 General Session

**57-8-6 Ownership and possession rights.**

Each unit owner shall be entitled to the exclusive ownership and possession of his unit. The owner of a time period condominium unit shall be entitled to the exclusive ownership and possession of the physical unit to which his time period relates and shall be entitled to the use and enjoyment of the common areas and facilities during, but only during, such annually recurring part or parts of a year as describe and define the time period unit concerned in the declaration.

Amended by Chapter 173, 1975 General Session

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

- (1) Unless specifically authorized in the declaration, bylaws, or rules, an association of unit owners may not charge a fee for providing association payoff information needed in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit.
- (2) An association of unit owners may not:
  - (a) require a fee described in Subsection (1) that is authorized in the declaration, bylaws, or rules to be paid before closing; or

- (b) charge the fee if it exceeds \$50.
- (3)
  - (a) An association of unit owners that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.
  - (b) A request under Subsection (3)(a) is not effective unless the request:
    - (i) is conveyed in writing to the primary contact person designated under Subsection 57-8-13.1(3)(d);
    - (ii) contains:
      - (A) the name, telephone number, and address of the person making the request; and
      - (B) the facsimile number or email address for delivery of the payoff information; and
    - (iii) is accompanied by a written consent for the release of the payoff information:
      - (A) identifying the person requesting the information as a person to whom the payoff information may be released; and
      - (B) signed and dated by an owner of the unit for which the payoff information is requested.
- (4) This section applies to each association of unit owners, regardless of when the association of unit owners is formed.

Enacted by Chapter 255, 2011 General Session

**57-8-6.7 Limit on fee for approval of plans.**

- (1) As used in this section:
  - (a) "Plan fee" means a fee that an association of unit owners charges for review and approval of unit plans.
  - (b) "Unit plans" means plans:
    - (i) for the construction or improvement of a unit; and
    - (ii) that are required to be approved by the association of unit owners before the unit construction or improvement may occur.
- (2) An association of unit owners may not charge a plan fee that exceeds the actual cost of reviewing and approving the unit plans.

Enacted by Chapter 152, 2013 General Session

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

- (1) As used in this section:
  - (a) "Emergency repairs" means any repairs that, if not made in a timely manner, will likely result in immediate and substantial damage to the common areas and facilities or to another unit or units.
  - (b) "Reasonable notice" means:
    - (i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed entry; or
    - (ii) in the case of emergency repairs, notice that is reasonable under the circumstances.
- (2) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentages or fractions expressed in the declaration. The declaration may allocate to each unit an undivided interest in the common areas and facilities proportionate to either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an equal undivided interest in the common areas and facilities, subject to the following exception: each convertible space depicted on the condominium plat shall be allocated an undivided interest in

the common areas and facilities proportionate to the size of the space vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common areas and facilities shall be allocated equally among the other units so depicted. The undivided interest in the common areas and facilities allocated in accordance with this Subsection (2) shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal undivided interest in the common areas and facilities is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated. Otherwise, the undivided interest allocated to each unit shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously with it, containing columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective sizes or par values of those units and the fraction or percentage of undivided interest in the common areas and facilities allocated thereto.

- (3) Except as otherwise expressly provided by this act, the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of two-thirds of the unit owners expressed in an amended declaration duly recorded. The undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be considered to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. A time period unit may not be further divided into shorter time periods by a conveyance or disclaimer.
- (4) The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this act as provided in Sections 57-8-22 and 57-8-31. Any covenants to the contrary shall be null and void.
- (5) Each unit owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other unit owners.
- (6) The necessary work of maintenance, repair, and replacement of the common areas and facilities and the making of any additions or improvements thereon shall be carried out only as provided in this chapter or in the declaration or bylaws.
- (7) Except as otherwise provided in the declaration or Section 57-8-43:
  - (a) an association of unit owners is responsible for the maintenance, repair, and replacement of common areas and facilities; and
  - (b) a unit owner is responsible for the maintenance, repair, and replacement of the unit owner's unit.
- (8) After reasonable notice to the occupant of the unit being entered, the manager or management committee may access a unit:
  - (a) from time to time during reasonable hours, as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities; or
  - (b) for making emergency repairs.
- (9)
  - (a) An association of unit owners is liable to repair damage it causes to the common areas and facilities or to a unit the association of unit owners uses to access the common areas and facilities.

- (b) An association of unit owners shall repair damage described in Subsection (9)(a) within a time that is reasonable under the circumstances.

Amended by Chapter 152, 2013 General Session

**57-8-7.2 Scope -- Designation of certain areas.**

- (1) Unless otherwise provided in the declaration, this section applies to a unit if the declaration designates a wall, floor, or ceiling as a boundary of the unit.
- (2)
  - (a) The following are part of a unit:
    - (i) lath;
    - (ii) furring;
    - (iii) wallboard;
    - (iv) plasterboard;
    - (v) plaster;
    - (vi) paneling;
    - (vii) tiles;
    - (viii) wallpaper;
    - (ix) paint;
    - (x) finished flooring; and
    - (xi) any other material constituting part of the finished surface of a wall, floor, or ceiling.
  - (b) Any portion of a wall, floor, or ceiling not listed in Subsection (2)(a) is part of the common areas and facilities.
- (3) If a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit:
  - (a) any portion of an item described in this Subsection (3) serving only that unit is part of the limited common areas and facilities; and
  - (b) any portion of an item described in this Subsection (3) is part of the common areas and facilities if the item serves:
    - (i) more than one unit; or
    - (ii) any portion of the common areas and facilities.
- (4) Subject to Subsection (3), the following within the boundaries of a unit are part of the unit:
  - (a) spaces;
  - (b) interior partitions; and
  - (c) other fixtures and improvements.
- (5) The following, if designated to serve a single unit but located outside the unit's boundaries, are limited common areas and facilities allocated exclusively to a unit:
  - (a) a shutter;
  - (b) an awning;
  - (c) a window box;
  - (d) a doorstep;
  - (e) a stoop;
  - (f) a porch;
  - (g) a balcony;
  - (h) a patio;
  - (i) an exterior door;
  - (j) an exterior window; and
  - (k) any other fixture.

Enacted by Chapter 290, 2004 General Session

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

- (1) As used in this section:
  - (a) "Reserve analysis" means an analysis to determine:
    - (i) the need for a reserve fund to accumulate reserve funds; and
    - (ii) the appropriate amount of any reserve fund.
  - (b) "Reserve fund line item" means the line item in an association of unit owners' annual budget that identifies the amount to be placed into a reserve fund.
  - (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the association of unit owners.
- (2) Except as otherwise provided in the declaration, a management committee shall:
  - (a) cause a reserve analysis to be conducted no less frequently than every six years; and
  - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.
- (3) The management committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the management committee, to conduct the reserve analysis.
- (4) A reserve fund analysis shall include:
  - (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
  - (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
  - (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
  - (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and
  - (e) a reserve funding plan that recommends how the association of unit owners may fund the annual contribution described in Subsection (4)(d).
- (5) An association of unit owners shall:
  - (a) annually provide unit owners a summary of the most recent reserve analysis or update; and
  - (b) provide a copy of the complete reserve analysis or update to a unit owner who requests a copy.
- (6) In formulating its budget each year, an association of unit owners shall include a reserve fund line item in:
  - (a) an amount the management committee determines, based on the reserve analysis, to be prudent; or
  - (b) an amount required by the declaration, if the declaration requires an amount higher than the amount determined under Subsection (6)(a).
- (7)
  - (a) Within 45 days after the day on which an association of unit owners adopts its annual budget, the unit owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association of unit owners at a special meeting called by the unit owners for the purpose of voting whether to veto a reserve fund line item.

- (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a reserve fund line item exists in a previously approved annual budget of the association of unit owners that was not vetoed, the association of unit owners shall fund the reserve account in accordance with that prior reserve fund line item.
- (8)
- (a) Subject to Subsection (8)(b), if an association of unit owners does not comply with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:
- (i) injunctive relief requiring the association of unit owners to comply with the requirements of Subsection (5), (6), or (7);
  - (ii) \$500 or actual damages, whichever is greater;
  - (iii) any other remedy provided by law; and
  - (iv) reasonable costs and attorney fees.
- (b) No fewer than 90 days before the day on which a unit owner files a complaint under Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to the association of unit owners.
- (c) A notice under Subsection (8)(b) shall state:
- (i) the requirement in Subsection (5), (6), or (7) with which the association of unit owners has failed to comply;
  - (ii) a demand that the association of unit owners come into compliance with the requirements; and
  - (iii) a date, no fewer than 90 days after the day on which the unit owner delivers the notice, by which the association of unit owners shall remedy its noncompliance.
- (d) In a case filed under Subsection (8)(a), a court may order an association of unit owners to produce the summary of the reserve analysis or the complete reserve analysis on an expedited basis and at the association of unit owners' expense.
- (9)
- (a) A management committee may not use money in a reserve fund:
- (i) for daily maintenance expenses, unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose; or
  - (ii) for any purpose other than the purpose for which the reserve fund was established.
- (b) A management committee shall maintain a reserve fund separate from other funds of the association of unit owners.
- (c) This Subsection (9) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.
- (10) Subsections (2) through (9) do not apply to an association of unit owners during the period of administrative control.
- (11) For a condominium project whose initial declaration is recorded on or after May 12, 2015, during the period of administrative control, for any property that the declarant sells to a third party, the declarant shall give the third party:
- (a) a copy of the association of unit owners' governing documents; and
  - (b) a copy of the association of unit owners' most recent financial statement that includes any reserve funds held by the association of unit owners or by a subsidiary of the association of unit owners.
- (12) Except as otherwise provided in this section, this section applies to each association of unit owners, regardless of when the association of unit owners was created.

Amended by Chapter 34, 2015 General Session  
Amended by Chapter 325, 2015 General Session

**57-8-8 Compliance with covenants, bylaws and/or house rules and administrative provisions.**

Subject to reasonable compliance therewith by the manager and the management committee, each unit owner shall reasonably comply with the covenants, conditions, and restrictions as set forth in the declaration or in the deed to his unit, and with the bylaws and/or house rules and with the administrative rules and regulations drafted pursuant thereto, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the manager or management committee on behalf of the unit owners, or in a proper case, by an aggrieved unit owner.

Amended by Chapter 132, 2000 General Session

**57-8-8.1 Equal treatment by rules required -- Limits on rules.**

- (1)
  - (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated unit owners similarly.
  - (b) Notwithstanding Subsection (1)(a), a rule may:
    - (i) vary according to the level and type of service that the association of unit owners provides to unit owners;
    - (ii) differ between residential and nonresidential uses; or
    - (iii) for a unit that a unit owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals that may use the common areas and facilities as the rental unit tenant's guest or as the unit owner's guest.
- (2)
  - (a) If a unit owner owns a rental unit and is in compliance with the association of unit owners' governing documents and any rule that the association of unit owners adopts under Subsection (4), a rule may not treat the unit owner differently because the unit owner owns a rental unit.
  - (b) Notwithstanding Subsection (2)(a), a rule may:
    - (i) limit or prohibit a rental unit owner from using the common areas and facilities for purposes other than attending an association meeting or managing the rental unit;
    - (ii) if the rental unit owner retains the right to use the association of unit owners' common areas and facilities, even occasionally:
      - (A) charge a rental unit owner a fee to use the common areas and facilities; and
      - (B) for a unit that a unit owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals that may use the common areas and facilities as the rental unit tenant's guest or as the unit owner's guest; or
    - (iii) include a provision in the association of unit owners' governing documents that:
      - (A) requires each tenant of a rental unit to abide by the terms of the governing documents; and
      - (B) holds the tenant and the rental unit owner jointly and severally liable for a violation of a provision of the governing documents.
- (3)
  - (a) A rule may not interfere with the freedom of a unit owner to determine the composition of the unit owner's household.

- (b) Notwithstanding Subsection (3)(a), an association of unit owners may:
  - (i) require that all occupants of a dwelling be members of a single housekeeping unit; or
  - (ii) limit the total number of occupants permitted in each residential dwelling on the basis of the residential dwelling's:
    - (A) size and facilities; and
    - (B) fair use of the common areas and facilities.
- (4) Unless contrary to a declaration, a rule may require a minimum lease term.
- (5) Unless otherwise provided in the declaration, an association of unit owners may by rule:
  - (a) regulate the use, maintenance, repair, replacement, and modification of common areas and facilities;
  - (b) impose and receive any payment, fee, or charge for:
    - (i) the use, rental, or operation of the common areas, except limited common areas and facilities; and
    - (ii) a service provided to a unit owner;
  - (c) impose a charge for a late payment of an assessment; or
  - (d) provide for the indemnification of the association of unit owners' officers and management committee consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- (6) A rule shall be reasonable.
- (7) A declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1) through (5), except Subsection (1)(b)(ii).
- (8) This section applies to an association of unit owners regardless of when the association of unit owners is created.

Amended by Chapter 154, 2016 General Session

Amended by Chapter 348, 2016 General Session

### **57-8-9 Certain work prohibited.**

No unit owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other unit owners being first obtained.

Enacted by Chapter 111, 1963 General Session

### **57-8-10 Contents of declaration.**

- (1) Before the conveyance of any unit in a condominium project, a declaration shall be recorded that contains the covenants, conditions, and restrictions relating to the project that shall be enforceable equitable servitudes, where reasonable, and which shall run with the land. Unless otherwise provided, these servitudes may be enforced by a unit owner or a unit owner's successor in interest.
- (2)
  - (a) For every condominium project, the declaration shall:
    - (i) include a description of the land or interests in real property included within the project;
    - (ii) contain a description of any buildings that states the number of storeys and basements, the number of units, the principal materials of which the building is or is to be constructed, and a description of all other significant improvements contained or to be contained in the project;
    - (iii) contain the unit number of each unit, the square footage of each unit, and any other description or information necessary to properly identify each unit;

- (iv) describe the common areas and facilities of the project; and
    - (v) describe any limited common areas and facilities and state to which units the use of the common areas and facilities is reserved.
  - (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall constitute a limited common area and facility appertaining to that unit exclusively, whether or not the declaration makes such a provision.
  - (c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (2)(a) and (b).
  - (d)
    - (i) The declaration shall include the percentage or fraction of undivided interest in the common areas and facilities appurtenant to each unit and the unit owner for all purposes, including voting, derived and allocated in accordance with Subsection 57-8-7(2).
    - (ii) If any use restrictions are to apply, the declaration shall state the purposes for which the units are intended and the use restrictions that apply.
    - (iii)
      - (A) The declaration shall include the name and address of a person to receive service of process on behalf of the project, in the cases provided by this chapter.
      - (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall maintain a place of business within, this state.
    - (iv) The declaration shall describe the method by which the declaration may be amended consistent with this chapter.
    - (v) Any further matters in connection with the property may be included in the declaration, which the person or persons executing the declaration may consider desirable, consistent with this chapter.
    - (vi) The declaration shall contain a statement of intention that this chapter applies to the property.
  - (e) The initial recorded declaration shall include:
    - (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
    - (ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8-45 to (name of trustee), with power of sale, the unit and all improvements to the unit for the purpose of securing payment of assessments under the terms of the declaration."
- (3)
- (a) If the condominium project contains any convertible land, the declaration shall:
    - (i) contain a legal description by metes and bounds of each area of convertible land within the condominium project;
    - (ii) state the maximum number of units that may be created within each area of convertible land;
    - (iii) state, with respect to each area of convertible land, the maximum percentage of the aggregate land and floor area of all units that may be created and the use of which will not or may not be restricted exclusively to residential purposes, unless none of the units on other portions of the land within the project are restricted exclusively to residential use;
    - (iv) state the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the land within the condominium project in terms of quality of construction, the principal materials to be used, and architectural style;
    - (v) describe all other improvements that may be made on each area of convertible land within the condominium project;

- (vi) state that any units created within each area of convertible land will be substantially identical to the units on other portions of the land within the project or describe in detail what other type of units may be created; and
  - (vii) describe the declarant's reserved right, if any, to create limited common areas and facilities within any convertible land in terms of the types, sizes, and maximum number of the limited common areas within each convertible land.
- (b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsection (3)(a).
- (4)
- (a) If the condominium project is an expandable condominium project, the declaration shall:
    - (i) contain an explicit reservation of an option to expand the project;
    - (ii) include a statement of any limitations on the option to expand, including a statement as to whether the consent of any unit owners is required and, a statement as to the method by which consent shall be ascertained, or a statement that there are no such limitations;
    - (iii) include a time limit, not exceeding seven years after the day on which the declaration is recorded, upon which the option to expand the condominium project expires and a statement of any circumstances that will terminate the option before expiration of the specified time limits;
    - (iv) contain a legal description by metes and bounds of all land that may be added to the condominium project, which is known as additional land;
    - (v) state:
      - (A) if any of the additional land is added to the condominium project, whether all of it or any particular portion of it must be added;
      - (B) any limitations as to what portions may be added; or
      - (C) a statement that there are no such limitations;
    - (vi) include a statement as to whether portions of the additional land may be added to the condominium project at different times, including any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of these lands and regulating the order in which they may be added to the condominium project;
    - (vii) include a statement of any limitations on the locations of any improvements that may be made on any portions of the additional land added to the condominium project, or a statement that no assurances are made in that regard;
  - (viii)
    - (A) state the maximum number of units that may be created on the additional land;
    - (B) if portions of the additional land may be added to the condominium project and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(vi), state the maximum number of units that may be created on each portion added to the condominium project; and
    - (C) if portions of the additional land may be added to the condominium project and the boundaries of those portions are not fixed in accordance with Subsection (4)(a)(vi), state the maximum number of units per acre that may be created on any portion added to the condominium project;
  - (ix) with respect to the additional land and to any portion of the additional land that may be added to the condominium project, state the maximum percentage of the aggregate land and floor area of all units that may be created on it, the use of which will not or may not be restricted exclusively to residential purposes, unless none of the units on the land originally within the project are restricted exclusively to residential use;

- (x) state the extent to which any structures erected on any portion of the additional land added to the condominium project will be compatible with structures on the land originally within the project in terms of quality of construction, the principal materials to be used, and architectural style, or that no assurances are made in those regards;
  - (xi) describe all other improvements that will be made on any portion of the additional land added to the condominium project, including any limitations on what other improvements may be made on the additional land, or state that no assurances are made in that regard;
  - (xii) contain a statement that any units created on any portion of the additional land added to the condominium project will be substantially identical to the units on the land originally within the project, a statement of any limitations on what types of units may be created on the additional land, or a statement that no assurances are made in that regard; and
  - (xiii) describe the declarant's reserved right, if any, to create limited common areas and facilities within any portion of the additional land added to the condominium project, in terms of the types, sizes, and maximum number of limited common areas within each portion, or state that no assurances are made in those regards.
- (b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (4)(a)(iv) through (a)(vii) and (a)(x) through (a)(xiii).
- (5)
- (a) If the condominium project is a contractible condominium, the declaration shall:
    - (i) contain an explicit reservation of an option to contract the condominium project;
    - (ii) contain a statement of any limitations on the option to contract, including a statement regarding whether the consent of any unit owners is required, and if so, a statement regarding the method by which this consent shall be ascertained, or a statement that there are no such limitations;
    - (iii) state the time limit, not exceeding seven years after the day on which the declaration is recorded, upon which the option to contract the condominium project expires, together with a statement of any circumstances that will terminate the option before expiration of the specified time limit;
    - (iv) include a legal description by metes and bounds of all land that may be withdrawn from the condominium project, which is known as withdrawable land;
    - (v) include a statement as to whether portions of the withdrawable land may be withdrawn from the condominium project at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds and regulating the order in which they may be withdrawn from the condominium project; and
    - (vi) include a legal description by metes and bounds of all of the land within the condominium project to which the option to contract the project does not extend.
  - (b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (5)(a)(iv) through (vi).
- (6)
- (a) If the condominium project is a leasehold condominium, the declaration shall, with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium project:
    - (i) include recording information enabling the location of each lease in the official records of the county recorder;
    - (ii) include the date upon which each lease is due to expire;
    - (iii) state whether any land or improvements will be owned by the unit owners in fee simple;
    - (iv) if there is to be fee simple ownership of any land or improvement, as described in Subsection (6)(a)(iii), include:

- (A) a description of the land or improvements, including a legal description by metes and bounds of the land; or
- (B) a statement of any rights the unit owners have to remove these improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights; and
- (v) include a statement of the rights the unit owners have to extend or renew any of the leases or to redeem or purchase any of the reversions, or a statement that they have no such rights.
- (b) After the recording of the declaration, a lessor who executed the declaration, or the lessor's successor in interest, may not terminate any part of the leasehold interest of any unit owner who:
  - (i) makes timely payment of the unit owner's share of the rent to the persons designated in the declaration for the receipt of the rent; and
  - (ii) otherwise complies with all covenants which would entitle the lessor to terminate the lease if the covenants were violated.
- (7)
  - (a) If the condominium project contains time period units, the declaration shall also contain the location of each condominium unit in the calendar year. This information shall be set out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7(2), if the exhibit or schedule accompanies the declaration.
  - (b) The declaration shall also put timeshare owners on notice that tax notices will be sent to the management committee, not each timeshare owner.
  - (c) The time period units created with respect to any given physical unit shall be such that the aggregate of the durations involved constitute a full calendar year.
- (8)
  - (a) The declaration, bylaws, and condominium plat shall be duly executed and acknowledged by all of the owners and any lessees of the land which is made subject to this chapter.
  - (b) As used in Subsection (8)(a), "owners and lessees" does not include, in their respective capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common areas and facilities.

Amended by Chapter 397, 2014 General Session

**57-8-10.1 Rental restrictions.**

- (1)
  - (a) Subject to Subsections (1)(b), (5), and (6), an association of unit owners may:
    - (i) create restrictions on the number and term of rentals in a condominium project; or
    - (ii) prohibit rentals in the condominium project.
  - (b) An association of unit owners that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a declaration or by amending the declaration.
- (2) If an association of unit owners prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:
  - (a) a provision that requires a condominium project to exempt from the rental restrictions the following unit owner and the unit owner's unit:
    - (i) a unit owner in the military for the period of the unit owner's deployment;

- (ii) a unit occupied by a unit owner's parent, child, or sibling;
- (iii) a unit owner whose employer has relocated the unit owner for no less than two years; or
- (iv) a unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:
  - (A) a current resident of the unit; or
  - (B) the parent, child, or sibling of the current resident of the unit;
- (b) a provision that allows a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the county in which the condominium project is located to continue renting until:
  - (i) the unit owner occupies the unit; or
  - (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; and
- (c) a requirement that the association of unit owners create, by rule or resolution, procedures to:
  - (i) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (2)(a) and (b); and
  - (ii) ensure consistent administration and enforcement of the rental restrictions.
- (3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:
  - (a) the conveyance, sale, or other transfer of a unit by deed;
  - (b) the granting of a life estate in the unit; or
  - (c) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- (4) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.
- (5) A declaration or amendment to a declaration recorded before transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)(a).
- (6) Subsections (1) through (5) do not apply to:
  - (a) a condominium project that contains a time period unit as defined in Section 57-8-3;
  - (b) any other form of timeshare interest as defined in Section 57-19-2; or
  - (c) a condominium project in which the initial declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association of unit owners:
    - (i) adopts a rental restriction or prohibition; or
    - (ii) amends an existing rental restriction or prohibition.
- (7) Notwithstanding this section, an association of unit owners may restrict or prohibit rentals without an exception described in Subsection (2) if:
  - (a) the restriction or prohibition receives unanimous approval by all unit owners; and
  - (b) when the restriction or prohibition requires an amendment to the association of unit owners' declaration, the association of unit owners fulfills all other requirements for amending the declaration described in the association of unit owners' governing documents.
- (8) Except as provided in Subsection (9), an association of unit owners may not require a unit owner who owns a rental unit to:
  - (a) obtain the association of unit owners' approval of a prospective renter;
  - (b) give the association of unit owners:
    - (i) a copy of a rental application;
    - (ii) a copy of a renter's or prospective renter's credit information or credit report;

- (iii) a copy of a renter's or prospective renter's background check; or
  - (iv) documentation to verify the renter's age; or
  - (c) pay an additional assessment, fine, or fee because the unit is a rental unit.
- (9)
- (a) A unit owner who owns a rental unit shall give an association of unit owners the documents described in Subsection (8)(b) if the unit owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.
  - (b) If an association of unit owners' declaration lawfully prohibits or restricts occupancy of the units by a certain class of individuals, the association of unit owners may require a unit owner who owns a rental unit to give the association of unit owners the information described in Subsection (8)(b), if:
    - (i) the information helps the association of unit owners determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration; and
    - (ii) the association of unit owners uses the information to determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration.
- (10) The provisions of Subsections (8) and (9) apply to an association of unit owners regardless of when the association of unit owners is created.

Amended by Chapter 22, 2015 General Session

#### **57-8-10.3 Indemnification and limit of liability.**

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

Enacted by Chapter 152, 2013 General Session

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

- (1) An association of unit owners may amend the declaration to make applicable to the association of unit owners a provision of this chapter that is enacted after the creation of the association of unit owners, by complying with:
- (a) the amendment procedures and requirements specified in the declaration and applicable provisions of this chapter; or
  - (b) the amendment procedures and requirements of this chapter, if the declaration being amended does not contain amendment procedures and requirements.
- (2) If an amendment under Subsection (1) adopts a specific section of this chapter:
- (a) the amendment grants a right, power, or privilege permitted by that specific section; and
  - (b) all correlative obligations, liabilities, and restrictions in that section also apply.

Enacted by Chapter 152, 2013 General Session

#### **57-8-11 Contents of deeds of units.**

A deed of units may include:

- (1) a description of the land as provided in Section 57-8-10, including the book and page or entry number and date of recording of the declaration;
- (2) the unit number of the unit and any other data necessary for its proper identification;

- (3) percentage of undivided interest appertaining to the unit in the common or community areas and facilities; and
- (4) any further particulars that the grantor and grantee consider desirable to set forth consistent with the declaration and this chapter.

Amended by Chapter 268, 2007 General Session

**57-8-12 Recording.**

- (1) The declaration, any amendment, any instrument by which the provisions of this act may be waived, and every instrument affecting the property or any unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless recorded.
- (2) In addition to the records and indexes now required to be maintained by the recorder, the recorder shall maintain an index whereby the record of each condominium project contains a reference to the declaration, each conveyance of, lien against, and all other instruments referring to a unit affected by such declaration, and the record of each conveyance of, lien against, and all other instruments referring to a unit shall contain a reference to the declaration of the property of which the unit is a part.

Enacted by Chapter 111, 1963 General Session

**57-8-13 Condominium plat to be recorded.**

- (1)
  - (a) Simultaneously with the recording of the declaration there shall be recorded a standard size, original linen (21" x 31") condominium plat with 6-1/4" x 1-1/2" recording information block, which map shall be made by a registered Utah land surveyor and shall set forth:
    - (i) a description of the surface of the land included within the project, including all angular and linear data along the exterior boundaries of the property;
    - (ii) the linear measurement and location, with reference to the exterior boundaries, of the building or buildings, if any, located or to be located on the property other than within the boundaries of any convertible lands;
    - (iii) diagrammatic floor plans of the building or buildings, if any, built or to be built on the property, other than within the boundaries of any convertible lands, in sufficient detail to identify each convertible space and physical unit contained within a building, including its identifying number or symbol, the official datum elevations of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and the lateral extensions, of every such convertible space and unit;
    - (iv) a description or delineation of the boundaries of any unit or convertible space not contained or to be contained in a building or whose boundaries are not to be coextensive with walls, ceilings, or floors within a building, other than units located within the boundaries of any convertible lands, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;
    - (v) a distinguishing number or other symbol for every physical unit identified on the condominium plat;
    - (vi) to the extent feasible, the location and dimensions of all easements appurtenant to the land included within the project;
    - (vii) the label "convertible space" for each such space, if any;

- (viii) the location and dimensions of any convertible lands within the condominium project, with each such convertible land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;
  - (ix) the location and dimensions of any withdrawable lands, with each such withdrawable land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;
  - (x) if with respect to any portion or portions, but less than all, of the land included within the project the unit owners are to own only an estate for years, the location and dimensions of any such portion, with each labeled as a leased land, and if there be more than one such land, with each labeled with a different letter or number; and
  - (xi) any encroachments by or on any portion of the condominium project.
- (b) Each such condominium plat shall be certified as to its accuracy and compliance with the provisions of this Subsection (1) by the land surveyor who prepared or who supervised the preparation of the same and shall be executed and acknowledged as provided in Subsection 57-8-10(8).
- (2) When converting all or any portion of any convertible land or when adding additional land to an expandable condominium, the declarant shall record a new or supplemental condominium plat which shall contain the information necessary to comply with the requirements of Subsection (1) of this section. In any case where less than all of a convertible land is being converted, the condominium plat shall show the location and dimensions of the remaining portion or portions of the land in addition to otherwise meeting such requirements.
- (3) When converting all or any portion of any convertible space into one or more units or limited common areas and facilities, the declarant shall record, with regard to the structure or portion of it constituting that convertible space, a supplemental condominium plat showing the location and dimensions of the vertical and horizontal boundaries of each unit formed out of this space. The supplemental map shall be certified as to its accuracy and compliance with this Subsection (3) by the land surveyor who prepared or who supervised the preparation of it.
- (4) In interpreting the condominium plat or any deed or other instrument affecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the condominium plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the condominium plat, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the condominium plat and those of the building or unit.

Amended by Chapter 265, 2003 General Session

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

- (1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.
- (2)
- (a) No later than 90 days after the recording of a declaration, an association of unit owners shall register with the department in the manner established by the department.
  - (b) An association of unit owners existing under a declaration recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.
- (3) The department shall require an association of unit owners registering as required in this section to provide with each registration:
- (a) the name and address of the association of unit owners;

- (b) the name, address, telephone number, and, if applicable, email address of the president of the association of unit owners;
  - (c) the name and address of each management committee member;
  - (d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a unit owner's financing, refinancing, or sale of the owner's unit; and
  - (e) a registration fee not to exceed \$37.
- (4) An association of unit owners that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).
- (5)
- (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4):
    - (i) a lien may not arise under Section 57-8-44; and
    - (ii) an association of unit owners may not enforce an existing lien that arose under Section 57-8-44.
  - (b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.
  - (c) An association of unit owners that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).
  - (d) An association of unit owners that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).
  - (e) Except as described in Subsection (5)(f), beginning on the date an association of unit owners ends a period of noncompliance:
    - (i) a lien may arise under Section 57-8-44 for any event that:
      - (A) occurred during the period of noncompliance; and
      - (B) would have given rise to a lien under Section 57-8-44 had the association of unit owners been in compliance with the registration requirements described in this section; and
    - (ii) an association of unit owners may enforce a lien described in Subsection (5)(e) or a lien that existed before the period of noncompliance.
  - (f) If an owner's unit is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):
    - (i) a lien that arose under Section 57-8-44 before the conveyance of the unit became final is extinguished when the conveyance of the unit becomes final; and
    - (ii) an event that occurred before the conveyance of the unit became final, and that would have given rise to a lien under Section 57-8-44 had the association of unit owners been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8-44 if the conveyance of the unit becomes final before the association of unit owners ends the period of noncompliance.

Amended by Chapter 95, 2013 General Session

**57-8-13.2 Conversion of convertible land -- Amendment to declaration -- Limitations.**

- (1) The declarant may convert all or any portion of any convertible land into one or more units or limited common areas and facilities subject to any restrictions and limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under Subsection (2) of this section and Subsection 57-8-13(2).
- (2) Simultaneously with the recording of the condominium plat pursuant to Subsection 57-8-13(2), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection 57-8-13.10(2). The amendment shall describe or delineate the limited common areas and facilities formed out of the convertible land, showing or designating the unit or units to which each is assigned.
- (3) All convertible lands shall be deemed part of the common areas and facilities except for such portions of them as are converted in accordance with this section. No such conversions shall occur after five years from the recordation of the declaration, or such shorter period of time as the declaration may specify, unless three-fourths of unit owners vote in favor of converting the land after the time period has expired.

Amended by Chapter 265, 2003 General Session

**57-8-13.4 Conversion of convertible space -- Amendment to declaration -- Limitations.**

- (1) The declarant may convert any portion of any convertible space into one or more units or common areas and facilities, including, without limitation, limited common areas and facilities, subject to any restrictions and limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under Subsection (2) of this section and Subsection 57-8-13(3).
- (2) Simultaneously with the recording of the supplemental record survey map under Subsection 57-8-13(3), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common areas and facilities appertaining to that space. The amendment shall describe or delineate the limited common areas and facilities formed out of the convertible space, showing or designating the unit or units to which each is assigned.
- (3) Any convertible space not converted in accordance with this section, or any portion of it not so converted, shall be treated for all purposes as a single unit until and unless it is so converted; and this act shall be deemed applicable to any such space, or portion of it, as though the same were a unit.

Enacted by Chapter 173, 1975 General Session

**57-8-13.6 Expansion of project.**

A condominium project may be expanded under the provisions of the declaration and of this act. Any such expansion shall be deemed to have occurred at the time of the recordation of the condominium plat under Subsection 57-8-13(2), together with an amendment to the declaration, duly executed and acknowledged by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium project. The amendment shall contain a legal description by metes and bounds of the land added to the condominium project

and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection 57-8-13.10(2).

Amended by Chapter 265, 2003 General Session

**57-8-13.8 Contraction of project.**

A condominium project may be contracted under the provisions of the declaration and the provisions of this chapter. Any such contraction shall be considered to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium project. If portions of the withdrawable land were described pursuant to Subsection 57-8-10(5)(a)(iv), then no described portion may be so withdrawn after the conveyance of any unit on the portion. If no withdrawable portions were described, then none of the withdrawable land may be withdrawn after the first conveyance of any unit on the portion.

Amended by Chapter 397, 2014 General Session

**57-8-13.10 Condominiums containing convertible land -- Expandable condominiums -- Allocation of interests in common areas and facilities.**

(1) If a condominium project contains any convertible land or is an expandable condominium, then the declaration may not allocate undivided interests in the common areas and facilities on the basis of par value unless the declaration:

- (a) prohibits the creation of any units not substantially identical to the units depicted on the condominium plat recorded pursuant to Subsection 57-8-13(1); or
- (b) prohibits the creation of any units not described under Subsection 57-8-10(3)(a)(vii) in the case of convertible land, Subsection 57-8-10(4)(a)(xii) in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every unit that may be created.

(2) (a) Interests in the common areas and facilities may not be allocated to any units to be created within any convertible land or within any additional land until a condominium plat depicting the same is recorded pursuant to Subsection 57-8-13(2).

(b) Simultaneously with the recording of the supplemental condominium plat required under Subsection (2)(a), the declarant shall execute and record an amendment to the declaration which reallocates undivided interests in the common areas and facilities so that the units depicted on the supplemental condominium plat shall be allocated undivided interests in the common areas and facilities on the same basis as the units depicted on the condominium plat that was recorded simultaneously with the declaration pursuant to Subsection 57-8-13(1).

(3) If all of a convertible space is converted into common areas and facilities, including limited common areas and facilities, then the undivided interest in the common areas and facilities appertaining to the convertible space shall afterward appertain to the remaining units and shall be allocated among them in proportion to their undivided interests in the common areas and facilities. The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration, shall immediately prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interest produced by the conversion.

(4)

- (a) If the expiration or termination of any lease of a leasehold condominium causes a contraction of the condominium project which reduces the number of units, or if the withdrawal of withdrawable land of a contractible condominium causes a contraction of the condominium project which reduces the number of units, the undivided interest in the common areas and facilities appertaining to any units so withdrawn shall afterward appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common areas and facilities.
- (b) The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration shall immediately prepare, execute, and record an amendment to the declaration, reflecting the reallocation of undivided interests produced by the reduction of units.

Amended by Chapter 397, 2014 General Session

**57-8-13.12 Land to be withdrawn or added to project -- Applicability of restrictions.**

No covenants, restrictions, limitations, or other representations or commitments in the declaration concerning anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium project or never added to it except to the extent that the declaration so provides. In the case of any covenant, restriction, limitation, or other representation or commitment in the declaration or in any other agreement requiring the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations concerning anything that is or is not to be done on it or concerning it, or imposing any obligations about anything that is or is not to be done on or in respect to the condominium project or any portion of it, this section shall not be construed to nullify, limit, or otherwise affect any such obligation.

Enacted by Chapter 173, 1975 General Session

**57-8-13.14 Easement rights -- Sales offices and model units -- Damage to property.**

- (1) Subject to any restrictions and limitations the declaration may specify, the declarant shall have a transferable easement over and on the common areas and facilities for the purpose of making improvements on the land within the project or on any additional land under the declaration and this act, and for the purpose of doing all things reasonably necessary and proper in connection with the same.
- (2) The declarant and his duly authorized agents, representatives, and employees may maintain sales offices or model units on the land within the project if the declaration provides for the same and specifies the rights of the declarant about the number, size, location, and relocation of them. Any sales office or model unit which is not designated a unit by the declaration shall become a common area and facility as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights concerning it unless the sales office or model unit is removed immediately from the land included within the project in accordance with a right reserved in the declaration to make this removal.
- (3) To the extent that damage is inflicted on any part of the condominium project by any person or persons utilizing the easements reserved by the declaration or created by Subsections (1) and (2) of this section, the declarant, together with the person or persons causing the same, shall be jointly and severally liable for the prompt repair of the damage and for the restoration of the same to a condition compatible with the remainder of the condominium project.

Enacted by Chapter 173, 1975 General Session

**57-8-14 Legal description of units.**

- (1) A deed, lease, mortgage, or other instrument may legally describe a unit by its identifying number or symbol as designated in the declaration or as shown on the condominium plat.
- (2) Each description under Subsection (1) shall be considered:
  - (a) to be good and sufficient for all purposes; and
  - (b) to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of ownership in the common or community areas and facilities even though the percentage of ownership is not expressly mentioned or described.

Amended by Chapter 268, 2007 General Session

**57-8-15 Bylaws.**

The administration of every property shall be governed by bylaws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment and such amendment is recorded.

Enacted by Chapter 111, 1963 General Session

**57-8-16 Contents of bylaws.**

The bylaws may provide for the following:

- (1) the establishment of a management committee, the number of persons constituting the committee and the method of selecting the members of the committee; the powers and duties of the management committee; and whether or not the management committee may engage the services of a manager;
- (2) the method of calling meetings of the unit owners; what percentage of the unit owners shall constitute a quorum, and be authorized to transact business;
- (3) the maintenance, repair, and replacement of the common areas and facilities and payment therefor;
- (4) the manner of collecting from the unit owners their share of the common expenses;
- (5) the designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities;
- (6) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;
- (7)
  - (a) restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners; and
  - (b) restrictions regarding the use of the units may include other prohibitions on, or allowance of, smoking tobacco products;
- (8) the percentage of votes required to amend the bylaws; and
- (9) other provisions as may be considered necessary for the administration of the property consistent with this act.

Amended by Chapter 230, 1997 General Session

**57-8-16.5 Appointment and removal of committee members and association officers --  
Renewal or ratification of contracts -- Failure to establish association or committee.**

- (1)
- (a) The declaration may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the members of the management committee or some or all of the officers of the association of unit owners, or to exercise powers and responsibilities otherwise assigned by the declaration and by this act to the association of unit owners, its officers, or the management committee.
  - (b) If the declaration authorizes the declarant to appoint or remove some or all members of the management committee or some or all of the officers of the association of unit owners during the period of control contemplated by this Subsection (1), the declarant may appoint the declarant's officers, employees or agents as members of the management committee or as officers of the association of unit owners.
  - (c) No amendment to the declaration not consented to by all unit owners shall increase the scope of this authorization, and no such authorization shall be valid after the first to occur of the following:
    - (i) expiration of the time limit set by the declaration, which shall not exceed six years in the case of an expandable condominium, four years in the case of a condominium project containing any convertible land, or three years in the case of any other condominium project; or
    - (ii) after units to which three-fourths of the undivided interest in the common areas and facilities appertain have been conveyed, or after all additional land has been added to the project and all convertible land has been converted, whichever last occurs.
  - (2) If entered into during the period of control contemplated by Subsection (1), no management contract, lease of recreational areas or facilities, or any other contract or lease designed to benefit the declarant which was executed by or on behalf of the association of unit owners or the unit owners as a group shall be binding after such period of control unless then renewed or ratified by the consent of unit owners of units to which a majority of the votes in the association of unit owners appertains.
  - (3) If the association of unit owners or management committee is not in existence or does not have officers at the time of the creation of a condominium project, the declarant shall, until there is an association or management committee with these officers, have the power and responsibility to act in all instances where this act or the declaration requires action by the association of unit owners, the management committee, or any of the officers of them.
  - (4) This section shall be strictly construed to protect the rights of the unit owners.

Amended by Chapter 210, 2016 General Session

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

- (1)
- (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make documents available to unit owners in accordance with Sections 16-6a-1601 through 1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610, regardless of whether the association of unit owners is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
  - (b) An association of unit owners may redact the following information from any document the association of unit owners produces for inspection or copying:
    - (i) a Social Security number;
    - (ii) a bank account number; or

- (iii) any communication subject to attorney-client privilege.
- (2)
  - (a) In addition to the requirements described in Subsection (1), an association of unit owners shall make documents available to unit owners in accordance with the association of unit owners' governing documents.
  - (b) If a provision of an association of unit owners' governing documents conflicts with a provision of this section, the provision of this section governs.
- (3) In a request to inspect or copy documents, a unit owner may:
  - (a) elect whether to inspect or copy the documents;
  - (b) if the unit owner elects to copy the documents, request hard copies or electronic scans of the documents; or
  - (c) subject to Subsection (4), request that:
    - (i) the association of unit owners make the copies or electronic scans of the requested documents;
    - (ii) a recognized third party duplicating service make the copies or electronic scans of the requested documents; or
    - (iii) the unit owner be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents.
- (4)
  - (a) An association of unit owners shall comply with a request described in Subsection (3).
  - (b) If an association of unit owners produces the copies or electronic scans:
    - (i) the copies or electronic scans shall be legible and accurate; and
    - (ii) the unit owner shall pay the association of unit owners the reasonable cost of the copies or electronic scans, which may not exceed:
      - (A) the actual cost that the association of unit owners paid to a recognized third party duplicating service to make the copies or electronic scans; or
      - (B) if an employee, manager, or other agent of the association of unit owners makes the copies or electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.
  - (c) If a unit owner requests a recognized third party duplicating service make the copies or electronic scans:
    - (i) the association of unit owners shall arrange for the delivery and pick up of the original documents; and
    - (ii) the unit owner shall pay the duplicating service directly.
  - (d) If a unit owner requests to bring imaging equipment to the inspection, the association of unit owners shall provide the necessary space, light, and power for the imaging equipment.
- (5) If, in response to a unit owner's request to inspect or copy documents, an association of unit owners fails to comply with a provision of this section, the association of unit owners shall pay:
  - (a) the reasonable costs of inspecting and copying the requested documents; and
  - (b) reasonable attorney fees and costs incurred by the unit owner in obtaining the inspection and copies of the requested documents.
- (6)
  - (a) In addition to any remedy in the association of unit owners' governing documents or as otherwise provided by law, a unit owner may file an action in court under this section if:
    - (i) an association of unit owners fails to make documents available to the unit owner in accordance with this section, the association of unit owners' governing documents, or as otherwise provided by law; and

- (ii) the association of unit owners fails to timely comply with a notice described in Subsection (6)(d).
  - (b) In an action described in Subsection (6)(a):
    - (i) the unit owner may request:
      - (A) injunctive relief requiring the association of unit owners to comply with the provisions of this section;
      - (B) \$500 or actual damage, whichever is greater; or
      - (C) any other relief provided by law; and
    - (ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.
  - (c)
    - (i) In an action described in Subsection (6)(a), upon motion by the unit owner, notice to the association of unit owners, and a hearing in which the court finds a likelihood that the association of unit owners failed to comply with a provision of this section, the court shall order the association of unit owners to immediately comply with the provision.
    - (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after the day on which the unit owner files the motion.
  - (d) At least 10 days before the day on which a unit owner files an action described in Subsection (6)(a), the unit owner shall deliver a written notice to the association of unit owners that states:
    - (i) the unit owner's name, address, telephone number, and email address;
    - (ii) each requirement of this section with which the association of unit owners has failed to comply;
    - (iii) a demand that the association of unit owners comply with each requirement with which the association of unit owners has failed to comply; and
    - (iv) a date by which the association of unit owners shall remedy the association of unit owners' noncompliance that is at least 10 days after the day on which the unit owner delivers the notice to the association of unit owners.
- (7)
- (a) The provisions of Section 16-6a-1604 do not apply to an association of unit owners.
  - (b) The provisions of this section apply regardless of any conflicting provision in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right that the unit owner has under this section.

Repealed and Re-enacted by Chapter 325, 2015 General Session

**57-8-18 Blanket mortgages and other blanket liens affecting unit at time of first conveyance.**

At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit, including the percentage of undivided interest of the unit in the common areas and facilities, shall have been paid and satisfied of record, or the unit being conveyed and its percentage of undivided interest in the common areas and facilities shall have been released therefrom by partial release duly recorded. The provisions of this section shall not apply, however, to any withdrawable land in a contractible condominium.

Amended by Chapter 173, 1975 General Session

**57-8-19 Liens against units -- Removal from lien -- Effect of part payment.**

- (1) Subsequent to recording the declaration as provided in this act, and while the property remains subject to this act, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against the unit of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the unit owners, the manager or management committee in accordance with this act, the declaration or bylaws or the house rules, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the units.
- (2) In the event a lien against two or more units becomes effective, the unit owners of the separate units may remove their units and the percentage of undivided interest in the common areas and facilities appurtenant to such units from the lien by payment of the fractional or proportional amount attributable to each of the units affected. Such individual payment shall be computed by reference to the percentages appearing in the declaration. Subsequent to any payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

Enacted by Chapter 111, 1963 General Session

**57-8-21 Acquisition through tax deed or foreclosure of liens.**

In the event any person shall acquire, through foreclosure, exercise of power of sale, or other enforcement of any lien, or by tax deed, the interest of any unit owner, the interest acquired shall be subject to all the provisions of this act and to the covenants, conditions and restrictions contained in the declaration, the condominium plat, the bylaws, the house rules, or any deed affecting the interest then in force.

Amended by Chapter 265, 2003 General Session

**57-8-22 Removal of property from statutory provisions.**

- (1) All of the unit owners may remove a property from the provisions of this act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.
- (2) Upon removal of the property from the provisions of this act, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

Enacted by Chapter 111, 1963 General Session

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

The removal provided for in Section 57-8-22 does not bar the subsequent resubmission of the property to the provisions of this chapter.

Amended by Chapter 152, 2013 General Session

**57-8-24 Common profits, common expenses, and voting rights -- Unit -- Unconstructed unit.**

- (1) A unit is created by the recording of the declaration and a condominium plat that describes the unit.
- (2) An association of unit owners shall, according to each unit owner's respective percentage or fractional undivided interests in the common areas and facilities:
  - (a) distribute the property's common profits among the unit owners;
  - (b) except as otherwise provided in the declaration for unconstructed units, assess the unit owners the property's common expenses; and
  - (c) make voting rights available to the unit owners.
- (3)
  - (a) After the recording of a condominium project's declaration, an unconstructed unit is a unit for the purposes of the declaration and this chapter, including:
    - (i) allocation of undivided interests in the common areas and facilities in accordance with Subsection 57-8-7(2); and
    - (ii) voting rights in accordance with Section 57-8-24.
  - (b) Subsection (3)(a) applies to a condominium project regardless of when the condominium project's initial declaration was recorded.

Amended by Chapter 210, 2016 General Session

**57-8-25 Joint and several liability of grantor and grantee for unpaid common expenses.**

In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the manager or management committee setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

Enacted by Chapter 111, 1963 General Session

**57-8-26 Waiver of use of common areas and facilities -- Abandonment of unit.**

No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

Enacted by Chapter 111, 1963 General Session

**57-8-27 Separate taxation.**

- (1) Each unit and its percentage of undivided interest in the common or community areas and facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit, local district, and special service district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.
- (2) In the event any of the interests in real property made subject to this chapter by the declaration are leasehold interests, if the lease creating these interests is of record in the office of the county recorder, if the balance of the term remaining under the lease is at least 40 years at the time the leasehold interest is made subject to this chapter, if units are situated or are to be situated on or within the real property covered by the lease, and if the lease provides that the lessee shall pay all taxes and assessments imposed by governmental authority, then until 10 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be levied against the owner of the lessee's interest. If the owner of the reversion under the lease has executed the declaration and condominium plat, until 10 years prior to the date that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be separately levied against the unit owners having an interest in the lease, with each unit owner for taxation purposes being considered the owner of a parcel consisting of his undivided condominium interest in the fee of the real property affected by the lease.
- (3) No forfeiture or sale of the improvements or the property as a whole for delinquent real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an individual unit if the real estate taxes or duly levied share of the assessments and charges on the individual unit are currently paid.
- (4) Any exemption from taxes that may exist on real property or the ownership of the property may not be denied by virtue of the submission of the property to this chapter.
- (5) Timeshare interests and timeshare estates, as defined in Section 57-19-2, may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, vacation conveniences and services, club memberships, and any other intangible rights and benefits available to a timeshare unit owner. Nothing in this section shall be construed as requiring the assessment of any real property interest associated with a timeshare interest or timeshare estate at less than its fair market value. Notice of assessment, delinquency, sale, or any other purpose required by law is considered sufficient for all purposes if the notice is given to the management committee.

Amended by Chapter 255, 2016 General Session

**57-8-28 Exemption from rules of property.**

The rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this act, or of any declaration, bylaws or other document executed in accordance with this act.

Enacted by Chapter 111, 1963 General Session

**57-8-30 Application of insurance proceeds to reconstruction.**

In case of fire or any other disaster, the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. Reconstruction of the building, as used in this section and Section 57-8-31, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

Enacted by Chapter 111, 1963 General Session

**57-8-31 Disposition of property where insurance proceeds are insufficient for reconstruction.**

Unless otherwise provided in the declaration or bylaws, if the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the manager or management committee, using proceeds of insurance, if any, on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the building is destroyed or substantially damaged and if the unit owners, by a vote of at least three-fourths of such unit owners, do not voluntarily, within 100 days after such destruction or damage, make provision for reconstruction, the manager or management committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

- (1) The property shall be deemed to be owned in common by the unit owners;
- (2) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;
- (3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and
- (4) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

Enacted by Chapter 111, 1963 General Session

**57-8-32 Sale of property.**

Unless otherwise provided in the declaration or bylaws, and notwithstanding the provisions of Sections 57-8-30 and 57-8-31, the unit owners may, by an affirmative vote of at least three-fourths of such unit owners, at a meeting of unit owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all unit owners and it shall

thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

Enacted by Chapter 111, 1963 General Session

**57-8-32.5 Property taken by eminent domain -- Allocation of award -- Reallocation of interests.**

- (1) If any portion of the common areas and facilities is taken by eminent domain, the award for it shall be allocated to the unit owners in proportion to their respective undivided interests in the common areas and facilities.
- (2) If any units are taken by eminent domain, the undivided interest in the common areas and facilities appertaining to these units shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common areas and facilities. The court shall enter a decree reflecting the reallocation of undivided interests so produced, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common areas and facilities as well as for his unit.
- (3) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of the unit not taken, and the undivided interest in the common areas and facilities appertaining to any such units shall be reduced, in the case of each unit, in proportion to the diminution in the fair market value of the unit resulting from the taking. The portions of undivided interest in the common areas and facilities thus divested from the unit owners of these units shall be reallocated among these units and the other units in the condominium project in proportion to their respective undivided interests in the common areas and facilities, with any units partially taken participating in the reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common areas and facilities divested from him by operation of the first sentence of this Subsection (3), and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.
- (4) The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common areas and facilities divested from him and also not revested in him under this Subsection (4), as well as for that portion of his unit taken by eminent domain.
- (5) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the declaration, then the entire undivided interest in the common areas and facilities appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interest in the common areas and facilities, and the remaining portion of that unit shall thenceforth be a common area and facility. The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of the unit for his entire undivided interest in the common areas and facilities and for his entire unit.

Enacted by Chapter 173, 1975 General Session

**57-8-33 Actions.**

Without limiting the rights of any unit owner, actions may be brought by the manager or management committee, in either case in the discretion of the management committee, on behalf of two or more of the unit owners, as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one unit. Service of process on two or more unit owners in any action relating to the common areas and facilities or more than one unit may be made on the person designated in the declaration to receive service of process.

Enacted by Chapter 111, 1963 General Session

**57-8-34 Persons subject to provisions and agreements.**

- (1) All unit owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use the property or any part thereof submitted to the provisions of this act shall be subject to this act and to the declaration and bylaws adopted pursuant to the provisions of this act.
- (2) All agreements, decisions and determinations lawfully made by the manager, management committee or by the association of unit owners in accordance with this act, the declaration or bylaws, shall be deemed to be binding on all unit owners.

Enacted by Chapter 111, 1963 General Session

**57-8-35 Effect of other laws -- Compliance with ordinances and codes -- Approval of projects by municipality or county.**

- (1) The provisions of this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail: provided further, for purposes of Sections 10-9a-604, 10-9a-611, and 17-27a-603 and provisions of similar import and any law or ordinance adopted pursuant thereto, a condominium project shall be considered to be a subdivision, and a condominium plat or supplement thereto prepared pursuant to this chapter shall be considered to be a subdivision map or plat, only with respect to:
  - (a) such real property or improvements, if any, as are intended to be dedicated to the use of the public in connection with the creation of the condominium project or portion thereof concerned; and
  - (b) those units, if any, included in the condominium project or portion thereof concerned which are not contained in existing or proposed buildings.
- (2) Nothing in this chapter shall be interpreted to state or imply that a condominium project, unit, association or unit owners, or management committee is exempt by this chapter from compliance with the zoning ordinance, building and sanitary codes, and similar development regulations which have been adopted by a municipality or county. No condominium project or any use within said project or any unit or parcel or parcel of land indicated as a separate unit or any structure within said project shall be permitted which is not in compliance with said ordinances and codes.
- (3) From and after the time a municipality or county shall have established a planning commission, no condominium project or any condominium plat, declaration, or other material as required for recordation under this chapter shall be recorded in the office of the county recorder unless and until the following mentioned attributes of said condominium project shall have been

approved by the municipality or county in which it is located. In order to more fully avail itself of this power, the legislative body of a municipality or county may provide by ordinance for the approval of condominium projects proposed within its limits. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project.

- (4) Any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:
- (a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and
  - (b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accomplishment by bond or other appropriate means. No declaration or condominium plat shall be recorded in the office of the county recorder until a final approval has been granted.

Amended by Chapter 254, 2005 General Session

#### **57-8-36 Existing projects -- Effect of statutory amendments.**

Any condominium project established by instruments filed for record prior to the effective date of the foregoing amendments to the Condominium Ownership Act (hereinafter referred to as an "existing project") and the rights and obligations of all parties interested in any such existing project shall, to the extent that the declaration, bylaws, and condominium plat concerning the existing project are inconsistent with the provisions of these amendments, be governed and controlled by the provisions of the Condominium Ownership Act as they existed prior to these amendments and by the terms of the existing project's declaration, bylaws, and condominium plat to the extent that these terms are consistent with applicable law other than these amendments. Any existing project containing or purporting to contain time period units, convertible land, or convertible space, any existing project which is or purports to be a contractible, expandable, or leasehold condominium, the validity of any such project, and the validity and enforceability of any provisions concerning time period units, convertible land, convertible space, withdrawable land, additional land, or leased land which are set forth in an existing project's declaration, bylaws, or condominium plat, shall be governed by applicable law in effect prior to these amendments, including principles relating to reasonableness, certainty, and constructive and actual notice, shall not necessarily be ineffective or defeated in whole or in part because the project or provision in question does not comply or substantially comply with those requirements of the foregoing amendments which would have been applicable had the instruments creating the project been recorded after the effective date of these amendments, but shall, in any event, be valid, effective, and enforceable if the project or provision in question either substantially complies with those requirements of the foregoing amendments which relate to the subject at issue or employs an arrangement which substantially achieves the same policy as underlies those requirements of the foregoing amendments which relate to the subject at issue.

Amended by Chapter 265, 2003 General Session

#### **57-8-37 Fines.**

- (1) A management committee may assess a fine against a unit owner for a violation of the association of unit owners' governing documents in accordance with the provisions of this section.
- (2)
  - (a) Before assessing a fine under Subsection (1), the management committee shall give the unit owner a written warning that:
    - (i) describes the violation;
    - (ii) states the rule or provision of the association of unit owners' governing documents that the unit owner's conduct violates;
    - (iii) states that the management committee may, in accordance with the provisions of this section, assess fines against the unit owner if a continuing violation is not cured or if the unit owner commits similar violations within one year after the day on which the management committee gives the unit owner the written warning or assesses a fine against the unit owner under this section; and
    - (iv) if the violation is a continuing violation, states a time that is not less than 48 hours after the day on which the management committee gives the unit owner the written warning by which the unit owner shall cure the violation.
  - (b) A management committee may assess a fine against a unit owner if:
    - (i) within one year after the day on which the management committee gives the unit owner a written warning described in Subsection (2)(a), the unit owner commits another violation of the same rule or provision identified in the written warning; or
    - (ii) for a continuing violation, the unit owner does not cure the violation within the time period that is stated in the written warning described in Subsection (2)(a).
  - (c) If permitted by the association of unit owners' governing documents, after a management committee assesses a fine against a unit owner under this section, the management committee may, without further warning under this Subsection (2), assess an additional fine against the unit owner each time the unit owner:
    - (i) commits a violation of the same rule or provision within one year after the day on which the management committee assesses a fine for a violation of the same rule or provision; or
    - (ii) allows a violation to continue for 10 days or longer after the day on which the management committee assesses the fine.
  - (d) The aggregate amount of fines assessed against a unit owner for violations of the same rule or provision of the governing documents may not exceed \$500 in any one calendar month.
- (3) A fine assessed under Subsection (1) shall:
  - (a) be made only for a violation of a rule, covenant, condition, or restriction that is in the association of unit owners' governing documents;
  - (b) be in the amount provided for in the association of unit owners' governing documents and in accordance with Subsection (2)(d); and
  - (c) accrue interest and late fees as provided in the association of unit owners' governing documents.
- (4)
  - (a) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing before the management committee to dispute the fine within 30 days after the day on which the unit owner receives notice that the fine is assessed.
  - (b) At a hearing described in Subsection (4)(a), the management committee shall:
    - (i) provide the unit owner a reasonable opportunity to present the unit owner's position to the management committee; and

- (ii) allow the unit owner, a committee member, or any other person involved in the hearing to participate in the hearing by means of electronic communication.
- (c) If a unit owner timely requests an informal hearing under Subsection (4)(a), no interest or late fees may accrue until after the management committee conducts the hearing and the unit owner receives a final decision.
- (5) A unit owner may appeal a fine assessed under Subsection (1) by initiating a civil action within 180 days after:
  - (a) if the unit owner timely requests an informal hearing under Subsection (4), the day on which the unit owner receives a final decision from the management committee; or
  - (b) if the unit owner does not timely request an informal hearing under Subsection (4), the day on which the time to request an informal hearing under Subsection (4) expires.
- (6)
  - (a) Subject to Subsection (6)(b), a management committee may delegate the management committee's rights and responsibilities under this section to a managing agent.
  - (b) A management committee may not delegate the management committee's rights or responsibilities described in Subsection (4)(b).
- (7) The provisions of this section apply to an association of unit owners regardless of when the association of unit owners is created.

Amended by Chapter 22, 2015 General Session

**57-8-38 Arbitration.**

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

Amended by Chapter 3, 2008 General Session

**57-8-39 Limitation on requirements for amending governing documents -- Limitation on contracts.**

- (1)
  - (a)
    - (i) To amend the governing documents, the governing documents may not require:
      - (A) for an amendment adopted after the period of administrative control, the vote or approval of unit owners with more than 67% of the voting interests;
      - (B) the approval of any specific unit owner; or
      - (C) the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association of unit owners.
    - (ii) Any provision in the governing documents that prohibits a vote or approval to amend any part of the governing documents during a particular time period is invalid.
  - (b) Subsection (1)(a) does not apply to an amendment affecting only:
    - (i) the undivided interest of each unit owner in the common areas and facilities, as expressed in the declaration;
    - (ii) unit boundaries; or
    - (iii) unit owners' voting rights.
- (2)
  - (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association of unit owners during a period of administrative control

is binding beyond the period of administrative control unless terminated by the board of directors after the period of administrative control ends.

- (b) Subsection (2)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.
- (3) Voting interests under Subsection (1) are calculated in the manner required by the governing documents.
- (4) Nothing in this section affects any other rights reserved by the declarant.
- (5) This section applies to an association of unit owners regardless of when the association of unit owners is created.

Amended by Chapter 325, 2015 General Session

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

- (1) As used in this section, "organizational documents" means the documents related to the formation or operation of a nonprofit corporation or other legal entity formed by the management committee or the declarant.
- (2) If permitted, required, or acknowledged by the declaration, the management committee may organize an association of unit owners as:
  - (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or
  - (b) any other entity organized under other law.
- (3) Organizational documents for a nonprofit corporation or other entity formed in accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and obligations found in the declaration and any of the association's bylaws recorded at the time of the formation of a nonprofit corporation or other entity.
- (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the organizational documents of a nonprofit corporation or other entity formed in accordance with Subsection (2) may include any additional indemnification and liability limitation provision for:
  - (a) board members, directors, and officers; or
  - (b) similar persons in a position of control.
- (5) In the event of a conflict between this chapter's provisions, a statute under which the association of unit owners is organized, documents concerning the organization of the association of unit owners as a nonprofit corporation or other entity, the declaration, the bylaws, and association rules, the following order prevails:
  - (a) this chapter controls over a conflicting provision found in any of the sources listed in Subsections (5)(b) through (f);
  - (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources listed in Subsections (5)(c) through (f);
  - (c) an organizational document filed in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources listed in Subsections (5)(d) through (f);
  - (d) the declaration controls over a conflicting provision in any of the sources listed in Subsections (5)(e) or (f);
  - (e) the bylaws control over a conflicting provision in association rules; and
  - (f) the association rules yield to a conflicting provision in any of the sources listed in Subsection (5)(a) through (e).

- (6) Immediately upon the legal formation of an entity in compliance with this section, the association and unit owners are subject to any right, obligation, procedure, and remedy applicable to that entity.
- (7)
  - (a) A form "articles of incorporation" or similar organizational document attached to a declaration may be modified by the management committee for filing or re-filing if the modified version is otherwise consistent with this section's provisions.
  - (b) An organizational document attached to a declaration that is filed and concerns the organization of an entity may be amended in accordance with its own terms or any applicable law, notwithstanding the fact that the organizational document might be recorded.
  - (c) Except for amended bylaws, an initial or amended organizational document properly filed with the state does not need to be recorded.
- (8) This section applies to the reorganization of an association of unit owners previously organized if the entity's status is terminated or dissolved without the possibility of reinstatement.
- (9)
  - (a) This section applies to all condominium projects, whether established before or after May 5, 2008.
  - (b) This section does not validate or invalidate the organization of an association that occurred before May 5, 2008, whether or not the association was otherwise in compliance with this section.

Amended by Chapter 152, 2013 General Session

**57-8-41 Lender approval -- Declaration amendments and association action.**

- (1) If a security holder's consent is a condition for amending a declaration or bylaw, or for an action of the association of unit owners or management committee, then, subject to Subsection (4), the security holder's consent is presumed if:
  - (a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest;
  - (b) 60 days have passed after the day on which notice was mailed; and
  - (c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.
- (2) The provisions of Subsection (1) shall apply to:
  - (a) an association of unit owners formed before and after May 12, 2009; and
  - (b) documents created and recorded before and after May 12, 2009.
- (3) If, under Subsection (1), a security holder's address for receiving notice is not provided in the recorded documents evidencing the security interest, the association of unit owners:
  - (a) shall use reasonable efforts to find a mailing address for the security holder; and
  - (b) may send the notice to any address obtained under Subsection (3)(a).
- (4) If a security holder responds in writing within 60 days after the day on which the notice is mailed under Subsection (1), indicating that the security interest has been assigned or conveyed to another person, without any recorded document evidencing such a conveyance, the association of unit owners:
  - (a) may not presume the security holder's consent under Subsection (1); and
  - (b) shall send a notice in accordance with Subsection (1) to the person assigned or conveyed the security interest.

(5) The association of unit owners shall:

- (a) send a notice as described in Subsection (4)(b) to the person assigned or conveyed the interest at an address provided by the security holder under Subsection (4); or
- (b) if no address is provided, shall use reasonable efforts to find a mailing address for, and send notice to, the person assigned or conveyed the interest.

Enacted by Chapter 178, 2009 General Session

**57-8-42 Fair and reasonable notice.**

- (1) Notice that an association of unit owners provides by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, whether or not the association of unit owners is a nonprofit corporation.
- (2) Notice that an association of unit owners provides by a method not referred to in Subsection (1), including a method described in Subsection (3), constitutes fair and reasonable notice if:
  - (a) the method is authorized in the declaration, articles, bylaws, or rules; and
  - (b) considering all the circumstances, the notice is fair and reasonable.
- (3)
  - (a) If provided in the declaration, articles, bylaws, or rules, an association of unit owners may provide notice by electronic means, including text message, email, or the website of the association of unit owners.
  - (b) Notwithstanding Subsection (3)(a), a unit owner may, by written demand, require an association of unit owners to provide notice to the unit owner by mail.

Enacted by Chapter 355, 2011 General Session

**57-8-43 Insurance.**

- (1) As used in this section, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association of unit owners to pay.
- (2)
  - (a) This section applies to an insurance policy or combination of insurance policies:
    - (i) issued or renewed on or after July 1, 2011; and
    - (ii) issued to or renewed by:
      - (A) a unit owner; or
      - (B) an association of unit owners, regardless of when the association of unit owners is formed.
  - (b) Unless otherwise provided in the declaration, this section does not apply to a commercial condominium project insured under a policy or combination of policies issued or renewed on or after July 1, 2014.
- (3) Beginning not later than the day on which the first unit is conveyed to a person other than a declarant, an association of unit owners shall maintain, to the extent reasonably available:
  - (a) subject to Subsection (9), blanket property insurance or guaranteed replacement cost insurance on the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and
  - (b) subject to Subsection (10), liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.

- (4) If an association of unit owners becomes aware that property insurance under Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the association of unit owners shall, within seven calendar days after becoming aware, give all unit owners notice, as provided in Section 57-8-42, that the insurance is not reasonably available.
- (5)
  - (a) The declaration or bylaws may require the association of unit owners to carry other types of insurance in addition to those described in Subsection (3).
  - (b) In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws and subject to the requirements of this section, an association of unit owners may, as the management committee considers appropriate, obtain:
    - (i) an additional type of insurance than otherwise required; or
    - (ii) a policy with greater coverage than otherwise required.
- (6) Unless a unit owner is acting within the scope of the unit owner's authority on behalf of an association of unit owners, a unit owner's act or omission may not:
  - (a) void a property insurance policy under Subsection (3)(a) or a liability insurance policy under Subsection (3)(b); or
  - (b) be a condition to recovery under a policy.
- (7) An insurer under a property insurance policy or liability insurance policy obtained by an association of unit owners under this section waives the insurer's right to subrogation under the policy against:
  - (a) any person residing with the unit owner, if the unit owner resides in the unit; and
  - (b) the unit owner.
- (8)
  - (a) An insurance policy issued to an association of unit owners may not be inconsistent with any provision of this section.
  - (b) A provision of a declaration, bylaw, rule, or other document governing the association of unit owners that is contrary to a provision of this section has no effect.
  - (c) Neither the governing documents nor a property insurance or liability insurance policy issued to an association of unit owners may prevent a unit owner from obtaining insurance for the unit owner's own benefit.
- (9)
  - (a) This Subsection (9) applies to property insurance required under Subsection (3)(a).
  - (b) The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding:
    - (i) items normally excluded from property insurance policies; and
    - (ii) unless otherwise provided in the declaration, any commercial condominium unit in a mixed-use condominium project, including any fixture, improvement, or betterment in a commercial condominium unit in a mixed-use condominium project.
  - (c) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a unit or to a limited common area associated with a unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common element associated with a unit.
  - (d) Notwithstanding anything in this section and unless otherwise provided in the declaration, an association of unit owners is not required to obtain property insurance for a loss to a unit that is not physically attached to:

- (i) another unit; or
  - (ii) a structure that is part of a common area or facility.
- (e) Each unit owner is an insured person under a property insurance policy.
- (f) If a loss occurs that is covered by a property insurance policy in the name of an association of unit owners and another property insurance policy in the name of a unit owner:
- (i) the association's policy provides primary insurance coverage; and
  - (ii) notwithstanding Subsection (9)(f)(i) and subject to Subsection (9)(g):
    - (A) the unit owner is responsible for the deductible of the association of unit owners; and
    - (B) building property coverage, often referred to as coverage A, of the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the association of unit owners.
- (g)
- (i) As used in this Subsection (9)(g) and Subsection (9)(j):
    - (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of an association of unit owners.
    - (B) "Unit damage" means damage to a unit or to a limited common area or facility appurtenant to that unit, or both.
    - (C) "Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to unit damage.
  - (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for an amount calculated by applying the unit damage percentage for that unit to the amount of the deductible under the property insurance policy of the association of unit owners.
  - (iii) If a unit owner does not pay the amount required under Subsection (9)(g)(ii) within 30 days after substantial completion of the repairs to the unit or limited common areas and facilities appurtenant to that unit, an association of unit owners may levy an assessment against the unit owner for that amount.
- (h) An association of unit owners shall set aside an amount equal to the amount of the association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.
- (i)
- (i) An association of unit owners shall provide notice in accordance with Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)(g) for the association's policy deductible and of any change in the amount of the deductible.
  - (ii)
    - (A) An association of unit owners that fails to provide notice as provided in Subsection (9)(i)(i) is responsible for the portion of the deductible that the association of unit owners could have assessed to a unit owner under Subsection (9)(g), but only to the extent that the unit owner does not have insurance coverage that would otherwise apply under this Subsection (9).
    - (B) Notwithstanding Subsection (9)(i)(ii), an association of unit owners that provides notice of the association's policy deductible, as required under Subsection (9)(i)(i), but fails to provide notice of a later increase in the amount of the deductible is responsible only for the amount of the increase for which notice was not provided.
  - (iii) The failure of an association of unit owners to provide notice as provided in Subsection (9)(i)(i) may not be construed to invalidate any other provision of this section.
- (j) If, in the exercise of the business judgment rule, the management committee determines that a covered loss is likely not to exceed the property insurance policy deductible of the association

of unit owners and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the association of unit owners and a claim is submitted to the property insurance insurer of the association of unit owners:

- (i) a unit owner's policy is considered the policy for primary coverage for a loss occurring to the unit owner's unit or to a limited common area or facility appurtenant to the unit;
  - (ii) the association of unit owners is responsible for any covered loss to any common areas and facilities;
  - (iii) a unit owner who does not have a policy to cover the damage to that unit owner's unit and appurtenant limited common areas and facilities is responsible for that damage, and the association of unit owners may, as provided in Subsection (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit and appurtenant limited common areas and facilities; and
  - (iv) the association of unit owners need not tender the claim to the association's insurer.
- (k)
- (i) An insurer under a property insurance policy issued to an association of unit owners shall adjust with the association of unit owners a loss covered under the association's policy.
  - (ii) Notwithstanding Subsection (9)(k)(i), the insurance proceeds for a loss under a property insurance policy of an association of unit owners:
    - (A) are payable to an insurance trustee that the association of unit owners designates or, if no trustee is designated, to the association of unit owners; and
    - (B) may not be payable to a holder of a security interest.
  - (iii) An insurance trustee or an association of unit owners shall hold any insurance proceeds in trust for the association of unit owners, unit owners, and lien holders.
- (iv)
- (A) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.
  - (B) After the disbursements described in Subsection (9)(k)(iv)(A) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association of unit owners, unit owners, and lien holders, as provided in the declaration.
- (l) An insurer that issues a property insurance policy under this section, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:
- (i) the association of unit owners;
  - (ii) a unit owner, upon the unit owner's written request; and
  - (iii) a holder of a security interest, upon the holder's written request.
- (m) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.
- (n) A management committee that acquires from an insurer the property insurance required in this section is not liable to unit owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.
- (o)
- (i) Unless required in the declaration, property insurance coverage is not required for fixtures, improvements, or betterments in a commercial unit or limited common areas and facilities appurtenant to a commercial unit in a mixed-use condominium project.
  - (ii) Notwithstanding any other provision of this section, an association of unit owners may obtain property insurance for fixtures, improvements, or betterments in a commercial unit in a mixed-use condominium project if allowed or required in the declaration.
- (p)

- (i) This Subsection (9) does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.
  - (ii) Subsection (9)(p)(i) does not affect Subsection (7).
- (10)
- (a) This Subsection (10) applies to a liability insurance policy required under Subsection (3)(b).
  - (b) A liability insurance policy shall be in an amount determined by the management committee but not less than an amount specified in the declaration or bylaws.
  - (c) Each unit owner is an insured person under a liability insurance policy that an association of unit owners obtains, but only for liability arising from:
    - (i) the unit owner's ownership interest in the common areas and facilities;
    - (ii) maintenance, repair, or replacement of common areas and facilities; and
    - (iii) the unit owner's membership in the association of unit owners.

Amended by Chapter 189, 2014 General Session

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

- (1)
- (a) Except as provided in Section 57-8-13.1, an association of unit owners has a lien on a unit for:
    - (i) an assessment;
    - (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:
      - (A) court costs and reasonable attorney fees;
      - (B) late charges;
      - (C) interest; and
      - (D) any other amount that the association of unit owners is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and
    - (iii) a fine that the association of unit owners imposes against a unit owner in accordance with Section 57-8-37, if:
      - (A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit owner did not file an appeal; or
      - (B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8-37(1).
  - (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).
- (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association of unit owners otherwise provides in a notice of assessment.
- (3) An unpaid assessment or fine accrues interest at the rate provided:
  - (a) in Subsection 15-1-1(2); or
  - (b) in the governing documents, if the governing documents provide for a different interest rate.
- (4) A lien under this section has priority over each other lien and encumbrance on a unit except:
  - (a) a lien or encumbrance recorded before the declaration is recorded;
  - (b) a first or second security interest on the unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the association of unit owners; or
  - (c) a lien for real estate taxes or other governmental assessments or charges against the unit.
- (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.

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

Amended by Chapter 116, 2014 General Session

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

- (1)
- (a) Except as provided in Section 57-8-13.1, to enforce a lien established under Section 57-8-44, an association of unit owners may:
    - (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by:
      - (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and
      - (B) this chapter; or
    - (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
      - (A) law for the foreclosure of a mortgage; and
      - (B) this chapter.
  - (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection (1)(a):
    - (i) the association of unit owners is considered to be the beneficiary under a trust deed; and
    - (ii) the unit owner is considered to be the trustor under a trust deed.
- (2) A unit owner's acceptance of the owner's interest in a unit constitutes a simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.
- (3)
- (a) A power of sale and other powers of a trustee under this part and under Sections 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a qualified trustee.
  - (b) An association of unit owners' execution of a substitution of trustee form authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
  - (c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).
  - (d) A trustee under this part is subject to all duties imposed on a trustee under Sections 57-1-19 through 57-1-34.
- (4) This chapter does not prohibit an association of unit owners from bringing an action against a unit owner to recover an amount for which a lien is created under Section 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the unit owner's unit under this chapter.

Amended by Chapter 95, 2013 General Session

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

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

- (i) notify the unit owner that the association of unit owners intends to pursue nonjudicial foreclosure with respect to the owner's unit to enforce the association of unit owners' lien for an unpaid assessment;
- (ii) notify the unit owner of the owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure;
- (iii) be in substantially the following form:

**"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE**

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

- (iv) be sent to the unit owner by certified mail, return receipt requested; and
  - (b) may be included with other association correspondence to the unit owner.
- (3) An association of unit owners may not use a nonjudicial foreclosure to enforce a lien if the unit owner mails the association of unit owners a written demand for judicial foreclosure:
- (a) by U.S. mail, certified with a return receipt requested;
  - (b) to the address stated in the association of unit owners' notice under Subsection (1); and
  - (c) within 15 days after the date of the postmark on the envelope of the association of unit owners' notice under Subsection (1).

Enacted by Chapter 355, 2011 General Session

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

- (1) An association of unit owners' nonjudicial foreclosure of a unit is governed by:
  - (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association of unit owners' lien were a trust deed; and
  - (b) this chapter.
- (2) If there is a conflict between a provision of this chapter and a provision of Sections 57-1-19 through 57-1-34 with respect to an association of unit owners' nonjudicial foreclosure of a unit, the provision of this chapter controls.

Enacted by Chapter 355, 2011 General Session

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

- (1) Subsection 78B-6-901(1) does not apply to an association of unit owners' judicial or nonjudicial foreclosure of a unit under this part.
- (2) An association of unit owners may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

Enacted by Chapter 355, 2011 General Session

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

- (1) A court entering a judgment or decree in a judicial action brought under Sections 57-8-44 through 57-8-53 shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association of unit owners is the prevailing party, any costs and reasonable attorney fees that the association of unit owners incurs collecting the judgment.
- (2) In a nonjudicial foreclosure, an association of unit owners may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

Enacted by Chapter 355, 2011 General Session

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

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

Enacted by Chapter 355, 2011 General Session

**57-8-51 Appointment of receiver.**

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

- (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money alleged to be due and owing to a unit owner:
  - (a) before commencement of the action; or
  - (b) during the pendency of the action; and
- (2) order the receiver to pay the association of unit owners, to the extent of the association's common expense assessment, money the receiver holds under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8-52 Termination of a delinquent owner's rights -- Notice -- Informal hearing.**

- (1) As used in this section, "delinquent unit owner" means a unit owner who fails to pay an assessment when due.
- (2) A management committee may, if authorized in the declaration, bylaws, or rules and as provided in this section, terminate a delinquent unit owner's right:
  - (a) to receive a utility service for which the unit owner pays as a common expense; or
  - (b) of access to and use of recreational facilities.
- (3)

- (a) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (2), the manager or management committee shall give the delinquent unit owner notice in a manner provided in the declaration, bylaws, or association of unit owners rules.
- (b)
  - (i) A notice under Subsection (3)(a) shall state:
    - (A) that the association of unit owners will terminate the unit owner's utility service or right of access to and use of recreational facilities, or both, if the association of unit owners does not receive payment of the assessment within the time provided in the declaration, bylaws, or association of unit owners rules, subject to Subsection (3)(b)(ii);
    - (B) the amount of the assessment due, including any interest or late payment fee; and
    - (C) the unit owner's right to request a hearing under Subsection (4).
  - (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.
  - (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a utility service if service is terminated.
- (4)
  - (a) A delinquent unit owner may submit a written request to the management committee for an informal hearing to dispute the assessment.
  - (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date the delinquent unit owner receives the notice under Subsection (3).
- (5) A management committee shall conduct an informal hearing requested under Subsection (4) in accordance with the standards provided in the declaration, bylaws, or association of unit owners rules.
- (6) If a delinquent unit owner requests a hearing, the association of unit owners may not terminate a utility service or right of access to and use of recreational facilities until after the management committee:
  - (a) conducts the hearing; and
  - (b) enters a final decision.
- (7) If an association of unit owners terminates a utility service or a right of access to and use of recreational facilities, the association of unit owners shall take immediate action to reinstate the service or right following the unit owner's payment of the assessment, including any interest and late payment fee.
- (8) An association of unit owners may:
  - (a) assess a unit owner for the cost associated with reinstating a utility service that the association of unit owners terminates as provided in this section; and
  - (b) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection (3).

Enacted by Chapter 355, 2011 General Session

**57-8-53 Requiring tenant in residential condominium unit to pay rent to association of unit owners if owner fails to pay assessment.**

- (1) As used in this section:
  - (a) "Amount owing" means the total of:
    - (i) any assessment or obligation under Subsection 57-8-44(1)(a) that is due and owing; and
    - (ii) any applicable interest, late fee, and cost of collection that accrues after an association of unit owners gives notice under Subsection (3).

- (b) "Lease" means an arrangement under which a tenant occupies a unit owner's residential condominium unit in exchange for the unit owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument.
  - (c) "Tenant" means a person, other than the unit owner, who has regular, exclusive occupancy of the unit owner's residential condominium unit.
- (2) Subject to Subsections (3) and (4), the management committee may require a tenant under a lease with a unit owner to pay the association of unit owners all future lease payments due to the unit owner:
- (a) if:
    - (i) the unit owner fails to pay an assessment for a period of more than 60 days after the assessment is due and payable; and
    - (ii) authorized in the declaration, bylaws, or rules;
  - (b) beginning with the next monthly or periodic payment due from the tenant; and
  - (c) until the association of unit owners is paid the amount owing.
- (3)
- (a) Before requiring a tenant to pay lease payments to the association of unit owners under Subsection (2), the manager or management committee shall give the unit owner notice, in accordance with the declaration, bylaws, or association rules.
  - (b) The notice required under Subsection (3)(a) shall state:
    - (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees;
    - (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and to be paid through the collection of lease payments; and
    - (iii) that the association intends to demand payment of future lease payments from the unit owner's tenant if the unit owner does not pay the amount owing within 15 days.
- (4)
- (a) If a unit owner fails to pay the amount owing within 15 days after the manager or management committee gives the unit owner notice under Subsection (3), the manager or management committee may exercise the rights of the association of unit owners under Subsection (2) by delivering a written notice to the tenant.
  - (b) A notice under Subsection (4)(a) shall state that:
    - (i) due to the unit owner's failure to pay an assessment within the required time, the manager or management committee has notified the unit owner of the manager or management committee's intent to collect all lease payments until the amount owing is paid;
    - (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the association of unit owners, until the amount owing is paid; and
    - (iii) the tenant's payment of lease payments to the association of unit owners does not constitute a default under the terms of the lease with the unit owner.
  - (c) The manager or management committee shall mail a copy of the notice to the unit owner.
- (5)
- (a) A tenant to whom notice under Subsection (4) is given shall pay to the association of unit owners all future lease payments as they become due and owing to the unit owner:
    - (i) beginning with the next monthly or other periodic payment after the notice under Subsection (4) is delivered to the tenant; and
    - (ii) until the association of unit owners notifies the tenant under Subsection (6) that the amount owing is paid.

- (b) A unit owner:
  - (i) shall credit each payment that the tenant makes to the association of unit owners under this section against any obligation that the tenant owes to the owner as though the tenant made the payment to the owner; and
  - (ii) may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an association of unit owners as required under this section.
- (6)
  - (a) Within five business days after the amount owing is paid, the manager or management committee shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the association of unit owners.
  - (b) The manager or management committee shall mail a copy of the notification described in Subsection (6)(a) to the unit owner.
- (7)
  - (a) An association of unit owners shall deposit money paid to the association of unit owners under this section in a separate account and disburse that money to the association of unit owners until:
    - (i) the amount owing is paid; and
    - (ii) any cost of administration, not to exceed \$25, is paid.
  - (b) The association of unit owners shall, within five business days after the amount owing is paid, pay to the unit owner any remaining balance.

Enacted by Chapter 355, 2011 General Session

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

- (1) A manager or management committee shall issue a written statement indicating any unpaid assessment with respect to a unit owner's unit upon:
  - (a) a written request by the unit owner; and
  - (b) payment of a reasonable fee not to exceed \$25.
- (2) A written statement under Subsection (1) is conclusive in favor of a person who relies on the written statement in good faith.

Enacted by Chapter 355, 2011 General Session

**57-8-55 Consolidation of multiple associations of unit owners.**

- (1) Two or more associations of unit owners may be consolidated into a single association of unit owners as provided in Title 16, Chapter 6a, Part 11, Merger, and this section.
- (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of consolidation between two or more associations of unit owners to consolidate into a single association of unit owners is not effective unless it is approved by the unit owners of each of the consolidating associations of unit owners, by the highest percentage of allocated voting interests of the unit owners required by each association of unit owners to amend its respective declaration, articles, or bylaws.
- (3) A declaration of consolidation under Subsection (2) shall:
  - (a) be prepared, executed, and certified by the president of the association of each of the consolidating associations of unit owners; and
  - (b) provide for the reallocation of the allocated interests in the consolidated association by stating:

- (i) the reallocations of the allocated interests in the consolidated association of unit owners or the formulas used to reallocate the allocated interests; or
- (ii)
  - (A) the percentage of overall allocated interests of the consolidated association of unit owners that are allocated to all of the units comprising each of the consolidating associations of unit owners; and
  - (B) that the portion of the percentages allocated to each unit formerly comprising a part of a consolidating association of unit owners is equal to the percentages of allocated interests allocated to the unit by the declaration of the consolidating association of unit owners.
- (4) A declaration of consolidation under Subsection (2) is not effective until it is recorded in the office of each applicable county recorder.
- (5) Unless otherwise provided in the declaration of consolidation, the consolidated association of unit owners resulting from a consolidation under this section:
  - (a) is the legal successor for all purposes of all of the consolidating associations of unit owners;
  - (b) the operations and activities of all of the consolidating associations of unit owners shall be consolidated into the consolidated association of unit owners; and
  - (c) the consolidated association of unit owners holds all powers, rights, obligations, assets, and liabilities of all consolidating associations of unit owners.

Enacted by Chapter 152, 2013 General Session

**57-8-56 Association of unit owners' right to pay delinquent utilities.**

- (1) Upon request in accordance with Subsection (2), at least 10 days before the day on which an electrical corporation or a gas corporation discontinues service to a unit, the electrical corporation or gas corporation shall give the association of unit owners:
  - (a) written notice that the electrical corporation or gas corporation will discontinue service to the unit; and
  - (b) an opportunity to pay any delinquent charges and maintain service to the unit.
- (2) An association of unit owners may request the notice and opportunity to pay described in Subsection (1) by sending a written request to the electrical corporation or gas corporation that includes:
  - (a) the address of each unit in the association of unit owners;
  - (b) the association of unit owners' name, mailing address, phone number, and email address; and
  - (c) the address where the electrical corporation or gas corporation may send notices.
- (3) If, after an electrical corporation or a gas corporation sends a written notice described in Subsection (1) to an association of unit owners and the association of unit owners does not pay the delinquent charges within 10 days after the day on which the electrical corporation or gas corporation sends the notice, the electrical corporation or gas corporation may discontinue service to the unit.
- (4) An association of unit owners may collect any payment to an electrical corporation or a gas corporation under this section as an assessment in accordance with Section 57-8-44.
- (5)
  - (a) If, after an association of unit owners receives a written notice described in Subsection (1), the association of unit owners decides not to pay the delinquent charges, the association of unit owners may, if permitted by the association of unit owners' governing documents, and after reasonable notice to the unit owner:
    - (i) enter the unit; and

- (ii) winterize the unit.
- (b) A person who enters a unit in accordance with Subsection (5)(a) is not liable for trespass.
- (c) An association of unit owners may charge a unit owner an assessment for the actual and reasonable costs of winterizing a unit in accordance with this Subsection (5).

Enacted by Chapter 213, 2015 General Session

Amended by Chapter 325, 2015 General Session, (Coordination Clause)

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

- (1)
  - (a) At least 48 hours before a meeting, the association of unit owners shall give written notice of the meeting via email to each unit owner who requests notice of a meeting, unless:
    - (i) notice of the meeting is included in a meeting schedule that was previously provided to the unit owner; or
    - (ii)
      - (A) the meeting is to address an emergency; and
      - (B) each management committee member receives notice of the meeting less than 48 hours before the meeting.
  - (b) A notice described in Subsection (1)(a) shall:
    - (i) be delivered to the unit owner by email, to the email address that the unit owner provides to the management committee or the association of unit owners;
    - (ii) state the time and date of the meeting;
    - (iii) state the location of the meeting; and
    - (iv) if a management committee member may participate by means of electronic communication, provide the information necessary to allow the unit owner to participate by the available means of electronic communication.
- (2)
  - (a) Except as provided in Subsection (2)(b), a meeting shall be open to each unit owner or the unit owner's representative if the representative is designated in writing.
  - (b) A management committee may close a meeting to:
    - (i) consult with an attorney for the purpose of obtaining legal advice;
    - (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
    - (iii) discuss a personnel matter;
    - (iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;
    - (v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
    - (vi) discuss a delinquent assessment or fine.
- (3)
  - (a) At each meeting, the management committee shall provide each unit owner a reasonable opportunity to offer comments.
  - (b) The management committee may limit the comments described in Subsection (3)(a) to one specific time period during the meeting.
- (4) A management committee member may not avoid or obstruct the requirements of this section.
- (5) Nothing in this section shall affect the validity or enforceability of an action of a management committee.
- (6) The provisions of this section do not apply during the period of administrative control.
- (7) The provisions of this section apply regardless of when the condominium project's initial declaration was recorded.

- (8)
- (a) Subject to Subsection (8)(d), if an association of unit owners fails to comply with a provision of Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period described in Subsection (8)(d), a unit owner may file an action in court for:
    - (i) injunctive relief requiring the association of unit owners to comply with the provisions of Subsections (1) through (4);
    - (ii) \$500 or actual damages, whichever is greater; or
    - (iii) any other relief provided by law.
  - (b) In an action described in Subsection (8)(a), the court may award costs and reasonable attorney fees to the prevailing party.
  - (c) Upon motion from the unit owner, notice to the association of unit owners, and a hearing in which the court finds a likelihood that the association of unit owners has failed to comply with a provision of Subsections (1) through (4), the court may order the association of unit owners to immediately comply with the provisions of Subsections (1) through (4).
  - (d) At least 90 days before the day on which a unit owner files an action described in Subsection (8)(a), the unit owner shall deliver a written notice to the association of unit owners that states:
    - (i) the unit owner's name, address, telephone number, and email address;
    - (ii) each requirement of Subsections (1) through (4) with which the association of unit owners has failed to comply;
    - (iii) a demand that the association of unit owners comply with each requirement with which the association of unit owners has failed to comply; and
    - (iv) a date by which the association of unit owners shall remedy the association of unit owners' noncompliance that is at least 90 days after the day on which the unit owner delivers the notice to the association of unit owners.

Enacted by Chapter 387, 2015 General Session

## **Chapter 8a Community Association Act**

### **Part 1 General Provisions**

#### **57-8a-101 Title.**

This chapter is known as the "Community Association Act."

Enacted by Chapter 153, 2004 General Session

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

As used in this chapter:

- (1)
- (a) "Assessment" means a charge imposed or levied:
    - (i) by the association;
    - (ii) on or against a lot or a lot owner; and
    - (iii) pursuant to a governing document recorded with the county recorder.

- (b) "Assessment" includes:
  - (i) a common expense; and
  - (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
- (2)
  - (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, any member of which:
    - (i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and
    - (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
      - (A) real property taxes;
      - (B) insurance premiums;
      - (C) maintenance costs; or
      - (D) for improvement of real property not owned by the member.
  - (b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.
- (3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.
- (4) "Common areas" means property that the association:
  - (a) owns;
  - (b) maintains;
  - (c) repairs; or
  - (d) administers.
- (5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.
- (6) "Declarant":
  - (a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and
  - (b) includes the person's successor and assign.
- (7) "Electrical corporation" means the same as that term is defined in Section 54-2-1.
- (8) "Gas corporation" means the same as that term is defined in Section 54-2-1.
- (9)
  - (a) "Governing documents" means a written instrument by which the association may:
    - (i) exercise powers; or
    - (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the association.
  - (b) "Governing documents" includes:
    - (i) articles of incorporation;
    - (ii) bylaws;
    - (iii) a plat;
    - (iv) a declaration of covenants, conditions, and restrictions; and
    - (v) rules of the association.
- (10) "Independent third party" means a person that:
  - (a) is not related to the owner of the residential lot;
  - (b) shares no pecuniary interests with the owner of the residential lot; and
  - (c) purchases the residential lot in good faith and without the intent to defraud a current or future lienholder.
- (11) "Judicial foreclosure" means a foreclosure of a lot:
  - (a) for the nonpayment of an assessment; and
  - (b)

- (i) in the manner provided by law for the foreclosure of a mortgage on real property; and
  - (ii) as provided in Part 3, Collection of Assessments.
- (12) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- (a) by a person or persons other than the owner; and
  - (b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.
- (13) "Limited common areas" means common areas described in the declaration and allocated for the exclusive use of one or more lot owners.
- (14) "Lot" means:
- (a) a lot, parcel, plot, or other division of land:
    - (i) designated for separate ownership or occupancy; and
    - (ii)
      - (A) shown on a recorded subdivision plat; or
      - (B) the boundaries of which are described in a recorded governing document; or
  - (b)
    - (i) a unit in a condominium association if the condominium association is a part of a development; or
    - (ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.
- (15)
- (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.
  - (b) "Means of electronic communication" includes:
    - (i) web conferencing;
    - (ii) video conferencing; and
    - (iii) telephone conferencing.
- (16) "Meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.
- (17) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.
- (18) "Nonjudicial foreclosure" means the sale of a lot:
- (a) for the nonpayment of an assessment; and
  - (b)
    - (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and
    - (ii) as provided in Part 3, Collection of Assessments.
- (19) "Period of administrative control" means the period during which the person who filed the association's governing documents or the person's successor in interest retains authority to:
- (a) appoint or remove members of the association's board of directors; or
  - (b) exercise power or authority assigned to the association under the association's governing documents.
- (20) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

Amended by Chapter 22, 2015 General Session  
Amended by Chapter 34, 2015 General Session  
Amended by Chapter 213, 2015 General Session  
Amended by Chapter 325, 2015 General Session  
Amended by Chapter 387, 2015 General Session

**57-8a-103 Scope of chapter.**

Remedies provided in this chapter, by law, or in equity are not mutually exclusive.

Enacted by Chapter 153, 2004 General Session

**57-8a-104 Limitation on requirements for amending governing documents -- Limitation on contracts.**

- (1)
  - (a)
    - (i) To amend the governing documents, the governing documents may not require:
      - (A) for an amendment adopted after the period of administrative control, the vote or approval of lot owners with more than 67% of the voting interests;
      - (B) the approval of any specific lot owner; or
      - (C) the vote or approval of lien holders holding more than 67% of the first position security interests secured by a mortgage or trust deed in the association.
    - (ii) Any provision in the governing documents that prohibits a vote or approval to amend any part of the governing documents during a particular time period is invalid.
  - (b) Subsection (1)(a) does not apply to an amendment affecting only:
    - (i) lot boundaries; or
    - (ii) lot owner's voting rights.
- (2)
  - (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association during a period of administrative control is binding beyond the period of administrative control unless terminated by the board of directors after the period of administrative control ends.
  - (b) Subsection (2)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.
- (3) Voting interests under Subsection (1) are calculated in the manner required by the governing documents.
- (4) Nothing in this section affects any other rights reserved by the person who filed the association's original governing documents or a successor in interest.
- (5) This section applies to an association regardless of when the association is created.

Amended by Chapter 34, 2015 General Session

Amended by Chapter 325, 2015 General Session

Amended by Chapter 387, 2015 General Session

**57-8a-105 Registration with Department of Commerce.**

- (1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.
- (2)
  - (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.
  - (b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

- (3) The department shall require an association registering as required in this section to provide with each registration:
  - (a) the name and address of the association;
  - (b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;
  - (c) contact information for the manager;
  - (d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and
  - (e) a registration fee not to exceed \$37.
- (4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).
- (5)
  - (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4):
    - (i) a lien may not arise under Section 57-8a-301; and
    - (ii) an association may not enforce an existing lien that arose under Section 57-8a-301.
  - (b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.
  - (c) An association that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).
  - (d) An association that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).
  - (e) Except as described in Subsection (5)(f), beginning on the date an association ends a period of noncompliance:
    - (i) a lien may arise under Section 57-8a-301 for any event that:
      - (A) occurred during the period of noncompliance; and
      - (B) would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements described in this section; and
    - (ii) an association may enforce a lien described in Subsection (5)(e) or a lien that existed before the period of noncompliance.
  - (f) If an owner's residential lot is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):
    - (i) a lien that arose under Section 57-8a-301 before the conveyance of the residential lot became final is extinguished when the conveyance of the residential lot becomes final; and
    - (ii) an event that occurred before the conveyance of the residential lot became final, and that would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8a-301 if the conveyance of the residential lot becomes final before the association ends the period of noncompliance.

Amended by Chapter 95, 2013 General Session

**57-8a-106 Fee for providing payoff information needed at closing.**

- (1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, an association may not charge a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.
- (2) An association may not:
  - (a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or
  - (b) charge the fee if it exceeds \$50.
- (3)
  - (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.
  - (b) A request under Subsection (3)(a) is not effective unless the request:
    - (i) is conveyed in writing to the primary contact person designated under Subsection 57-8a-105(3)(d);
    - (ii) contains:
      - (A) the name, telephone number, and address of the person making the request; and
      - (B) the facsimile number or email address for delivery of the payoff information; and
    - (iii) is accompanied by a written consent for the release of the payoff information:
      - (A) identifying the person requesting the information as a person to whom the payoff information may be released; and
      - (B) signed and dated by an owner of the lot for which the payoff information is requested.
- (4) This section applies to each association, regardless of when the association is formed.

Amended by Chapter 369, 2012 General Session

**57-8a-107 Amending the declaration to make provisions of this chapter applicable.**

- (1) An association may amend the declaration to make applicable to the association a provision of this chapter that is enacted after the creation of the association, by complying with:
  - (a) the amendment procedures and requirements specified in the declaration and applicable provisions of this chapter; or
  - (b) the amendment procedures and requirements of this chapter, if the declaration being amended does not contain amendment procedures and requirements.
- (2) If an amendment under Subsection (1) adopts a specific section of this chapter:
  - (a) the amendment grants a right, power, or privilege permitted by that specific section; and
  - (b) all correlative obligations, liabilities, and restrictions in that section also apply.

Enacted by Chapter 152, 2013 General Session

**57-8a-108 Rules against perpetuities and unreasonable restraints -- Insubstantial failure to comply.**

- (1) The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of a governing document.
- (2)
  - (a) A declaration that fails to comply with this chapter does not render a title to a lot and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

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

Enacted by Chapter 152, 2013 General Session

**57-8a-109 Limit on fee for approval of plans.**

(1) As used in this section:

(a) "Lot plans" means plans:

- (i) for the construction or improvement of a lot; and
- (ii) that are required to be approved by the association before the lot construction or improvement may occur.

(b) "Plan fee" means a fee that an association charges for review and approval of lot plans.

(2) An association may not charge a plan fee that exceeds the actual cost of reviewing and approving the lot plans.

Enacted by Chapter 152, 2013 General Session

**Part 2  
Administrative Provisions**

**57-8a-201 Payment of a common expense or assessment.**

(1) An owner shall pay the owner's proportionate share of:

- (a) the common expenses; and
- (b) any other assessments levied by the association.

(2) A payment described in Subsection (1) shall be in the amount and at the time determined by the board of directors in accordance with the terms of the:

- (a) declaration; or
- (b) bylaws.

(3) An assessment levied against a lot is:

- (a) a debt of the owner at the time the assessment is made; and
- (b) collectible as a debt described in Subsection (3)(a).

Enacted by Chapter 153, 2004 General Session

**57-8a-206 Written statement of unpaid assessment.**

(1)

(a) The manager or board of directors shall issue a written statement indicating any unpaid assessment with respect to a lot covered by the request, upon:

- (i) the written request of any unit owner; and
- (ii) payment of a reasonable fee not to exceed \$10.

(b) The written statement described in Subsection (1)(a) is binding in favor of any person who relies in good faith on the written statement upon the:

- (i) remaining owners;
- (ii) manager; and
- (iii) board of directors.

(2) Unless the manager or board of directors complies with a request described in Subsection

(1)(a) within 10 days, any unpaid assessment that became due prior to the date the request

described in Subsection (1)(a) was made is subordinate to a lien held by the person requesting the statement pursuant to Subsection (1)(a).

Enacted by Chapter 153, 2004 General Session

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

- (1) A board may assess a fine against a lot owner for a violation of the association's governing documents in accordance with the provisions of this section.
- (2)
  - (a) Before assessing a fine under Subsection (1), the board shall give the lot owner a written warning that:
    - (i) describes the violation;
    - (ii) states the rule or provision of the association's governing documents that the lot owner's conduct violates;
    - (iii) states that the board may, in accordance with the provisions of this section, assess fines against the lot owner if a continuing violation is not cured or if the lot owner commits similar violations within one year after the day on which the board gives the lot owner the written warning or assesses a fine against the lot owner under this section; and
    - (iv) if the violation is a continuing violation, states a time that is not less than 48 hours after the day on which the board gives the lot owner the written warning by which the lot owner shall cure the violation.
  - (b) A board may assess a fine against a lot owner if:
    - (i) within one year after the day on which the board gives the lot owner a written warning described in Subsection (2)(a), the lot owner commits another violation of the same rule or provision identified in the written warning; or
    - (ii) for a continuing violation, the lot owner does not cure the violation within the time period that is stated in the written warning described in Subsection (2)(a).
  - (c) If permitted by the association's governing documents, after the board assesses a fine against a lot owner under this section, the board may, without further warning under this Subsection (2), assess an additional fine against the lot owner each time the lot owner:
    - (i) commits a violation of the same rule or provision within one year after the day on which the board assesses a fine for a violation of the same rule or provision; or
    - (ii) allows a violation to continue for 10 days or longer after the day on which the board assesses the fine.
- (3) A fine assessed under Subsection (1) shall:
  - (a) be made only for a violation of a rule, covenant, condition, or restriction that is in the association's governing documents;
  - (b) be in the amount provided for in the association's governing documents; and
  - (c) accrue interest and late fees as provided in the association's governing documents.
- (4)
  - (a) A lot owner who is assessed a fine under Subsection (1) may request an informal hearing before the board to dispute the fine within 30 days after the day on which the lot owner receives notice that the fine is assessed.
  - (b) At a hearing described in Subsection (4)(a), the board shall:
    - (i) provide the lot owner a reasonable opportunity to present the lot owner's position to the board; and
    - (ii) allow the lot owner, a board member, or any other person involved in the hearing to participate in the hearing by means of electronic communication.

- (c) If a lot owner timely requests an informal hearing under Subsection (4)(a), no interest or late fees may accrue until after the board conducts the hearing and the lot owner receives a final decision.
- (5) A lot owner may appeal a fine assessed under Subsection (1) by initiating a civil action within 180 days after:
  - (a) if the lot owner timely requests an informal hearing under Subsection (4), the day on which the lot owner receives a final decision from the board; or
  - (b) if the lot owner does not timely request an informal hearing under Subsection (4), the day on which the time to request an informal hearing under Subsection (4) expires.
- (6)
  - (a) Subject to Subsection (6)(b), a board may delegate the board's rights and responsibilities under this section to a managing agent.
  - (b) A board may not delegate the board's rights or responsibilities described in Subsection (4)(b).
- (7) The provisions of this section apply to an association regardless of when the association is created.

Amended by Chapter 22, 2015 General Session

**57-8a-209 Rental restrictions.**

- (1)
  - (a) Subject to Subsections (1)(b), (5), and (6), an association may:
    - (i) create restrictions on the number and term of rentals in an association; or
    - (ii) prohibit rentals in the association.
  - (b) An association that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a recorded declaration of covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions.
- (2) If an association prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:
  - (a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner's lot:
    - (i) a lot owner in the military for the period of the lot owner's deployment;
    - (ii) a lot occupied by a lot owner's parent, child, or sibling;
    - (iii) a lot owner whose employer has relocated the lot owner for no less than two years; or
    - (iv) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
      - (A) the estate of a current resident of the lot; or
      - (B) the parent, child, or sibling of the current resident of the lot;
  - (b) a provision that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:
    - (i) the lot owner occupies the lot; or
    - (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; and
  - (c) a requirement that the association create, by rule or resolution, procedures to:
    - (i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (2)(a) and (b); and

- (ii) ensure consistent administration and enforcement of the rental restrictions.
- (3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:
  - (a) the conveyance, sale, or other transfer of a lot by deed;
  - (b) the granting of a life estate in the lot; or
  - (c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- (4) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.
- (5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)(a).
- (6) Subsections (1) through (5) do not apply to:
  - (a) an association that contains a time period unit as defined in Section 57-8-3;
  - (b) any other form of timeshare interest as defined in Section 57-19-2; or
  - (c) an association in which the initial declaration of covenants, conditions, and restrictions is recorded before May 12, 2009, unless, on or after May 12, 2015, the association:
    - (i) adopts a rental restriction or prohibition; or
    - (ii) amends an existing rental restriction or prohibition.
- (7) Notwithstanding this section, an association may restrict or prohibit rentals without an exception described in Subsection (2) if:
  - (a) the restriction or prohibition receives unanimous approval by all lot owners; and
  - (b) when the restriction or prohibition requires an amendment to the association's recorded declaration of covenants, conditions, and restrictions, the association fulfills all other requirements for amending the recorded declaration of covenants, conditions, and restrictions described in the association's governing documents.
- (8) Except as provided in Subsection (9), an association may not require a lot owner who owns a rental lot to:
  - (a) obtain the association's approval of a prospective renter;
  - (b) give the association:
    - (i) a copy of a rental application;
    - (ii) a copy of a renter's or prospective renter's credit information or credit report;
    - (iii) a copy of a renter's or prospective renter's background check; or
    - (iv) documentation to verify the renter's age; or
  - (c) pay an additional assessment, fine, or fee because the lot is a rental lot.
- (9)
  - (a) A lot owner who owns a rental lot shall give an association the documents described in Subsection (8)(b) if the lot owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.
  - (b) If an association's declaration of covenants, conditions, and restrictions lawfully prohibits or restricts occupancy of the lots by a certain class of individuals, the association may require a lot owner who owns a rental lot to give the association the information described in Subsection (8)(b), if:
    - (i) the information helps the association determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions; and
    - (ii) the association uses the information to determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions.

- (10) The provisions of Subsections (8) and (9) apply to an association regardless of when the association is created.

Amended by Chapter 22, 2015 General Session  
Amended by Chapter 258, 2015 General Session

**57-8a-210 Lender approval -- Declaration amendments and association action.**

- (1) If a security holder's consent is a condition for amending a declaration or bylaw, or for an action of the association, then, subject to Subsection (4), the security holder's consent is presumed if:
- (a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest;
  - (b) 60 days have passed after the day on which notice was mailed; and
  - (c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.
- (2) The provisions of Subsection (1) shall apply to:
- (a) an association formed before and after May 12, 2009; and
  - (b) documents created and recorded before and after May 12, 2009.
- (3) If, under Subsection (1), a security holder's address for receiving notice is not provided in the recorded documents evidencing the security interest, the association:
- (a) shall use reasonable efforts to find a mailing address for the security holder; and
  - (b) may send the notice to any address obtained under Subsection (3)(a).
- (4) If a security holder responds in writing within 60 days after the day on which a notice is mailed under Subsection (1), indicating that the security interest has been assigned or conveyed to another person, without any recorded document evidencing such a conveyance, the association:
- (a) may not presume the security holder's consent under Subsection (1); and
  - (b) shall send a notice in accordance with Subsection (1) to the person assigned or conveyed the security interest.
- (5) The association shall:
- (a) send a notice as described in Subsection (4)(b) to the person assigned or conveyed the interest at an address provided by the security holder under Subsection (4); or
  - (b) if no address is provided, shall use reasonable efforts to find a mailing address for, and send notice to, the person assigned or conveyed the interest.

Enacted by Chapter 178, 2009 General Session

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

- (1) As used in this section:
- (a) "Reserve analysis" means an analysis to determine:
    - (i) the need for a reserve fund to accumulate reserve funds; and
    - (ii) the appropriate amount of any reserve fund.
  - (b) "Reserve fund line item" means the line item in an association's annual budget that identifies the amount to be placed into a reserve fund.
  - (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of

less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the association.

- (2) Except as otherwise provided in the governing documents, a board shall:
  - (a) cause a reserve analysis to be conducted no less frequently than every six years; and
  - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.
- (3) The board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the board, to conduct the reserve analysis.
- (4) A reserve fund analysis shall include:
  - (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
  - (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
  - (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
  - (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and
  - (e) a reserve funding plan that recommends how the association may fund the annual contribution described in Subsection (4)(d).
- (5) An association shall:
  - (a) annually provide lot owners a summary of the most recent reserve analysis or update; and
  - (b) provide a copy of the complete reserve analysis or update to a lot owner who requests a copy.
- (6) In formulating its budget each year, an association shall include a reserve fund line item in:
  - (a) an amount the board determines, based on the reserve analysis, to be prudent; or
  - (b) an amount required by the governing documents, if the governing documents require an amount higher than the amount determined under Subsection (6)(a).
- (7)
  - (a) Within 45 days after the day on which an association adopts its annual budget, the lot owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association at a special meeting called by the lot owners for the purpose of voting whether to veto a reserve fund line item.
  - (b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve fund line item exists in a previously approved annual budget of the association that was not vetoed, the association shall fund the reserve account in accordance with that prior reserve fund line item.
- (8)
  - (a) Subject to Subsection (8)(b), if an association does not comply with the requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:
    - (i) injunctive relief requiring the association to comply with the requirements of Subsection (5), (6), or (7);
    - (ii) \$500 or the lot owner's actual damages, whichever is greater;
    - (iii) any other remedy provided by law; and
    - (iv) reasonable costs and attorney fees.
  - (b) No fewer than 90 days before the day on which a lot owner files a complaint under Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to the association.

- (c) A notice under Subsection (8)(b) shall state:
  - (i) the requirement in Subsection (5), (6), or (7) with which the association has failed to comply;
  - (ii) a demand that the association come into compliance with the requirements; and
  - (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the notice, by which the association shall remedy its noncompliance.
- (d) In a case filed under Subsection (8)(a), a court may order an association to produce the summary of the reserve analysis or the complete reserve analysis on an expedited basis and at the association's expense.
- (9)
  - (a) A board may not use money in a reserve fund:
    - (i) for daily maintenance expenses, unless a majority of association members vote to approve the use of reserve fund money for that purpose; or
    - (ii) for any purpose other than the purpose for which the reserve fund was established.
  - (b) A board shall maintain a reserve fund separate from other association funds.
  - (c) This Subsection (9) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.
- (10) Subsections (2) through (9) do not apply to an association during the period of administrative control.
- (11) For a project whose initial declaration of covenants, conditions, and restrictions is recorded on or after May 12, 2015, during the period of administrative control, for any property that the declarant sells to a third party, the declarant shall give the third party:
  - (a) a copy of the association's governing documents; and
  - (b) a copy of the association's most recent financial statement that includes any reserve funds held by the association or by a subsidiary of the association.
- (12) Except as otherwise provided in this section, this section applies to each association, regardless of when the association was created.

Amended by Chapter 34, 2015 General Session

**57-8a-212 Content of a declaration.**

- (1) An initial declaration recorded on or after May 10, 2011 shall contain:
  - (a) the name of the project;
  - (b) the name of the association;
  - (c) a statement that the project is not a cooperative;
  - (d) a statement indicating any portions of the project that contain condominiums governed by Chapter 8, Condominium Ownership Act;
  - (e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;
  - (f) the name of each county in which any part of the project is located;
  - (g) a legally sufficient description of the real estate included in the project;
  - (h) a description of any limited common areas and any real estate that is or is required to become common areas;
  - (i) any restriction on the alienation of a lot, including a restriction on leasing; and
  - (j)
    - (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
    - (ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to (name of trustee), with power of sale, the lot and all

improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."

- (2) A declaration may contain any other information the declarant considers appropriate, including any restriction on the use of a lot, the number of persons who may occupy a lot, or other qualifications of a person who may occupy a lot.
- (3) The location of a limited common area or real estate described in Subsection (1)(g) may be shown on a subdivision plat.

Amended by Chapter 152, 2013 General Session

**57-8a-213 Board action to enforce governing documents -- Parameters.**

- (1)
  - (a) The board shall use its reasonable judgment to determine whether to exercise the association's powers to impose sanctions or pursue legal action for a violation of the governing documents, including:
    - (i) whether to compromise a claim made by or against the board or the association; and
    - (ii) whether to pursue a claim for an unpaid assessment.
  - (b) The association may not be required to take enforcement action if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:
    - (i) the association's legal position does not justify taking any or further enforcement action;
    - (ii) the covenant, restriction, or rule in the governing documents is likely to be construed as inconsistent with current law;
    - (iii)
      - (A) a technical violation has or may have occurred; and
      - (B) the violation is not material as to a reasonable person or does not justify expending the association's resources; or
    - (iv) it is not in the association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
- (2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego enforcement, the association is not prevented from later taking enforcement action.
- (3) The board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action.
- (4) This section does not govern whether the association's action in enforcing a provision of the governing documents constitutes a waiver or modification of that provision.

Enacted by Chapter 355, 2011 General Session

**57-8a-214 Fair and reasonable notice.**

- (1) Notice that an association provides by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, regardless of whether or not the association is a nonprofit corporation.
- (2) Notice that an association provides by a method not referred to in Subsection (1) constitutes fair and reasonable notice if:
  - (a) the method is authorized in the declaration, articles, bylaws, or rules; and
  - (b) considering all the circumstances, the notice is fair and reasonable.
- (3)

- (a) If provided in the declaration, articles, bylaws, or rules, an association may provide notice by electronic means, including text message, email, or the association's website.
- (b) Notwithstanding Subsection (3)(a), a lot owner may, by written demand, require an association to provide notice to the lot owner by mail.

Enacted by Chapter 355, 2011 General Session

**57-8a-215 Budget.**

- (1) At least annually the board shall prepare and adopt a budget for the association.
- (2) The board shall present the adopted budget to association members at a meeting of the members.
- (3) A budget is disapproved if within 45 days after the date of the meeting under Subsection (2) at which the board presents the adopted budget:
  - (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of the lot owners in the association; and
  - (b) the vote is taken at a special meeting called for that purpose by lot owners under the declaration, articles, or bylaws.
- (4) If a budget is disapproved under Subsection (3), the budget that the board last adopted that was not disapproved by members continues as the budget until and unless the board presents another budget to members and that budget is not disapproved.
- (5) During the period of administrative control, association members may not disapprove a budget.

Enacted by Chapter 355, 2011 General Session

**57-8a-216 Association bylaws -- Recording required -- Bylaw requirements.**

- (1)
  - (a) No later than the date of the first lot sale, an association shall file its bylaws for recording in the office of the recorder of each county in which any part of the real estate included within the association is located.
  - (b) If an association fails to file bylaws for recording within the time specified in Subsection (1)(a), the board may file the bylaws for recording as provided in Subsection (1)(a).
- (2) Unless otherwise provided in the declaration, an association's bylaws shall state:
  - (a) the number of board members;
  - (b) the title of each of the association's officers;
  - (c) the manner and method of officer election by the board or, if the declaration requires, by the lot owners;
  - (d)
    - (i) the board member's and officer's:
      - (A) qualifications;
      - (B) powers and duties; and
      - (C) terms of office;
    - (ii) the method for removing a board member or officer; and
    - (iii) the method for filling a board member or officer vacancy;
  - (e) the powers that the board or officers may delegate to other persons or to a managing agent;
  - (f) the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
  - (g) a method for the board or lot owners to amend the bylaws, consistent with Section 16-6a-1010; and

- (h) subject to the provisions of the declaration and unless the declaration or this chapter requires that a provision appear in a declaration, any other matter that is necessary or appropriate for conducting the affairs of the association, including:
  - (i) meetings;
  - (ii) voting requirements; and
  - (iii) quorum requirements.
- (3) An association shall file any amended bylaws for recording in the same manner as the association is required to file the initial bylaws for recording under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8a-217 Association rules, including design criteria -- Requirements and limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

- (1)
  - (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the rules and design criteria of the association.
  - (b) A board's action under Subsection (1)(a) is subject to:
    - (i) this section;
    - (ii) any limitation that the declaration imposes on the authority stated in Subsection (1)(a);
    - (iii) the limitation on rules in Sections 57-8a-218 and 57-8a-219;
    - (iv) the board's duty to exercise business judgment on behalf of:
      - (A) the association; and
      - (B) the lot owners in the association; and
    - (v) the right of the lot owners or declarant to disapprove the action under Subsection (4).
- (2) Except as provided in Subsection (3), before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the association, the board shall:
  - (a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is considering a change to a rule or design criterion;
  - (b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection (1)(a); and
  - (c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board meeting.
- (3)
  - (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.
  - (b) The board shall provide notice under Subsection (2) to the lot owners of a rule adopted under Subsection (3)(a).
- (4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if within 60 days after the date of the board meeting where the action was taken:
  - (a)
    - (i) there is a vote of disapproval by at least 51% of all the allocated voting interests of the lot owners in the association; and
    - (ii) the vote is taken at a special meeting called for that purpose by the lot owners under the declaration, articles, or bylaws; or
  - (b)

- (i) the declarant delivers to the board a writing of disapproval; and
  - (ii)
    - (A) the declarant is within the period of administrative control; or
    - (B) for an expandable project, the declarant has the right to add real estate to the project.
- (5)
- (a) The board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition, in the same manner as the declaration, articles, or bylaws provide for a special meeting, for the meeting to be held.
  - (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the board's action is:
    - (i) stayed until after the meeting is held; and
    - (ii) subject to the outcome of the meeting.
- (6) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under this section if the declaration reserves to the declarant the right to exempt the declarant.

Amended by Chapter 325, 2015 General Session

**57-8a-218 Equal treatment by rules required -- Limits on association rules and design criteria.**

- (1)
- (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot owners similarly.
  - (b) Notwithstanding Subsection (1)(a), a rule may:
    - (i) vary according to the level and type of service that the association provides to lot owners; and
    - (ii) differ between residential and nonresidential uses.
- (2)
- (a) If a lot owner owns a rental lot and is in compliance with the association's governing documents and any rule that the association adopts under Subsection (4), a rule may not treat the lot owner differently because the lot owner owns a rental lot.
  - (b) Notwithstanding Subsection (2)(a), a rule may:
    - (i) limit or prohibit a rental lot owner from using the common areas for purposes other than attending an association meeting or managing the rental lot;
    - (ii) if the rental lot owner retains the right to use the association's common areas, even occasionally, charge a rental lot owner a fee to use the common areas; or
    - (iii) include a provision in the association's governing documents that:
      - (A) requires each tenant of a rental lot to abide by the terms of the governing documents; and
      - (B) holds the tenant and the rental lot owner jointly and severally liable for a violation of a provision of the governing documents.
- (3)
- (a) A rule criterion may not abridge the rights of a lot owner to display religious and holiday signs, symbols, and decorations inside a dwelling on a lot.
  - (b) Notwithstanding Subsection (3)(a), the association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling or lot.
- (4)
- (a) A rule may not regulate the content of political signs.
  - (b) Notwithstanding Subsection (4)(a):
    - (i) a rule may regulate the time, place, and manner of posting a political sign; and

- (ii) an association design provision may establish design criteria for political signs.
- (5)
- (a) A rule may not interfere with the freedom of a lot owner to determine the composition of the lot owner's household.
  - (b) Notwithstanding Subsection (5)(a), an association may:
    - (i) require that all occupants of a dwelling be members of a single housekeeping unit; or
    - (ii) limit the total number of occupants permitted in each residential dwelling on the basis of the residential dwelling's:
      - (A) size and facilities; and
      - (B) fair use of the common areas.
- (6)
- (a) A rule may not interfere with an activity of a lot owner within the confines of a dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.
  - (b) Notwithstanding Subsection (6)(a), a rule may prohibit an activity within a dwelling on an owner's lot if the activity:
    - (i) is not normally associated with a project restricted to residential use; or
    - (ii)
      - (A) creates monetary costs for the association or other lot owners;
      - (B) creates a danger to the health or safety of occupants of other lots;
      - (C) generates excessive noise or traffic;
      - (D) creates unsightly conditions visible from outside the dwelling;
      - (E) creates an unreasonable source of annoyance to persons outside the lot; or
      - (F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's dwelling, the common areas, or limited common areas.
  - (c) If permitted by law, an association may adopt rules described in Subsection (6)(b) that affect the use of or behavior inside the dwelling.
- (7)
- (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.
  - (b) Notwithstanding Subsection (7)(a), an association may:
    - (i) change the common areas available to a lot owner;
    - (ii) adopt generally applicable rules for the use of common areas; or
    - (iii) deny use privileges to a lot owner who:
      - (A) is delinquent in paying assessments;
      - (B) abuses the common areas; or
      - (C) violates the governing documents.
  - (c) This Subsection (7) does not permit a rule that:
    - (i) alters the method of levying assessments; or
    - (ii) increases the amount of assessments as provided in the declaration.
- (8)
- (a) Subject to Subsection (8)(b), a rule may not:
    - (i) prohibit the transfer of a lot; or
    - (ii) require the consent of the association or board to transfer a lot.
  - (b) Unless contrary to a declaration, a rule may require a minimum lease term.
- (9)
- (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

- (b) The exemption in Subsection (9)(a):
  - (i) applies during the period of the lot owner's ownership of the lot; and
  - (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (9)(a).
- (10) A rule or action by the association or action by the board may not unreasonably impede a declarant's ability to satisfy existing development financing for community improvements and right to develop:
  - (a) the project; or
  - (b) other properties in the vicinity of the project.
- (11) A rule or association or board action may not interfere with:
  - (a) the use or operation of an amenity that the association does not own or control; or
  - (b) the exercise of a right associated with an easement.
- (12) A rule may not divest a lot owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.
- (13) Unless otherwise provided in the declaration, an association may by rule:
  - (a) regulate the use, maintenance, repair, replacement, and modification of common areas;
  - (b) impose and receive any payment, fee, or charge for:
    - (i) the use, rental, or operation of the common areas, except limited common areas; and
    - (ii) a service provided to a lot owner;
  - (c) impose a charge for a late payment of an assessment; or
  - (d) provide for the indemnification of the association's officers and board consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- (14) A rule shall be reasonable.
- (15) A declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1) through (13), except Subsection (1)(b)(ii).
- (16) A rule may not be inconsistent with a provision of the association's declaration, bylaws, or articles of incorporation.
- (17) This section applies to an association regardless of when the association is created.

Amended by Chapter 22, 2015 General Session

**57-8a-219 Display of the flag.**

- (1) An association may not prohibit a lot owner from displaying a United States flag inside a dwelling or limited common area or on a lot, if the display complies with United States Code, Title 4, Chapter 1, The Flag.
- (2) An association may restrict the display of a flag on the common areas.

Enacted by Chapter 355, 2011 General Session

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

- (1)
  - (a) Subject to Subsection (1)(b), a declaration may:
    - (i) condition the effectiveness of lot owners' actions specified in the declaration on the approval of a specified number or percentage of lenders holding a security interest in the lots; or

- (ii) condition the effectiveness of association actions specified in the declaration on the approval of a specified number or percentage of lenders that have extended credit to the association.
- (b) A condition under Subsection (1)(a) may not:
  - (i) deny or delegate the lot owners' or board's control over the association's general administrative affairs;
  - (ii) prevent the association or board from commencing, intervening in, or settling any litigation or proceeding; or
  - (iii) prevent an insurance trustee or the association from receiving or distributing insurance proceeds under Subsection 57-8a-405(11).
- (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection (1)(b) by:
  - (i) requiring the association to deposit the association's assessments before default with the lender assigned the income; or
  - (ii) requiring the association to increase an assessment at the lender's direction by an amount reasonably necessary to pay the loan in accordance with the loan terms.
- (d) This Subsection (1) applies to:
  - (i) an association formed before, on, or after May 10, 2011; and
  - (ii) documents created and recorded before, on, or after May 10, 2011.
- (2) Subject to this chapter and applicable law, a lender who has extended credit to an association secured by an assignment of income or an encumbrance of the common areas may enforce the lender's security agreement as provided in the agreement.
- (3)
  - (a) Subject to Subsection (4), a security holder's consent that is required under Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:
    - (i) the association sends written notice of the proposed amendment or action by certified or registered mail to the security holder's address stated in a recorded document evidencing the security interest; and
    - (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security holder's response does not receive a response within 60 days after the association sends notice under Subsection (3)(a)(i).
  - (b) If a security holder's address for receiving notice is not stated in a recorded document evidencing the security interest, an association:
    - (i) shall use reasonable efforts to find a mailing address for the security holder; and
    - (ii) may send the notice to any address obtained under Subsection (3)(b)(i).
- (4) If a security holder responds in writing within 60 days after the association sends notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to another person, the association:
  - (a) shall:
    - (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the security interest at the address provided by the security holder in the security holder's response; or
    - (ii) if no address is provided:
      - (A) use reasonable efforts to find a mailing address for the person assigned or conveyed the security interest; and
      - (B) send notice by certified or registered mail to the person at the address that the association finds under Subsection (4)(a)(ii)(A); and
  - (b) may not presume the security holder's consent under Subsection (3)(a) unless the person designated in a notice under Subsection (4)(a) to receive the response from the person assigned or conveyed the security interest does not receive a response within 60 days after the association sends the notice.

Amended by Chapter 152, 2013 General Session

**57-8a-221 Reincorporation of terminated or dissolved association.**

- (1) An association that is terminated or dissolved without possibility of reinstatement under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, may be reincorporated by the acting directors of the association refiling articles of incorporation that are substantially similar to the articles of incorporation, as amended, in existence at the time of termination or dissolution.
- (2) Upon the association's reincorporation under Subsection (1):
  - (a) the board of directors shall readopt bylaws for the association that are the same as the bylaws that were in existence at the time of termination or dissolution; and
  - (b) all lot owners within the project are members of the reincorporated association.

Enacted by Chapter 355, 2011 General Session

**57-8a-222 Removing or altering partition or creating aperture between dwelling units on adjoining lots.**

- (1) Subject to the declaration, a lot owner may, after acquiring an adjoining lot with a dwelling unit that shares a common wall with a dwelling unit on the lot owner's lot:
  - (a) remove or alter a partition between the lot owner's lot and the acquired lot, even if the partition is entirely or partly common areas; or
  - (b) create an aperture to the adjoining lot or portion.
- (2) A lot owner may not take an action under Subsection (1) if the action would:
  - (a) impair the structural integrity or mechanical systems of the building or either lot;
  - (b) reduce the support of any portion of the common areas or another lot; or
  - (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local government land use ordinance, or a building code.
- (3) The board may require a lot owner to submit, at the lot owner's expense, a registered professional engineer's or registered architect's opinion stating that a proposed change to the lot owner's lot will not:
  - (a) impair the structural integrity or mechanical systems of the building or either lot;
  - (b) reduce the support or integrity of common areas; or
  - (c) compromise structural components.
- (4) The board may require a lot owner to pay all of the association's legal and other expenses related to a proposed alteration to the lot or building under this section.
- (5) An action under Subsection (1) does not change an assessment or voting right attributable to the lot owner's lot or the acquired lot, unless the declaration provides otherwise.

Enacted by Chapter 152, 2013 General Session

**57-8a-223 Eminent domain -- Common area.**

Unless the declaration provides otherwise:

- (1) if part of the common area is taken by eminent domain:
  - (a) the entity taking part of the common area shall pay to the association the portion of the compensation awarded for the taking that is attributable to the common area; and
  - (b) the association shall equally divide any portion of the award attributable to the taking of a limited common area among the owners of the lots to which the limited common area was allocated at the time of the taking; and

- (2) an association shall submit for recording to each applicable county recorder the court judgment or order in an eminent domain action that results in the taking of some or all of the common area.

Enacted by Chapter 152, 2013 General Session

**57-8a-224 Responsibility for the maintenance, repair, and replacement of common areas and lots.**

- (1) As used in this section:
  - (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely result in immediate and substantial damage to a common area or to another lot.
  - (b) "Reasonable notice" means:
    - (i) written notice that is hand delivered to the lot at least 24 hours before the proposed entry; or
    - (ii) in the case of an emergency repair, notice that is reasonable under the circumstances.
- (2) Except as otherwise provided in the declaration or Part 4, Insurance:
  - (a) an association is responsible for the maintenance, repair, and replacement of common areas; and
  - (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot owner's lot.
- (3) After reasonable notice to the occupant of the lot being entered, the board may access a lot:
  - (a) from time to time during reasonable hours, as necessary for the maintenance, repair, or replacement of any of the common areas; or
  - (b) for making an emergency repair.
- (4)
  - (a) An association is liable to repair damage it causes to the common areas or to a lot the association uses to access the common areas.
  - (b) An association shall repair damage described in Subsection (4)(a) within a time that is reasonable under the circumstances.
- (5) Subsections (2), (3), and (4) do not apply during the period of administrative control.

Amended by Chapter 34, 2015 General Session

Amended by Chapter 325, 2015 General Session

Amended by Chapter 387, 2015 General Session

**57-8a-225 Association's right to pay delinquent utilities.**

- (1) Upon request in accordance with Subsection (2), at least 10 days before the day on which an electrical corporation or a gas corporation discontinues service to a lot, the electrical corporation or gas corporation shall give the association:
  - (a) written notice that the electrical corporation or gas corporation will discontinue service to the lot; and
  - (b) an opportunity to pay any delinquent charges and maintain service to the lot.
- (2) An association may request the notice and opportunity to pay described in Subsection (1) by sending a written request to the electrical corporation or gas corporation that includes:
  - (a) the address of each lot in the association;
  - (b) the association's name, mailing address, phone number, and email address; and
  - (c) the address where the electrical corporation or gas corporation may send notices.
- (3) If, after an electrical corporation or a gas corporation sends a written notice described in Subsection (1) to an association and the association does not pay the delinquent charges

within 10 days after the day on which the electrical corporation or gas corporation sends the notice, the electrical corporation or gas corporation may discontinue service to the lot.

- (4) An association may collect any payment to an electrical corporation or a gas corporation under this section as an assessment in accordance with Section 57-8a-301.
- (5)
  - (a) If, after an association receives a written notice described in Subsection (1), the association decides not to pay the delinquent charges, the association may, if permitted by the association's governing documents, and after reasonable notice to the lot owner:
    - (i) enter the lot; and
    - (ii) winterize the lot.
  - (b) A person who enters a lot in accordance with Subsection (5)(a) is not liable for trespass.
  - (c) An association may charge a lot owner an assessment for the actual and reasonable costs of winterizing a lot in accordance with this Subsection (5).

Enacted by Chapter 213, 2015 General Session

Amended by Chapter 325, 2015 General Session, (Coordination Clause)

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

- (1)
  - (a) At least 48 hours before a meeting, the association shall give written notice of the meeting via email to each lot owner who requests notice of a meeting, unless:
    - (i) notice of the meeting is included in a meeting schedule that was previously provided to the lot owner; or
    - (ii)
      - (A) the meeting is to address an emergency; and
      - (B) each board member receives notice of the meeting less than 48 hours before the meeting.
  - (b) A notice described in Subsection (1)(a) shall:
    - (i) be delivered to the lot owner by email, to the email address that the lot owner provides to the board or the association;
    - (ii) state the time and date of the meeting;
    - (iii) state the location of the meeting; and
    - (iv) if a board member may participate by means of electronic communication, provide the information necessary to allow the lot owner to participate by the available means of electronic communication.
- (2)
  - (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot owner or the lot owner's representative if the representative is designated in writing.
  - (b) A board may close a meeting to:
    - (i) consult with an attorney for the purpose of obtaining legal advice;
    - (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
    - (iii) discuss a personnel matter;
    - (iv) discuss a matter relating to contract negotiations, including review of a bid or proposal;
    - (v) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
    - (vi) discuss a delinquent assessment or fine.
- (3)
  - (a) At each meeting, the board shall provide each lot owner a reasonable opportunity to offer comments.

- (b) The board may limit the comments described in Subsection (3)(a) to one specific time period during the meeting.
- (4) A board member may not avoid or obstruct the requirements of this section.
- (5) Nothing in this section shall affect the validity or enforceability of an action of a board.
- (6) The provisions of this section do not apply during the period of administrative control.
- (7) The provisions of this section apply regardless of when the association's first governing document was recorded.
- (8)
  - (a) Subject to Subsection (8)(d), if an association fails to comply with a provision of Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period described in Subsection (8)(d), a lot owner may file an action in court for:
    - (i) injunctive relief requiring the association to comply with the provisions of Subsections (1) through (4);
    - (ii) \$500 or actual damages, whichever is greater; or
    - (iii) any other relief provided by law.
  - (b) In an action described in Subsection (8)(a), the court may award costs and reasonable attorney fees to the prevailing party.
  - (c) Upon motion from the lot owner, notice to the association, and a hearing in which the court finds a likelihood that the association has failed to comply with a provision of Subsections (1) through (4), the court may order the association to immediately comply with the provisions of Subsections (1) through (4).
  - (d) At least 90 days before the day on which a lot owner files an action described in Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:
    - (i) the lot owner's name, address, telephone number, and email address;
    - (ii) each requirement of Subsections (1) through (4) with which the association has failed to comply;
    - (iii) a demand that the association comply with each requirement with which the association has failed to comply; and
    - (iv) a date by which the association shall remedy the association's noncompliance that is at least 90 days after the day on which the lot owner delivers the notice to the association.

Enacted by Chapter 387, 2015 General Session

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

- (1)
  - (a) Subject to Subsection (1)(b), an association shall keep and make documents available to lot owners in accordance with Sections 16-6a-1601 through 1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610, regardless of whether the association is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
  - (b) An association may redact the following information from any document the association produces for inspection or copying:
    - (i) a Social Security number;
    - (ii) a bank account number; or
    - (iii) any communication subject to attorney-client privilege.
- (2)
  - (a) In addition to the requirements described in Subsection (1), an association shall make documents available to lot owners in accordance with the association's governing documents.

- (b) If a provision of an association's governing documents conflicts with a provision of this section, the provision of this section governs.
- (3) In a request to inspect or copy documents, a lot owner may:
  - (a) elect whether to inspect or copy the documents;
  - (b) if the lot owner elects to copy the documents, request hard copies or electronic scans of the documents; or
  - (c) subject to Subsection (4), request that:
    - (i) the association make the copies or electronic scans of the requested documents;
    - (ii) a recognized third party duplicating service make the copies or electronic scans of the requested documents; or
    - (iii) the lot owner be allowed to bring any necessary imaging equipment to the place of inspection and make copies or electronic scans of the documents while inspecting the documents.
- (4)
  - (a) An association shall comply with a request described in Subsection (3).
  - (b) If an association produces the copies or electronic scans:
    - (i) the copies or electronic scans shall be legible and accurate; and
    - (ii) the lot owner shall pay the association the reasonable cost of the copies or electronic scans, which may not exceed:
      - (A) the actual cost that the association paid to a recognized third party duplicating service to make the copies or electronic scans; or
      - (B) if an employee, manager, or other agent of the association makes the copies or electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or other agent's time making the copies or electronic scans.
  - (c) If a lot owner requests a recognized third party duplicating service make the copies or electronic scans:
    - (i) the association shall arrange for the delivery and pick up of the original documents; and
    - (ii) the lot owner shall pay the duplicating service directly.
  - (d) If a lot owner requests to bring imaging equipment to the inspection, the association shall provide the necessary space, light, and power for the imaging equipment.
- (5) If, in response to a lot owner's request to inspect or copy documents, an association fails to comply with a provision of this section, the association shall pay:
  - (a) the reasonable costs of inspecting and copying the requested documents; and
  - (b) reasonable attorney fees and costs incurred by the lot owner in obtaining the inspection and copies of the requested documents.
- (6)
  - (a) In addition to any remedy in the association's governing documents or otherwise provided by law, a lot owner may file an action in court under this section if:
    - (i) an association fails to make documents available to the lot owner in accordance with this section, the association's governing documents, or as otherwise provided by law; and
    - (ii) the association fails to timely comply with a notice described in Subsection (6)(d).
  - (b) In an action described in Subsection (6)(a):
    - (i) the lot owner may request:
      - (A) injunctive relief requiring the association to comply with the provisions of this section;
      - (B) \$500 or actual damage, whichever is greater; or
      - (C) any other relief provided by law; and

- (ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.
- (c)
  - (i) In an action described in Subsection (6)(a), upon motion by the lot owner, notice to the association, and a hearing in which the court finds a likelihood that the association failed to comply with a provision of this section, the court shall order the association to immediately comply with the provision.
  - (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after the day on which the lot owner files the motion.
- (d) At least 10 days before the day on which a lot owner files an action described in Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:
  - (i) the lot owner's name, address, telephone number, and email address;
  - (ii) each requirement of this section with which the association has failed to comply;
  - (iii) a demand that the association comply with each requirement with which the association has failed to comply; and
  - (iv) a date by which the association shall remedy the association's noncompliance that is at least 10 days after the day on which the lot owner delivers the notice to the association.
- (7)
  - (a) The provisions of Section 16-6a-1604 do not apply to an association.
  - (b) The provisions of this section apply regardless of any conflicting provision in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that the lot owner has under this section.

Enacted by Chapter 325, 2015 General Session

### **Part 3**

### **Collection of Assessments**

#### **57-8a-301 Lien in favor of association for assessments and costs of collection.**

- (1)
  - (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:
    - (i) an assessment;
    - (ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:
      - (A) court costs and reasonable attorney fees;
      - (B) late charges;
      - (C) interest; and
      - (D) any other amount that the association is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and
    - (iii) a fine that the association imposes against a lot owner in accordance with Section 57-8a-208, if:
      - (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot owner did not file an appeal; or

- (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).
- (b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).
- (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.
- (3) An unpaid assessment or fine accrues interest at the rate provided:
  - (a) in Subsection 15-1-1(2); or
  - (b) in the declaration, if the declaration provides for a different interest rate.
- (4) A lien under this section has priority over each other lien and encumbrance on a lot except:
  - (a) a lien or encumbrance recorded before the declaration is recorded;
  - (b) a first or second security interest on the lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the association; or
  - (c) a lien for real estate taxes or other governmental assessments or charges against the lot.
- (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.
- (6) Unless the declaration provides otherwise, if two or more associations have liens for assessments on the same lot, the liens have equal priority, regardless of when the liens are created.

Amended by Chapter 116, 2014 General Session

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

- (1)
  - (a) Except as provided in Section 57-8a-105, to enforce a lien established under Section 57-8a-301, an association may:
    - (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by:
      - (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and
      - (B) this part; or
    - (ii) foreclose the lien through a judicial foreclosure in the manner provided by:
      - (A) law for the foreclosure of a mortgage; and
      - (B) this part.
  - (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection (1)(a):
    - (i) the association is considered to be the beneficiary under a trust deed; and
    - (ii) the lot owner is considered to be the trustor under a trust deed.
- (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.
- (3)
  - (a) A power of sale and other powers of a trustee under this part and under Sections 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified trustee.
  - (b) An association's execution of a substitution of trustee form authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).
  - (c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection 57-1-21(1)(a)(i) or (iv).
  - (d) A trustee under this part is subject to all duties imposed on a trustee under Sections 57-1-19 through 57-1-34.

- (4) This part does not prohibit an association from bringing an action against a lot owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the lot owner's lot under this part.

Amended by Chapter 95, 2013 General Session

**57-8a-303 Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.**

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

(2) The notice under Subsection (1):

(a) shall:

- (i) notify the lot owner that the association intends to pursue nonjudicial foreclosure with respect to the owner's lot to enforce the association's lien for an unpaid assessment;
- (ii) notify the lot owner of the owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure;
- (iii) be in substantially the following form:

**"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE**

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

- (iv) be sent to the lot owner by certified mail, return receipt requested; and
  - (b) may be included with other association correspondence to the lot owner.
- (3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot owner mails the association a written demand for judicial foreclosure:
- (a) by U.S. mail, certified with a return receipt requested;
  - (b) to the address stated in the association's notice under Subsection (1); and
  - (c) within 15 days after the date of the postmark on the envelope of the association's notice under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8a-304 Provisions applicable to nonjudicial foreclosure.**

- (1) An association's nonjudicial foreclosure of a lot is governed by:
  - (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association's lien were a trust deed; and
  - (b) this part.
- (2) If there is a conflict between a provision of this part and a provision of Sections 57-1-19 through 57-1-34 with respect to an association's nonjudicial foreclosure of a lot, the provision of this part controls.

Enacted by Chapter 355, 2011 General Session

**57-8a-305 One-action rule not applicable -- Abandonment of enforcement proceeding.**

- (1) Subsection 78B-6-901(1) does not apply to an association's judicial or nonjudicial foreclosure of a lot under this part.
- (2) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

Enacted by Chapter 355, 2011 General Session

**57-8a-306 Costs and attorney fees in lien enforcement action.**

- (1) A court entering a judgment or decree in a judicial action brought under this part shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association is the prevailing party, any costs and reasonable attorney fees that the association incurs collecting the judgment.
- (2) In a nonjudicial foreclosure, an association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

Enacted by Chapter 355, 2011 General Session

**57-8a-307 Action to recover unpaid assessment.**

An association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section 57-8a-301.

Enacted by Chapter 355, 2011 General Session

**57-8a-308 Appointment of receiver.**

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

- (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money alleged to be due and owing to a lot owner:
  - (a) before commencement of the action; or
  - (b) during the pendency of the action; and
- (2) order the receiver to pay the association, to the extent of the association's common expense assessment, money the receiver holds under Subsection (1).

Enacted by Chapter 355, 2011 General Session

**57-8a-309 Termination of a delinquent owner's rights -- Notice -- Informal hearing.**

- (1) As used in this section, "delinquent lot owner" means a lot owner who fails to pay an assessment when due.
- (2) A board may, if authorized in the declaration, bylaws, or rules and as provided in this section, terminate a delinquent lot owner's right:
  - (a) to receive a utility service for which the lot owner pays as a common expense; or
  - (b) of access to and use of recreational facilities.
- (3)
  - (a) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (2), the manager or board shall give the delinquent lot owner notice in a manner provided in the declaration, bylaws, or association rules.
  - (b)
    - (i) A notice under Subsection (3)(a) shall state:
      - (A) that the association will terminate the lot owner's utility service or right of access to and use of recreational facilities, or both, if the association does not receive payment of the assessment within the time provided in the declaration, bylaws, or association rules, subject to Subsection (3)(b)(ii);
      - (B) the amount of the assessment due, including any interest or late payment fee; and
      - (C) the lot owner's right to request a hearing under Subsection (4).
    - (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.
    - (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a utility service if service is terminated.
- (4)
  - (a) A delinquent lot owner may submit a written request to the board for an informal hearing to dispute the assessment.
  - (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date the delinquent lot owner receives the notice under Subsection (3).
- (5) A board shall conduct an informal hearing requested under Subsection (4) in accordance with the standards provided in the declaration, bylaws, or association rules.
- (6) If a delinquent lot owner requests a hearing, the association may not terminate a utility service or right of access to and use of recreational facilities until after the board:
  - (a) conducts the hearing; and
  - (b) enters a final decision.
- (7) If an association terminates a utility service or a right of access to and use of recreational facilities, the association shall take immediate action to reinstate the service or right following the lot owner's payment of the assessment, including any interest and late payment fee.
- (8) An association may:
  - (a) assess a lot owner for the cost associated with reinstating a utility service that the association terminates as provided in this section; and
  - (b) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection (3).

Enacted by Chapter 355, 2011 General Session

**57-8a-310 Requiring tenant in residential lot to pay rent to association if owner fails to pay assessment.**

- (1) As used in this section:

- (a) "Amount owing" means the total of:
    - (i) any assessment or obligation under Section 57-8a-301 that is due and owing; and
    - (ii) any applicable interest, late fee, and cost of collection.
  - (b) "Lease" means an arrangement under which a tenant occupies a lot owner's lot in exchange for the lot owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument.
  - (c) "Tenant" means a person, other than the lot owner, who has regular, exclusive occupancy of the lot owner's lot.
- (2) Subject to Subsections (3) and (4), the board may require a tenant under a lease with a lot owner to pay the association all future lease payments due to the lot owner:
- (a) if:
    - (i) the lot owner fails to pay an assessment for a period of more than 60 days after the assessment is due and payable; and
    - (ii) authorized in the declaration, bylaws, or rules;
  - (b) beginning with the next monthly or periodic payment due from the tenant; and
  - (c) until the association is paid the amount owing.
- (3)
- (a) Before requiring a tenant to pay lease payments to the association under Subsection (2), the association's manager or board shall give the lot owner notice, in accordance with the declaration, bylaws, or association rules.
  - (b) The notice required under Subsection (3)(a) shall state:
    - (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees;
    - (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and
    - (iii) that the association intends to demand payment of future lease payments from the lot owner's tenant if the lot owner does not pay the amount owing within 15 days.
- (4)
- (a) If a lot owner fails to pay the amount owing within 15 days after the association's manager or board gives the lot owner notice under Subsection (3), the association's manager or board may exercise the association's rights under Subsection (2) by delivering a written notice to the tenant.
  - (b) A notice under Subsection (4)(a) shall state that:
    - (i) due to the lot owner's failure to pay an assessment within the required time, the board has notified the lot owner of the board's intent to collect all lease payments until the amount owing is paid;
    - (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the association, until the amount owing is paid; and
    - (iii) the tenant's payment of lease payments to the association does not constitute a default under the terms of the lease with the lot owner.
  - (c) The manager or board shall mail a copy of the notice to the lot owner.
- (5)
- (a) A tenant to whom notice under Subsection (4) is given shall pay to the association all future lease payments as they become due and owing to the lot owner:
    - (i) beginning with the next monthly or other periodic payment after the notice under Subsection (4) is delivered to the tenant; and
    - (ii) until the association notifies the tenant under Subsection (6) that the amount owing is paid.

- (b) A lot owner:
  - (i) shall credit each payment that the tenant makes to the association under this section against any obligation that the tenant owes to the owner as though the tenant made the payment to the owner; and
  - (ii) may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an association as required under this section.
- (6)
  - (a) Within five business days after the amount owing is paid, the association's manager or board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the association.
  - (b) The manager or board shall mail a copy of the notification described in Subsection (6)(a) to the lot owner.
- (7)
  - (a) An association shall deposit money paid to the association under this section in a separate account and disburse that money to the association until:
    - (i) the amount owing is paid; and
    - (ii) any cost of administration, not to exceed \$25, is paid.
  - (b) The association shall, within five business days after the amount owing is paid, pay to the lot owner any remaining balance.

Enacted by Chapter 355, 2011 General Session

**57-8a-311 Statement from association's manager or board of unpaid assessment.**

- (1) An association's manager or board shall issue a written statement indicating any unpaid assessment with respect to a lot owner's lot upon:
  - (a) a written request by the lot owner; and
  - (b) payment of a reasonable fee not to exceed \$25.
- (2) A written statement under Subsection (1) is conclusive in favor of a person who relies on the written statement in good faith.

Enacted by Chapter 355, 2011 General Session

**Part 4  
Insurance**

**57-8a-401 Definition.**

As used in this part, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association to pay.

Enacted by Chapter 355, 2011 General Session

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

- (1) This part applies to an insurance policy or combination of insurance policies:
  - (a) issued or renewed on or after July 1, 2011; and
  - (b) issued to or renewed by:
    - (i) a lot owner; or

- (ii) an association, regardless of when the association is formed.
- (2) Unless otherwise provided in the declaration, this part does not apply to a project if all of the project's lots are restricted to entirely nonresidential use.
- (3) Subject to Subsection (4), this part does not apply to a project if:
  - (a) the initial declaration for the project is recorded before January 1, 2012;
  - (b) the project includes attached dwellings; and
  - (c) the declaration requires each lot owner to insure the lot owner's dwelling.
- (4)
  - (a) An association to which this part does not apply under Subsection (3) may amend the declaration, as provided in the declaration and applicable law, to subject the association to this part.
  - (b) During the period of administrative control, an amendment under Subsection (4)(a) requires the consent of the declarant.

Amended by Chapter 152, 2013 General Session

**57-8a-403 Property and liability insurance required -- Notice if insurance not reasonably available.**

- (1) Beginning not later than the day on which the first lot is conveyed to a person other than a declarant, an association shall maintain, to the extent reasonably available:
  - (a) subject to Section 57-8a-405, blanket property insurance or guaranteed replacement cost insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and
  - (b) subject to Section 57-8a-406, liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas.
- (2) If an association becomes aware that property insurance under Subsection (1)(a) or liability insurance under Subsection (1)(b) is not reasonably available, the association shall, within seven calendar days after becoming aware, give all lot owners notice, as provided in Section 57-8a-214, that the insurance is not reasonably available.

Amended by Chapter 152, 2013 General Session

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

- (1)
  - (a) The declaration or bylaws may require the association to carry other types of insurance in addition to those described in Section 57-8a-403.
  - (b) In addition to any type of insurance coverage or limit of coverage provided in the declaration or bylaws and subject to the requirements of this part, an association may, as the board considers appropriate, obtain:
    - (i) an additional type of insurance than otherwise required; or
    - (ii) a policy with greater coverage than otherwise required.
- (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf of an association, a lot owner's act or omission may not:

- (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability insurance policy under Subsection 57-8a-403(1)(b); or
  - (b) be a condition to recovery under a policy.
- (3) An insurer under a property insurance policy or liability insurance policy obtained by an association under this part waives its right to subrogation under the policy against:
- (a) any person residing with a lot owner, if the lot owner resides on the lot; and
  - (b) the lot owner.
- (4)
- (a) An insurance policy issued to an association may not be inconsistent with any provision of this part.
  - (b) A provision of a governing document that is contrary to a provision of this part has no effect.
  - (c) Neither the governing documents nor a property insurance or liability insurance policy issued to an association may prevent a lot owner from obtaining insurance for the lot owner's own benefit.

Amended by Chapter 152, 2013 General Session

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

- (1) This section applies to property insurance required under Subsection 57-8a-403(1)(a).
- (2) The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding:
  - (a) items normally excluded from property insurance policies; and
  - (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use project.
- (3) Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a limited common area.
- (4) Notwithstanding anything in this part and unless otherwise provided in the declaration, an association is not required to obtain property insurance for a loss to a dwelling that is not physically attached to another dwelling or to a common area structure.
- (5) Each lot owner is an insured person under a property insurance policy.
- (6) If a loss occurs that is covered by a property insurance policy in the name of an association and another property insurance policy in the name of a lot owner:
  - (a) the association's policy provides primary insurance coverage; and
  - (b) notwithstanding Subsection (6)(a) and subject to Subsection (7):
    - (i) the lot owner is responsible for the association's policy deductible; and
    - (ii) building property coverage, often referred to as coverage A, of the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.
- (7)
  - (a) As used in this Subsection (7) and Subsection (10):
    - (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by an association's property insurance policy.
    - (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

- (iii) "Lot damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to lot damage.
  - (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the association's property insurance policy.
  - (c) If a lot owner does not pay the amount required under Subsection (7)(b) within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.
- (8) An association shall set aside an amount equal to the amount of the association's property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.
- (9)
- (a) An association shall provide notice in accordance with Section 57-8a-214 to each lot owner of the lot owner's obligation under Subsection (7) for the association's policy deductible and of any change in the amount of the deductible.
  - (b)
    - (i) An association that fails to provide notice as provided in Subsection (9)(a) is responsible for the portion of the deductible that the association could have assessed to a lot owner under Subsection (7), but only to the extent that the lot owner does not have insurance coverage that would otherwise apply under this section.
    - (ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the association's policy deductible, as required under Subsection (9)(a), but fails to provide notice of a later increase in the amount of the deductible is responsible only for the amount of the increase for which notice was not provided.
  - (c) An association's failure to provide notice as provided in Subsection (9)(a) may not be construed to invalidate any other provision of this part.
- (10) If, in the exercise of the business judgment rule, the board determines that a covered loss is likely not to exceed the association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the association's property insurance deductible and a claim is submitted to the association's property insurance insurer:
- (a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for primary coverage for the damage to that lot;
  - (b) the association is responsible for any covered loss to any common area;
  - (c) a lot owner who does not have a policy to cover the damage to that lot owner's lot is responsible for that lot damage, and the association may, as provided in Subsection (7)(c), recover any payments the association makes to remediate that lot; and
  - (d) the association need not tender the claim to the association's insurer.
- (11)
- (a) An insurer under a property insurance policy issued to an association shall adjust with the association a loss covered under the association's policy.
  - (b) Notwithstanding Subsection (11)(a), the insurance proceeds for a loss under an association's property insurance policy:
    - (i) are payable to an insurance trustee that the association designates or, if no trustee is designated, to the association; and
    - (ii) may not be payable to a holder of a security interest.
  - (c) An insurance trustee or an association shall hold any insurance proceeds in trust for the association, lot owners, and lien holders.

- (d)
  - (i) If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.
  - (ii) After the disbursements described in Subsection (11)(d)(i) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the declaration.
- (12) An insurer that issues a property insurance policy under this part, or the insurer's authorized agent, shall issue a certificate or memorandum of insurance to:
  - (a) the association;
  - (b) a lot owner, upon the lot owner's written request; and
  - (c) a holder of a security interest, upon the holder's written request.
- (13) A cancellation or nonrenewal of a property insurance policy under this section is subject to the procedures stated in Section 31A-21-303.
- (14) A board that acquires from an insurer the property insurance required in this section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of the loss.
- (15)
  - (a) Unless required in the declaration, property insurance coverage is not required for fixtures, improvements, or betterments in a commercial lot or limited common areas appurtenant to a commercial lot in a mixed-use project.
  - (b) Notwithstanding any other provision of this part, an association may obtain property insurance for fixtures, improvements, and betterments in a commercial lot in a mixed-use project if allowed or required in the declaration.
- (16)
  - (a) This section does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss.
  - (b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

Amended by Chapter 152, 2013 General Session

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

- (1) This section applies to a liability insurance policy required under Subsection 57-8a-403(1)(b).
- (2) A liability insurance policy shall be in an amount determined by the board but not less than an amount specified in the declaration or bylaws.
- (3) Each lot owner is an insured person under a liability insurance policy that an association obtains, but only for liability arising from:
  - (a) the lot owner's ownership interest in the common areas;
  - (b) maintenance, repair, or replacement of common areas; and
  - (c) the lot owner's membership in the association.

Amended by Chapter 152, 2013 General Session

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

- (1)

- (a) If a portion of the project for which insurance is required under this part is damaged or destroyed, the association shall repair or replace the portion within a reasonable amount of time unless:
    - (i) the project is terminated;
    - (ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or
    - (iii)
      - (A) at least 75% of the allocated voting interests of the lot owners in the association vote not to rebuild; and
      - (B) each owner of a dwelling on a lot and the limited common area appurtenant to that lot that will not be rebuilt votes not to rebuild.
  - (b) If a portion of a project is not repaired or replaced because the project is terminated, the termination provisions of applicable law and the governing documents apply.
- (2)
- (a) The cost of repair or replacement of any lot in excess of insurance proceeds and reserves is a common expense to the extent the association is required under this chapter to provide insurance coverage for the lot.
  - (b) The cost of repair or replacement of any common area in excess of insurance proceeds and reserves is a common expense.
- (3) If the entire project is damaged or destroyed and not repaired or replaced:
- (a) the association shall use the insurance proceeds attributable to the damaged common areas to restore the damaged area to a condition compatible with the remainder of the project;
  - (b) the association shall distribute the insurance proceeds attributable to lots and common areas that are not rebuilt to:
    - (i) the lot owners of the lots that are not rebuilt;
    - (ii) the lot owners of the lots to which those common areas that are not rebuilt were allocated; or
    - (iii) lien holders; and
  - (c) the association shall distribute the remainder of the proceeds to all the lot owners or lien holders in proportion to the common expense liabilities of all the lots.
- (4) If the lot owners vote not to rebuild a lot:
- (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote as if the lot had been condemned; and
  - (b) the association shall prepare, execute, and submit for recording an amendment to the declaration reflecting the reallocations described in Subsection (4)(a).

Amended by Chapter 152, 2013 General Session

## **Part 5**

### **Association Board**

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

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

Enacted by Chapter 152, 2013 General Session

**57-8a-502 Period of administrative control.**

- (1) Unless otherwise provided for in a declaration, a period of administrative control terminates on the first to occur of the following:
  - (a) 60 days after 75% of the lots that may be created are conveyed to lot owners other than a declarant;
  - (b) seven years after all declarants have ceased to offer lots for sale in the ordinary course of business; or
  - (c) the day the declarant, after giving written notice to the lot owners, records an instrument voluntarily surrendering all rights to control activities of the association.
- (2)
  - (a) A declarant may voluntarily surrender the right to appoint and remove a member of the board before the period of administrative control terminates under Subsection (1).
  - (b) Subject to Subsection (2)(a), the declarant may require, for the duration of the period of administrative control, that actions of the association or board, as specified in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.
  - (c) During a period of administrative control, except as provided in Subsection (2)(a), a declarant may appoint the declarant's officers, employees, or agents as members of the board.
- (3)
  - (a) Upon termination of the period of administrative control, the lot owners shall elect a board consisting of an odd number of at least three members, a majority of whom shall be lot owners.
  - (b) Unless the declaration provides for the election of officers by the lot owners, the board shall elect officers of the association.
  - (c) The board members and officers shall take office upon election or appointment.

Amended by Chapter 210, 2016 General Session

**Part 6  
Consolidation of Associations**

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

- (1) Two or more associations may be consolidated into a single association as provided in Title 16, Chapter 6a, Part 11, Merger, and this section.
- (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of consolidation between two or more associations to consolidate into a single association is not effective unless it is approved by the lot owners of each of the consolidating associations by the highest percentage of allocated voting interests of the lot owners required by each association to amend its respective declaration, articles, or bylaws.
- (3) A declaration of consolidation under Subsection (2) shall:
  - (a) be prepared, executed, and certified by the president of each of the consolidating associations; and
  - (b) provide for the reallocation of the allocated interests in the consolidated association by stating:
    - (i) the reallocations of the allocated interests in the consolidated association or the formulas used to reallocate the allocated interests; or

- (ii)
  - (A) the percentage of overall allocated interests of the consolidated association that are allocated to all of the lots comprising each of the consolidating associations; and
  - (B) that the portion of the percentages allocated to each lot formerly comprising a part of a consolidating association is equal to the percentages of allocated interests allocated to the lot by the declaration of the consolidating association.
- (4) A declaration of consolidation under Subsection (2) is not effective until it is recorded in the office of each applicable county recorder.
- (5) Unless otherwise provided in the declaration of consolidation:
  - (a) the consolidated association resulting from a consolidation under this section is the legal successor for all purposes of all of the consolidating associations;
  - (b) the operations and activities of all of the consolidating associations shall be consolidated into the consolidated association; and
  - (c) the consolidated association holds all powers, rights, obligations, assets, and liabilities of all consolidating associations.

Enacted by Chapter 152, 2013 General Session

## **Chapter 9**

### **Marketable Record Title**

#### **57-9-1 What constitutes marketable record title.**

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 40 years or more, shall be deemed to have a marketable record title to such interest as defined in Section 57-9-8, subject only to the matters stated in Section 57-9-2. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than 40 years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

- (1) the person claiming such interest or
- (2) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest: with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

Enacted by Chapter 109, 1963 General Session

#### **57-9-2 Rights and interests to which marketable record title is subject.**

The marketable record title is subject to:

- (1) all interests and defects which are inherent in the muniments of which such chain of record title is formed, except that a general reference in the muniments or any of them, to easements, use restrictions, or other interests created prior to the root of title is not sufficient to preserve them, unless specific identification is made therein of a recorded title transaction which creates the easement, use restriction, or other interest;

- (2) all interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of 40 years or more, in accordance with Section 57-9-4;
- (3) the rights of any person arising from prescriptive use or a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title;
- (4) any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started, except that the recording does not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of Section 57-9-3; and
- (5) the exceptions stated in Section 57-9-6 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, as to the right, title, or interests of the state in school or institutional trust lands or sovereign lands, and as to interests of the United States.

Amended by Chapter 241, 1999 General Session

**57-9-3 Marketable record title held free and clear of interests, claims, and charges.**

Subject to Sections 57-9-2 and 57-9-6:

- (1) the marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges, whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title; and
- (2) all such interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether the interests, claims, or charges are asserted by a person sui juris or under a disability, whether the person is within or without the state, whether the person is natural or corporate, or is private or governmental, are declared to be void.

Amended by Chapter 299, 1995 General Session

**57-9-4 Filing of notice of claim of interest authorized -- Effect of possession of land by record owner of possessory interest.**

- (1) Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of the forty-year period. The notice may be filed for record by the claimant or by any other person acting in behalf of any claimant who is
  - (a) under a disability,
  - (b) unable to assert a claim on his own behalf, or
  - (c) one of a class, but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.
- (2) If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of 40 years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him or on his behalf as provided in Subsection (1), and such possession continues to the time when marketability is being determined, such period of possession shall be deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in Subsection (1).

Enacted by Chapter 109, 1963 General Session

**57-9-5 Notice of claim of interest -- Contents -- Filing for record.**

In order to be effective and to be recorded, the notice required by Section 57-9-4 shall contain a legal description of all land affected by the notice. If the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument. The notice shall be recorded in the county or counties where the land described is situated.

Amended by Chapter 320, 2000 General Session

**57-9-6 Applicability of provisions.**

This chapter may not be applied to:

- (1) bar a lessor or the lessor's successor as a reversioner of the right to possession on the expiration of any lease;
- (2) extinguish any right, title, or interest created or held for any pipeline, highway, railroad or public utility purpose;
- (3) extinguish an easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;
- (4) extinguish any water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water, or by water users' claims filed in general determination proceedings;
- (5) extinguish any right, title, estate, or interest in and to minerals, and any development, mining, production or other rights or easements related to the minerals or exercisable in connection with the minerals;
- (6) extinguish any right, title, or interest of the state or political subdivision of the state; or
- (7) extinguish any right, title, or interest of the United States, by reason of failure to file the notice required under this chapter.

Amended by Chapter 423, 2011 General Session

**57-9-7 Existing statutes of limitations and recording statutes not affected.**

Nothing contained in this act shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

Enacted by Chapter 109, 1963 General Session

**57-9-8 Definitions.**

As used in this act:

- (1) The words "marketable record title" mean a title of record as indicated in Section 57-9-1, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in Section 57-9-3.
- (2) The word "records" includes probate and other official public records, as well as records in the registry of deeds.
- (3) The word "recording," when applied to the official public records of a probate or other court, includes filing.

- (4) The words "person dealing with land" include a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.
- (5) The words "root of title" mean that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date 40 years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.
- (6) The words "title transaction" mean any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, or sheriff's deed, or decree of any court, as well as warranty deed, quitclaim deed, or mortgage.

Enacted by Chapter 109, 1963 General Session

**57-9-9 Legislative purpose and construction.**

This act shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 57-9-1 of this act, subject only to such limitations as appear in Section 57-9-2 of this act.

Enacted by Chapter 109, 1963 General Session

**57-9-10 Extension of limitation period.**

If the forty-year period specified in this act shall have expired prior to two years after the effective date of this act, such period shall be extended two years after the effective date of this act.

Enacted by Chapter 109, 1963 General Session

**Chapter 10  
Utah Coordinate System**

**57-10-1 Plane coordinate systems designated -- Zones within the systems by county.**

- (1) The systems of plane coordinates that have been established by the National Ocean Service/ National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within the state of Utah are known and designated as the Utah Coordinate System of 1927 and the Utah Coordinate System of 1983.
- (2) For the purpose of the use of these systems, the state is divided into three zones: North, Central, and South Zones.
  - (a) The area now included in the following counties constitutes the North Zone: Box Elder, Cache, Daggett, Davis, Morgan, Rich, Summit, and Weber.
  - (b) The area now included in the following counties constitutes the Central Zone: Carbon, Duchesne, Emery, Grand, Juab, Millard, Salt Lake, Sanpete, Sevier, Tooele, Uintah, Utah, and Wasatch.

- (c) The area now included in the following counties constitutes the South Zone: Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington, and Wayne.

Repealed and Re-enacted by Chapter 60, 1988 General Session

**57-10-2 Zones must be named in maps and documents.**

- (1) As established for use in the North Zone, the Utah Coordinate System of 1927 or the Utah Coordinate System of 1983 shall be named and designated as the "Utah Coordinate System 1927 North Zone" or "Utah Coordinate System 1983 North Zone" in any land description or on any map or document in which it is used.
- (2) As established for use in the Central Zone, the Utah Coordinate System of 1927 or the Utah Coordinate System of 1983 shall be named and designated as the "Utah Coordinate System 1927 Central Zone" or "Utah Coordinate System 1983 Central Zone" in any land description or on any map or document in which it is used.
- (3) As established for use in the South Zone, the Utah Coordinate System of 1927 or the Utah Coordinate System of 1983 shall be named and designated as the "Utah Coordinate System 1927 South Zone" or "Utah Coordinate System 1983 South Zone" in any land description or on any map or document in which it is used.

Repealed and Re-enacted by Chapter 60, 1988 General Session

**57-10-3 North to South and East to West coordinate values.**

The plane coordinate values for a point on the earth's surface used to express the geographic position or location or point in the appropriate zone of this system shall consist of two distances expressed in U.S. survey feet and decimals of a foot when using the Utah Coordinate System of 1927 and expressed in meters and decimals of a meter when using the Utah Coordinate System of 1983.

- (1) One of these distances, known as the "x-coordinate" or "E-coordinate," shall give the position in an east-west direction; the other, known as the "y-coordinate" or "N-coordinate," shall give the position in a north-south direction.
- (2) These coordinates shall be made to depend upon and conform to plane rectangular coordinate values computed on the systems defined in this chapter for the monumented points of the North American Horizontal Geodetic Control Network, as published by the National Ocean Service/National Geodetic Survey (formerly the United States Coast and Geodetic Survey) or its successors.
- (3) Any such station may be used for establishing a survey connection to either Utah coordinate system.

Repealed and Re-enacted by Chapter 60, 1988 General Session

**57-10-4 Legal effect of descriptions using coordinate values.**

- (1) A description of the location of any survey station or land boundary corner in the state is complete, legal, and satisfactory if it is expressed by use of the system of plane coordinates defined in this chapter.
- (2) For purposes of sale or title transfer, no real property may be described solely by reference to coordinate values from the Utah coordinate system or any other coordinate system.

- (3) When coordinates based on the Utah coordinate system are used in the description of any tract of land, they are supplemental to the basic description relating to existing recognized monuments and land lines of record.
- (4) The description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates, if there is any conflict between the descriptions.

Repealed and Re-enacted by Chapter 60, 1988 General Session

**57-10-5 Descriptions of tracts extending over more than one zone.**

- (1) When any tract of land that is to be defined by a single land description extends from one into another of the coordinate zones, the positions of all points on its boundaries may be referred to by either of the two zones.
- (2) The zone that is used shall be identified specifically in the land description.

Repealed and Re-enacted by Chapter 60, 1988 General Session

**57-10-6 Utah Coordinate Systems of 1927 and 1983 defined.**

For purposes of more precisely defining the Utah Coordinate Systems, the following special publications are adopted:

- (1) For the Utah Coordinate System of 1927, the manual entitled "The State Coordinate Systems (A Manual for Surveyors)," Special Publication No. 235, and "Plane Coordinate Projection Tables for Utah," Special Publication No. 277. Both manuals are published by the U.S. Department of Commerce, Coast and Geodetic Survey, and provide, in part, the following:
  - (a)
    - (i) The "Utah Coordinate System of 1927 North Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 41 degrees 47 minutes and 40 degrees 43 minutes, along which parallels the scale shall be exact.
    - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 40 degrees 20 minutes north latitude.
    - (iii) This origin is given the coordinates:  $x=2,000,000$  feet and  $y=0$  feet.
  - (b)
    - (i) The "Utah Coordinate System of 1927 Central Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 40 degrees 39 minutes and 39 degrees 01 minutes, along which parallels the scale shall be exact.
    - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 38 degrees 20 minutes north latitude.
    - (iii) This origin is given the coordinates:  $x=2,000,000$  feet and  $y=0$  feet.
  - (c)
    - (i) The "Utah Coordinate System of 1927 South Zone" is a Lambert Conformal Conic Projection of the Clarke Spheroid of 1866 having standard parallels at north latitudes 38 degrees 21 minutes and 37 degrees 13 minutes, along which parallels the scale shall be exact.
    - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude.
    - (iii) This origin is given the coordinates:  $x=2,000,000$  feet and  $y=0$  feet.
- (2) For the Utah Coordinate System of 1983, the manual entitled "State Plan Coordinate System of 1983," NOAA Manual NOS NGS 5. The manual is published by the U.S. Department of

Commerce, National Oceanic and Atmospheric Administration, and provides, in part, the following:

- (a)
  - (i) The "Utah Coordinate System of 1983 North Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 41 degrees 47 minutes and 40 degrees 43 minutes, along which parallels the scale shall be exact.
  - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 40 degrees 20 minutes north latitude.
  - (iii) This origin is given the coordinates: x or E=500,000 meters and y or N=1,000,000 meters.
- (b)
  - (i) The "Utah Coordinate System of 1983 Central Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 40 degrees 39 minutes and 39 degrees 01 minutes, along which parallels the scale shall be exact.
  - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west Greenwich and the parallel 38 degrees 20 minutes north latitude.
  - (iii) This origin is given the coordinates: x or E=500,000 meters and y or N=2,000,000 meters.
- (c)
  - (i) The "Utah Coordinate System of 1983 South Zone" is a Lambert Conformal Conic Projection of the North American Datum of 1983 having standard parallels at north latitudes 38 degrees 21 minutes and 37 degrees 13 minutes, along which parallels the scale shall be exact.
  - (ii) The origin of coordinates is at the intersection of the meridian 111 degrees 30 minutes west of Greenwich and the parallel 36 degrees 40 minutes north latitude.
  - (iii) This origin is given the coordinates: x or E=500,000 meters and y or N=3,000,000 meters.

Amended by Chapter 62, 2001 General Session

**57-10-7 Coordinates required to be based on control stations.**

- (1) Coordinates based on either the Utah Coordinate System of 1927 or the Utah Coordinate System of 1983 that purport to define the position of a point on a land boundary shall be based on a monumented horizontal control station established in conformity with the standards of accuracy and specifications for first or second order geodetic surveying, as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States Department of Commerce.
  - (a) Standards and specifications of the FGCC or its successor in force on the date of the survey shall apply.
  - (b) Publishing existing control stations, or the acceptance with intent to publish the newly established stations, by the National Ocean Service/National Geodetic Survey constitutes evidence of adherence to the FGCC specifications.
- (2) Control stations which have been established by agencies of the state or its political subdivisions may also be used, provided those points are established in conformity with the standards set forth in Section 57-10-6.

Amended by Chapter 167, 1990 General Session

**57-10-8 Use of terms on maps and documents.**

- (1) Any document identifying or using a coordinate system shall, in accordance with Section 57-10-9, clearly and completely identify the system used.
  - (a) The use of the term "Utah Coordinate System of 1927 (North, Central, South) Zone" on any map, report of survey, or other document shall be used to reference the system, the coordinates, and the unit of measure as defined in Subsection 57-10-6(1).
  - (b) The use of the term "Utah Coordinate System of 1983 (HARN 1994, or the current federal coordinate update used as the basis of the system being used) (North, Central, South) Zone" shall be used to reference the system, the coordinates, and the unit of measure as defined in Subsection 57-10-6(2).
- (2) Anyone using a coordinate system similar to the Utah coordinate system, such as one where a modified elevation datum is used, shall clearly include "modified" in the title of the coordinate system.
- (3) Any survey or map based on any such modified coordinate system shall show the title of the coordinate system, including "modified" in the title and show the appropriate combined adjustment factor relating the system to the Utah coordinate system.

Amended by Chapter 62, 2001 General Session

**57-10-9 Use of coordinate system optional.**

The use of the Utah coordinate system by any person, corporation, or governmental agency engaged in land surveying or mapping, or both, is optional.

Amended by Chapter 62, 2001 General Session

**57-10-11 1983 system to be used after certain dates.**

After January 1, 2002, any person, corporation, municipality, county, or state agency who is not utilizing an existing county coordinate system and is establishing a new countywide coordinate network for surveying or mapping, or both, must conform to the Utah Coordinate System of 1983, along with the current federal coordinate update.

Amended by Chapter 62, 2001 General Session

## **Chapter 11**

### **Utah Uniform Land Sales Practices Act**

**57-11-1 Short title.**

This act shall be known and may be cited as the "Utah Uniform Land Sales Practices Act."

Amended by Chapter 73, 1987 General Session

**57-11-2 Definitions.**

As used in this chapter:

- (1)
  - (a) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit.

- (b) "Disposition" does not include the sale or lease of land held by railroads for right of way if the land is within 400 feet of the center line of a railroad tract.
- (2) "Division" means the Division of Real Estate created in Section 61-2-201.
- (3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. Sec. 1701, et seq., or any successor federal act.
- (4)
  - (a) "Industrial park" means a subdivision or subdivided lands offered as a part of a common promotional plan of advertising and sale zoned for office, manufacturing, warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or more of those purposes.
  - (b) "Industrial park" does not include land offered for sale that is designed or intended to be used for recreational, residential, including multiple family dwellings, or agricultural purposes.
- (5) "Offer" includes an inducement, solicitation, or attempt to encourage a person to acquire an interest in land if undertaken for gain or profit.
- (6) "Person" includes:
  - (a) a business trust;
  - (b) an estate;
  - (c) a trust;
  - (d) a partnership;
  - (e) an unincorporated association;
  - (f) two or more of any entity having a joint or common interest; or
  - (g) any other legal or commercial entity.
- (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.
- (8) "Residential building" means a structure intended for occupation as a residence which, at the time of an offer or disposition of the unit on which it is situated, or on which there is a legal obligation on the part of the seller to complete construction of it within two years from date of disposition, has, or if completed would have, ready access to water, gas, electricity, and roads.
- (9) "Subdivider" means:
  - (a) an owner of an interest in subdivided lands who offers the subdivided lands for disposition; or
  - (b) a principal agent of an owner of an interest in subdivided lands if the owner is inactive.
- (10)
  - (a) "Subdivision" and "subdivided lands" means land that is divided or is proposed to be divided for the purpose of disposition into 10 or more units including land, whether contiguous or not, if 10 or more units are offered as a part of a common promotional plan of advertising and sale.
  - (b) If a subdivision is offered by a developer or group of developers, and the land is contiguous or is known, designated, or advertised as a common tract or by a common name, that land is presumed, without regard to the number of units covered by each individual offering, to be part of a common promotional plan.
- (11) "Unit" includes a lot, parcel, or other interest in land separately offered for disposition.

Amended by Chapter 379, 2010 General Session

**57-11-3 Administration by division.**

The division shall administer this chapter.

Amended by Chapter 352, 2009 General Session

### **57-11-3.5 Procedures -- Adjudicative proceedings.**

The Division of Real Estate shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

### **57-11-4 Exemptions.**

- (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the federal act, this chapter does not apply to an offer or disposition of an interest in land:
  - (a) by a purchaser of subdivided lands for the person's own account in a single or isolated transaction;
  - (b)
    - (i) on a unit of which there is a residential, commercial, or industrial building; or
    - (ii) on a unit of which there is a legal obligation on the part of the seller to complete construction of a residential, commercial, or industrial building within two years from date of disposition;
  - (c) unless a person who acquires land for one of the following purposes sells that land to one or more individuals as unimproved lots with no legal obligation on the part of the seller to construct a residential, commercial, or industrial building on that lot within two years from the date of disposition:
    - (i) if the person acquires an interest in the land for use in the business of constructing residential, commercial, or industrial buildings; or
    - (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the purpose of disposition to a person engaged in the business of constructing residential, commercial, or industrial buildings;
  - (d) pursuant to court order;
  - (e) by a government or government agency;
  - (f)
    - (i) if the interest lies within the boundaries of a city or a county which:
      - (A) has a planning and zoning board using at least one professional planner;
      - (B) enacts ordinances that require approval of planning, zoning, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and
      - (C) will have the improvements described in Subsection (1)(f)(i)(B) plus telephone and electricity; and
    - (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory assurance of completion of the improvements described in Subsection (1)(f)(i)(C);
  - (g) in an industrial park;
  - (h) as cemetery lots; or
  - (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a timeshare development as defined in Section 57-19-2.
- (2) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the provisions of the federal act, this chapter, except as specifically designated, does not apply to an offer or disposition of:
  - (a) indebtedness secured by a mortgage or deed of trust on real estate;
  - (b) a security or unit of interest issued by a real estate investment trust regulated under any state or federal statute;

- (c) subject to Subsection (5), subdivided lands registered under the federal act and which the division finds to be in the public interest to exempt from the registration requirements of this chapter;
  - (d) a security currently registered with the Division of Securities; or
  - (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the offer or disposition of the interest is regulated as a security by the federal government or by the Division of Securities.
- (3)
- (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an offer or disposition of an interest in land that is located in Utah shall apply to the division for an exemption before the offer or disposition is made if:
    - (i) the person is representing, in connection with the offer or disposition, the availability of culinary water service to or on the subdivided land; and
    - (ii) the culinary water service is provided by a water corporation as defined in Section 54-2-1.
  - (b) A subdivider seeking to qualify under this exemption shall file with the division a filing fee of \$50 and an application containing:
    - (i) information required by the division to show that the offer or disposition is exempt under this section;
    - (ii) a statement as to what entity will be providing culinary water service and the nature of that entity; and
    - (iii)
      - (A) a copy of the entity's certificate of convenience and necessity issued by the Public Service Commission; or
      - (B) evidence that the entity providing water service is exempt from the jurisdiction of the Public Service Commission.
- (4)
- (a) The director may by rule or order exempt a person from a requirement of this chapter if the director finds that the offering of an interest in a subdivision is essentially noncommercial.
  - (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to another person who will become the subdivider of those lands is considered essentially noncommercial.
- (5)
- (a) A subdivider seeking to qualify under the exemption described in Subsection (2)(c) shall file with the division:
    - (i) a copy of an effective statement of record filed with the Consumer Financial Protection Bureau; and
    - (ii) a filing fee of \$100.
  - (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c), the division shall credit the filing fee described in Subsection (5)(a) to the filing fee required for registration under this chapter.
  - (c) Nothing in this Subsection (5) exempts a subdivider from:
    - (i) Sections 57-11-16 and 57-11-17; or
    - (ii) the requirement to file an annual report with the division under Section 57-11-10.
- (6) Notwithstanding an exemption under this section, the division:
- (a) retains jurisdiction over an offer or disposition of an interest in land to determine whether or not the exemption continues to apply; and
  - (b) may require compliance with this chapter if an exemption no longer applies.

Amended by Chapter 292, 2013 General Session

**57-11-5 Registration, public offering statement, and receipt required for sale of subdivided land -- Temporary permit -- Right of rescission.**

Unless the subdivided lands or the transaction is exempt under Section 57-11-4, all of the following apply:

- (1) No person may offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located outside of this state prior to the time the subdivided lands are registered in accordance with this chapter.
- (2) Notwithstanding Subsection (1), the division may grant a temporary permit allowing the developer to begin a sales program while the registration is in process. In order to obtain a temporary permit the developer must:
  - (a) submit an application to the division for a temporary permit in the form required by the division;
  - (b) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Sections 57-11-6 and 57-11-7 in addition to a temporary permit fee of \$100;
  - (c) provide evidence acceptable to the division that all funds received by the developer or marketing agent will be placed into an independent escrow with instructions that funds will not be released until a final registration has been granted;
  - (d) give to each purchaser and potential purchaser a copy of the proposed property report which the developer has submitted to the division with the original application; and
  - (e) give to each purchaser the opportunity to rescind the purchase in accordance with this section. The purchaser must be granted an additional opportunity to rescind upon the issuance of an approved registration if the division determines that there is a substantial difference in the disclosures contained in the final property report and those given to the purchaser in the proposed property report.
- (3) Any contract or agreement of disposition for an interest in subdivided lands may be rescinded by the purchaser without cause by midnight of the fifth calendar day after the execution of the contract or agreement of disposition. This right of rescission may not be waived by agreement. The contract or agreement of disposition shall state in boldface type on the signature page above all signatures: **YOU HAVE THE OPTION TO CANCEL YOUR CONTRACT OR AGREEMENT OF DISPOSITION BY NOTICE TO THE SELLER UNTIL MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT. WRITTEN NOTICE OF CANCELLATION MUST BE PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, POSTMARKED BY MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE SIGNING OF THE CONTRACT OR AGREEMENT, TO THE SELLER AT: (Address of Seller).**
- (4) No person may dispose of any interest in subdivided lands without delivering to the purchaser an effective, current public offering statement and obtaining a dated, signed receipt for the public offering statement in a form to be approved by the division from each purchaser. The subdivider shall retain each receipt for two years from the date of its execution. All receipts shall be made available for inspection upon request by the division. Failure to comply with this subsection shall not constitute a cause of action under Section 57-11-17 but shall be grounds for appropriate action by the division under Sections 57-11-13 and 57-11-14.

Amended by Chapter 86, 2000 General Session

**57-11-6 Application for registration -- Required documents and information -- Filing fee and deposit -- Consolidation of registration of additional lands -- Reports of changes.**

- (1) The application for registration of subdivided lands shall be filed as prescribed by the division's rules and, unless otherwise provided by the division, shall include, but is not limited to, the following documents and information:
- (a) an irrevocable appointment of the division to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;
  - (b) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the units, and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;
  - (c) the states or jurisdictions, including the United States, in which an application for registration or similar document has been filed, and a copy of any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;
  - (d) the applicant's name and address, and the form, date, and jurisdiction of organization; the address of each of its offices in this state; and the name and address of the individual to whom the applicant wishes to have the division direct all communications;
  - (e) the name, address, and principal occupation for the past five years of every director, officer, or general partner of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within 30 days of the filing of the application;
  - (f) a statement, in a form acceptable to the division, of the condition of the title to the subdivided lands, including encumbrances, as of a specified date within 30 days of the date of application, which statement:
    - (i) if the subdivided lands are situated in this state, shall be in the form of a title opinion from a title insurer qualified to engage in the title insurance business in this state or an opinion of an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner;
    - (ii) if the subdivided lands are situated in another jurisdiction, shall be in the form of an opinion of an attorney licensed to practice in the jurisdiction where the lands are situated and who is not a salaried employee, officer, or director of the applicant or owner; or
    - (iii) may be substituted by other evidence of title acceptable to the division;
  - (g) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign;
  - (h) copies of the instruments by which the interest in the subdivided lands to be disposed of to the purchaser was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with recording data, but if any of these instruments contain any information relating to the consideration paid upon the prior acquisition of the subdivided lands, this information may be blocked out;
  - (i) if there is a lien or encumbrance affecting more than one unit, a statement of the consequences to a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;
  - (j) copies of instruments creating easements, restrictions, or other encumbrances affecting the subdivided lands;

- (k) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and of any existing or proposed taxes or special assessments which affect the subdivided lands;
  - (l)
    - (i) if the subdivided lands are situated in this state, and unless all lands to be disposed of are included on a subdivision plat map which has been filed and approved pursuant to Title 17, Counties, an opinion by an attorney, licensed to practice in this state and who is not a salaried employee, officer, or director of the applicant or owner, that:
      - (A) the division proposed or made does not or will not violate any existing state statute or local ordinance; and
      - (B) all permits or approvals have been obtained from the applicable state or local authorities necessary for the subdivided lands to be put to the use for which they are offered, except for those permits or approvals which will not be granted until the subdivided lands are registered under this chapter if this registration is the only condition precedent to the granting of the permits or approvals; or
    - (ii) if the subdivided lands are situated in another jurisdiction, an opinion by an attorney licensed to practice in that jurisdiction and who is not a salaried employee, officer, or director of the applicant or owner, that the division proposed or made does not violate any existing statute, ordinance, or other law;
  - (m) a statement of the existing provisions for access, sewage disposal, water (including a supply of culinary water), and other public utilities in the subdivision and, if they are not presently available but are feasible, the estimated cost to the purchaser of their procurement;
  - (n) a statement of any improvements to be installed, the schedule for their completion, any provisions for maintenance of those improvements, and estimated costs to the purchaser;
  - (o) a statement declaring whether or not the applicant is or will be representing, in connection with an offer or disposition of land, that culinary water service will be available to or on the subdivided lands, and if the applicant is or will be so representing:
    - (i) a statement as to what entity will be providing the culinary water service and the nature of the entity; and
    - (ii) if the entity providing the service is not a municipal system, a certificate from the Public Service Commission that the entity providing the culinary water service either holds a certificate of convenience and necessity from the commission, or has been found by the Public Service Commission to be exempt from its jurisdiction;
  - (p) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication;
  - (q) the proposed public offering statement;
  - (r) a copy of every public report or public offering statement or similar document filed with or issued by any agency of the United States or any state or jurisdiction; and
  - (s) any other reasonable information, including any current financial statement, which the division by its rules requires for the protection of purchasers.
- (2) Each application for registration of subdivided lands shall be accompanied by a filing fee of \$500 for up to 30 units, plus an additional \$3 per unit for each unit over 30 units up to a maximum of \$2,500 for each application, and a deposit of \$300 to cover all on-site inspection costs and expenses incurred by the division. If the \$300 deposit is insufficient to meet the estimated costs and expenses of the on-site inspection, the applicant or owner shall make an additional deposit sufficient to cover the estimated costs and expenses before the division

will inspect the subdivided lands. The deposit shall be refunded to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

- (3) In the event the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdividing lands for disposition under the same promotional plan by filing an application for consolidation accompanied by an additional fee of \$200, plus \$3 for each additional unit, up to a maximum of \$1,250 for each application, if at the time the subdivider makes the application all of the information required by Subsection (1) of this section has been brought current and covers the additional subdivided lands.
- (4) The subdivider shall report any material change in the information contained in an application for registration or consolidation within 15 days from the time that change becomes known to him.

Amended by Chapter 199, 1990 General Session

**57-11-7 Public offering statement -- Contents -- Restrictions on use -- Alteration or amendments.**

- (1) Every public offering statement shall disclose completely and accurately to prospective purchasers:
  - (a) the physical characteristics of the subdivided lands offered; and
  - (b) unusual and material circumstances or features affecting the subdivided lands.
- (2) The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and, unless otherwise provided by the division, shall include the following:
  - (a) the name and principal address of the subdivider and the name and principal address of each officer, director, general partner, other principal, or person occupying a similar status or performing similar functions as defined by the rules of the division if the subdivider is a person other than an individual;
  - (b) a general description of the subdivided lands stating the total number of units in the offering;
  - (c) a statement summarizing in one place the significant terms of any encumbrances, easements, liens, severed interests, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes or special assessments which affect the subdivided lands;
  - (d) a statement of the use for which the property is offered;
  - (e) information concerning:
    - (i) any improvements, including streets, curbs, and gutters, sidewalks, water supply including a supply of culinary water, drainage and flood control systems, irrigation systems, sewage disposal facilities, and customary utilities;
    - (ii) the estimated cost to the purchaser, the estimated date of completion, and the responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition; and
    - (iii) if for any reason any of the improvements described in Subsections (2)(e)(i) and (ii) cannot presently be constructed or maintained, a statement clearly setting forth this fact and giving the reasons therefor;
  - (f)
    - (i) a statement of existing zoning or other planned land use designation of each unit and the proposed use of each unit in the subdivision including uses as residential dwellings, agriculture, churches, schools, low density apartments, high density apartments and hotels, and a subdivision map showing the proposed use, the zoning, or other planned land use

designation, unless each unit has the same proposed use, zoning, or other planned land use designation;

- (ii) if the subdivision consists of more than one tract or other smaller division, the information and map required by Subsection (2)(f)(i) need only pertain to the tract or smaller division in which the units offered for disposition are located;
  - (g) a map, which need not be drawn to scale, enabling one unfamiliar with the area in which the subdivision is located to reach the subdivision by road or other thoroughfare from a nearby town or city;
  - (h)
    - (i) the boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;
    - (ii) the location of existing underground and utility facilities; and
    - (iii) any conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of record, and utility facilities within the subdivision; and
  - (i) any additional information the division may require to assure full and fair disclosure to prospective purchasers.
- (3)
- (a) The public offering statement may not be used for any promotional purposes either before registration of the subdivided lands or before the date the statement becomes effective.
  - (b) The statement may be used after it becomes effective only if it is used in its entirety.
  - (c) A person may not advertise or represent that the division approves or recommends the subdivided lands or their disposition.
  - (d) No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier, or different color type than the remainder of the statement, unless the division requires it.
- (4)
- (a) The division may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers.
  - (b) A change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without notifying and receiving approval of the division and without making appropriate amendment of the public offering statement.
  - (c) A public offering statement is not current unless:
    - (i) all amendments are incorporated;
    - (ii) the subdivider has timely filed each renewal report required by Section 57-11-10; and
    - (iii) no cease and desist order issued pursuant to this chapter is in effect.
- (5) The subdivider must notify the division within five working days if he is convicted of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.
- (6) The subdivider must notify the division within five working days if the person which owns the subdivided lands files a petition in bankruptcy or if any other event occurs which may have a material adverse effect on the subdivision.

Amended by Chapter 324, 2010 General Session

**57-11-8 Examination by division on application for registration.**

Upon receipt of an application for registration in proper form, the division shall immediately initiate an examination to determine whether:

- (1) the requirements of Sections 57-11-6 and 57-11-7 have been satisfied;
- (2) the subdivider has not, or if a corporation or partnership, its officers, directors, general partners, or persons occupying a similar status or performing similar functions, or other principals as defined by the rules of the division have not been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past 10 years and has not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions; and
- (3) the public offering statement requirements of this chapter have been satisfied.

Amended by Chapter 48, 1985 General Session

**57-11-9 Notice of filing of application for registration -- Division orders of registration or rejection.**

- (1)
  - (a) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant within five business days of the date of receipt of application.
  - (b) Within 30 days from the date of the notice of filing, or, if no notice of filing is issued within the time required, within 35 days from the date of receipt of the application, the division shall register the subdivided lands or reject the registration.
  - (c) If the division has not entered the rejection within 30 days from the date of notice of filing, the land is considered registered unless the applicant has consented in writing to a delay.
- (2)
  - (a) After inquiry and examination, if the division affirmatively determines that the requirements of Subsection 57-11-8(1) have been met, it shall register the subdivided lands and shall designate the form of the public offering statement.
  - (b) The division may provide that the public offering statement is not effective until evidence is obtained and made part of the public offering statement that demonstrates that all permits or approvals necessary for the subdivided lands to be put to the use for which they are offered have been granted.
- (3)
  - (a) After inquiry and examination, if the division determines that any of the requirements of Subsection 57-11-8(1) have not been met, it shall notify the applicant that the application for registration, the promotional plan, or the plan of disposition must be corrected within 15 days or within the time allowed by the division.
  - (b) If the requirements are not met within the time allowed, the division shall enter an order rejecting the registration, giving the reasons for the rejection.
  - (c) Rejection of the registration is not effective for 20 days, during which time the applicant may request a hearing.

Amended by Chapter 161, 1987 General Session

**57-11-10 Renewal report -- Renewal fee -- Examination by division -- Annual reports.**

- (1)
  - (a) Within 30 days after each annual anniversary date of the division's registration of subdivided lands, the subdivider shall file a renewal report in the form prescribed by the division together with a renewal fee of \$200.

- (b) The report shall reflect any material changes in information contained in the original application for registration, including any change in ownership of the subdivider.
  - (c) The report shall also indicate the number of units in the subdivision that have been disposed of since the division registered the subdivided lands.
- (2)
- (a) The division may, upon the filing of a renewal report, initiate a renewal examination of the kind described in Section 57-11-8.
  - (b) If the division determines upon inquiry and examination that any of the requirements of Section 57-11-8 have not been met, it shall notify the subdivider that the report, the promotional plan, or the plan of disposition must be corrected within 20 days or any additional time allowed by the division.
  - (c) If the requirements are not met within the time allowed, the division may, notwithstanding the provisions of Section 57-11-13 and without further notice, issue a cease and desist order according to the emergency procedures of Title 63G, Chapter 4, Administrative Procedures Act, barring further sale of the subdivided lands.
- (3) The division may permit the filing of annual reports within 30 days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

Amended by Chapter 382, 2008 General Session

**57-11-11 Rules of division -- Filing advertising material -- Injunctions -- Intervention by division in suits -- General powers of division.**

- (1)
- (a) The division shall prescribe reasonable rules which shall be adopted, amended, or repealed only after a public hearing.
  - (b) The division shall:
    - (i) publish notice of the public hearing described in Subsection (1)(a):
      - (A) once in a newspaper or newspapers with statewide circulation and at least 20 days before the hearing; and
      - (B) on the Utah Public Notice Website created in Section 63F-1-701, for at least 20 days before the hearing; and
    - (ii) send a notice to a nonprofit organization which files a written request for notice with the division at least 20 days prior to the hearing.
- (2) The rules shall include but need not be limited to:
- (a) provisions for advertising standards to assure full and fair disclosure; and
  - (b) provisions for escrow or trust agreements, performance bonds, or other means reasonably necessary to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for.
- (3) These provisions, however, shall not be required if the city or county in which the subdivision is located requires similar means of assurance of a nature and in an amount no less adequate than is required under said rules:
- (a) provisions for operating procedures;
  - (b) provisions for a shortened form of registration in cases where the division determines that the purposes of this act do not require a subdivision to be registered pursuant to an application containing all the information required by Section 57-11-6 or do not require that the public offering statement contain all the information required by Section 57-11-7; and
  - (c) other rules necessary and proper to accomplish the purpose of this chapter.

- (4) The division by rule or order, after reasonable notice, may require the filing of advertising material relating to subdivided lands prior to its distribution, provided that the division must approve or reject any advertising material within 15 days from the receipt thereof or the material shall be considered approved.
- (5) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in the district court of the district where said person maintains his residence or a place of business or where said act or practice has occurred or is about to occur, to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The division shall not be required to post a bond in any court proceedings.
- (6) The division shall be allowed to intervene in a suit involving subdivided lands, either as a party or as an amicus curiae, where it appears that the interpretation or constitutionality of any provision of law will be called into question. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings. Failure to do so may, in the discretion of the division, constitute grounds for the division withholding any approval required by this chapter.
- (7) The division may:
  - (a) accept registrations filed in other states or with the federal government;
  - (b) contract with public agencies or qualified private persons in this state or other jurisdictions to perform investigative functions; and
  - (c) accept grants-in-aid from any source.
- (8) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules, and common administrative practices.

Amended by Chapter 340, 2011 General Session

#### **57-11-12 Investigatory powers and proceedings of division.**

- (1) The division may:
  - (a) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder;
  - (b) require or permit any person to file a complaint in the form required by the division as to all the facts and circumstances concerning the matter to be investigated.
- (2) For the purpose of any investigation or proceeding under this act, the division or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.
- (3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the division may apply to any district court for an order compelling compliance.

Amended by Chapter 86, 2000 General Session

**57-11-13 Enforcement powers of division -- Cease and desist orders.**

- (1)
  - (a) If the director has reason to believe that any person has been or is engaging in conduct violating this chapter, or has violated any lawful order or rule of the division, the director shall issue and serve upon the person a cease and desist order and may also order the person to take such affirmative actions the director determines will carry out the purposes of this chapter.
  - (b) The person served may request an adjudicative proceeding within 10 days after receiving the order.
  - (c) The cease and desist order remains in effect pending the hearing.
  - (d) The division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.
- (2)
  - (a) After the hearing the director may issue an order making the cease and desist order permanent if the director finds there has been a violation of this chapter.
  - (b) If no hearing is requested and the person served does not obey the director's order, the director shall file suit in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter. The action shall be filed in the district court in the county in which the conduct occurred or where the person resides or carries on business.
- (3) The remedies and action provided in this section may not interfere with or prevent the prosecution of any other remedies or actions including criminal prosecutions.

Amended by Chapter 382, 2008 General Session

**57-11-14 Revocation, suspension, or denial of registration -- Grounds -- Suspension or revocation of license.**

- (1)
  - (a) If the division makes a written finding of fact that a subdivider engages in one or more acts described in Subsection (1)(b), the division may:
    - (i) deny an application for registration;
    - (ii) revoke, suspend, or deny reissuance of a registration; or
    - (iii) impose a civil penalty not to exceed the greater of:
      - (A) \$2,500 for each violation; or
      - (B) the amount of any gain or economic benefit derived from each violation.
  - (b) Subsection (1)(a) applies if the division makes a written finding of fact that a subdivider:
    - (i) fails to comply with the terms of a cease and desist order;
    - (ii) is convicted in a court prior or subsequent to the filing of the application for registration of a crime involving:
      - (A) fraud;
      - (B) deception;
      - (C) false pretenses;
      - (D) misrepresentation;
      - (E) false advertising; or
      - (F) dishonest dealing in real estate transactions;
    - (iii) is subject to an injunction or administrative order restraining a false or misleading promotional plan involving land dispositions;

- (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the rights of subdivision purchasers;
- (v) fails to perform faithfully a stipulation or agreement made with the division as an inducement to:
  - (A) grant a registration;
  - (B) reinstate a registration;
  - (C) revoke a cease and desist order; or
  - (D) approve any promotional plan or public offering statement;
- (vi) makes an intentional misrepresentation, or conceals a material fact, in an application for registration;
- (vii) violates this chapter or the rules adopted under this chapter;
- (viii) directly or through an agent or employee knowingly engages in false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (ix) engages in the offering of subdivided lands that has constituted or that may constitute a fraud upon purchasers or prospective purchasers of the subdivided lands; or
- (x) engages in a dishonest practice in any industry involving sales to consumers.
- (c) The division shall accompany with a finding of fact required by this Subsection (1) a concise and explicit statement of the underlying facts supporting the finding.
- (2) As an alternative to revoking the registration of a subdivider, the director may issue a cease and desist order if after notice and a hearing the director finds that the subdivider is guilty of a violation for which revocation may be ordered.
- (3)
  - (a) The division shall suspend or revoke the license of a principal broker, associate broker, or sales agent who violates this chapter for the period of time the director determines to be justified under the circumstances.
  - (b) A suspension or revocation under this section is in addition to any other penalty that may be imposed under this chapter, subject to Section 61-2f-404.

Amended by Chapter 379, 2010 General Session

**57-11-15 Judicial review.**

- (1) Any person aggrieved by any order of the division may obtain judicial review.
- (2)
  - (a) Venue for judicial review of informal adjudicative proceedings is in the district court where the aggrieved person maintains his principal place of business, if situated within this state, or otherwise in the Third Judicial District.
  - (b) Judicial review of informal adjudicative proceedings shall be conducted by the court without a jury.

Amended by Chapter 161, 1987 General Session

**57-11-16 Violations -- Duties of attorney general, county attorney, or district attorney.**

- (1)
  - (a) A person who violates this chapter is guilty of a class B misdemeanor, except as provided in Subsection (1)(b).

- (b) A person who knowingly makes an untrue statement or knowingly omits a material fact in an application for registration under this chapter or under the federal act is guilty of a class A misdemeanor.
- (2)
  - (a) The attorney general shall advise the division and the division's staff in matters requiring legal counsel or services in the exercise of the division's power or performance of the division's duties.
  - (b) In the prosecution or defense of an action under this section, the attorney general, the county attorney, or the district attorney of the appropriate county shall perform the necessary legal services without compensation other than their regular salaries.

Amended by Chapter 289, 2011 General Session

**57-11-17 Violations -- Civil remedies.**

- (1)
  - (a) A person is liable as provided in Subsection (1)(b) if that person:
    - (i) disposes of subdivided lands in violation of Subsection 57-11-5(1), (2), or (3);
    - (ii) in disposing of subdivided lands, makes an untrue statement of a material fact; or
    - (iii) in disposing of subdivided lands, omits a material fact required to be stated in a registration statement, public offering statement, statement of record or public report, necessary to make the statements made not misleading.
  - (b) A person described in Subsection (1)(a) is liable as provided in this section to the purchaser unless, in the case of an untruth or omission, it is proved that:
    - (i) the purchaser knew of the untruth or omission; or
    - (ii) the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission.
- (2) In addition to any other remedies, the purchaser under Subsection (1) may recover the consideration paid for the unit together with interest at the rate of 7% per year from the date of payment, property taxes paid, costs, and reasonable attorney fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the unit, the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 7% per year on that amount from the date of disposition.
- (3) Every person who directly or indirectly controls a subdivider liable under Subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.
- (4) Every person whose occupation gives authority to a statement which with that person's consent has been used in an application for registration, public offering statement, statement of record or public report, if the person is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in the person's statement and only if the person fails to prove that the person did not know and in the

exercise of the reasonable care of a person in the person's occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

- (5) A tender of reconveyance may be made at any time before the entry of judgment.
- (6) A person may not recover under this section in actions commenced more than four years after the person's first payment of money to the subdivider in the contested action.
- (7) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this chapter or any rule or order under it is void.

Amended by Chapter 325, 2007 General Session

**57-11-18 Dispositions subject to chapter -- Jurisdiction of district courts.**

Dispositions of subdivided lands are subject to this act, and the district courts of this state have jurisdiction in claims or causes of action arising under this act, if:

- (1) The subdivided lands offered for disposition are located in this state;
- (2) The subdivider's principal office is located in this state; or
- (3) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

Enacted by Chapter 158, 1973 General Session

**57-11-20 Service of process.**

- (1) In addition to the methods of service provided for in the Utah Rules of Civil Procedure, service may be made by delivering a copy of the process to the office of the division, but it is not effective unless the plaintiff, which may be the division in a proceeding instituted by it:
  - (a) forthwith sends a copy of the process and of the pleading by certified or registered mail to the defendant or respondent at his last known address; and
  - (b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the division to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in Subsection (1).

Enacted by Chapter 158, 1973 General Session

**57-11-21 Uniformity of construction.**

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Enacted by Chapter 158, 1973 General Session

## Chapter 12 Utah Relocation Assistance Act

### 57-12-1 Short title.

This act shall be known and may be cited as the "Utah Relocation Assistance Act."

Enacted by Chapter 24, 1972 General Session

### 57-12-2 Declaration of policy.

- (1) It is hereby declared to be the policy of this chapter and of the state, and the Legislature recognizes:
  - (a) that it is often necessary for the various agencies of state and local government to acquire land by condemnation;
  - (b) that persons, businesses, and farms are often uprooted and displaced by such action while being recompensed only for the value of land taken;
  - (c) that such displacement often works economic hardship on those least able to suffer the added and uncompensated costs of moving, locating new homes, business sites, farms, and other costs of being relocated;
  - (d) that such added expenses should reasonably be included as a part of the project cost and paid to those displaced;
  - (e) that the Congress of the United States has established matching grants for relocation assistance, and has also established uniform policies for land acquisition under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., to assist the states in meeting these expenses and assuring that land is fairly acquired; and
  - (f) that it is in the public interest for the state to provide for such payments and to establish such land acquisition policies.
- (2) Therefore, the purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced by the acquisition of real property by state and local land acquisition programs, by building code enforcement activities, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision.
- (3) All of the provisions of this chapter shall be liberally construed to put into effect the foregoing policies and purposes.

Amended by Chapter 306, 2007 General Session

### 57-12-3 Definitions.

As used in this chapter:

- (1) "Agency" means:
  - (a) a department, division, agency, commission, board, council, committee, authority, political subdivision, or other instrumentality of the state or of a political subdivision of the state whether one or more; and
  - (b) any other person whose use of the power of eminent domain results in a person becoming a displaced person.
- (2) "Business" means any lawful activity, excepting a farm operation, conducted primarily:
  - (a) for the purchase, sale, lease, or rental of personal or real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

- (b) for the sale of services to the public;
  - (c) by a nonprofit organization; or
  - (d) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (3) "Displaced person" means any person who, after the effective date of this chapter, moves from real property, or who moves the person's personal property from real property, or moves or discontinues the person's business or moves the person's dwelling as a result of the acquisition of the real property, in whole or in part, or as a result of a written order of the acquiring agency to vacate real property for a program of purchase undertaken by an agency or as a direct result of code enforcement activities or a program of rehabilitation of buildings conducted pursuant to a federal or state assisted program.
- (4) "Family farm" means a farm operation which is conducted:
- (a) on two sections (1280 acres) or less; or
  - (b) as a sole proprietorship or through an entity which is wholly owned by members of the same immediate family.
- (5) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (6) "Nonprofit organization" means all corporations, societies, and associations whose object is not pecuniary profit, but is to promote the general interest and welfare of the members, whether temporal, social, or spiritual.
- (7) "Person" means any individual, partnership, corporation, or association.
- (8) "Small business" means a business which has a gross annual income of less than \$1,500,000.

Amended by Chapter 223, 2004 General Session

**57-12-4 Federal funds -- Direct assistance.**

- (1) When federal funds are available for payment of direct financial assistance to a person displaced by acquisition of real property by any agency, the displacing agency may use those federal funds with state or local funds to the extent provided by federal law and may provide direct financial assistance in the instances and on the conditions set forth by federal law and regulations.
- (2)
- (a) When federal funds are not available or used for payment of direct financial assistance to a person displaced by the acquisition of real property by an agency, the displacing agency may provide direct financial assistance to the person.
  - (b) Except as provided in Subsection (3), financial assistance authorized by this Subsection (2) may not exceed the total amount that would have been payable under Subsection (1) if federal funds had been available or used.
- (3)
- (a) The amount of direct financial assistance provided to a person displaced by acquisition of real property by any agency includes actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or business at a new site, in accordance with criteria established by the agency by rule, but not exceeding \$50,000.
  - (b) The \$50,000 limit on direct financial assistance established in Subsection (3)(a):

- (i) applies despite any lower limit established by federal statute or regulation or agency rule;  
and
  - (ii) does not apply if a higher limit is established by federal statute or regulation.
- (4)
- (a) A displaced person eligible for payments under this chapter who is displaced from the person's place of business or farm may accept payment under this Subsection (4) in lieu of any payment under the displacing agency's rules if the person is eligible under the agency's criteria.
  - (b) A payment under this Subsection (4) is a fixed payment of at least \$1,000 but not more than \$75,000.
  - (c) A person whose sole business at the site from which the person is displaced is the rental of property to others does not qualify for payment under this Subsection (4).
- (5) Assistance under this section may not be provided to a person who is ineligible to receive relocation assistance under a federal statute or regulation.

Amended by Chapter 261, 2008 General Session

**57-12-5 Reimbursement of owner for expenses.**

Any agency acquiring real property for its use shall as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner for expenses the owner necessarily incurred for:

- (1) recording fees, transfer taxes, and similar expenses incidental to conveying the real property to the agency;
- (2) penalty costs for prepayment for any preexisting recorded mortgage entered into in good faith encumbering the real property;
- (3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the agency, or the effective date of possession of such real property by the agency, whichever is the earlier; and
- (4) relocation costs.

Amended by Chapter 321, 1998 General Session

**57-12-6 Buildings, structures or other improvements.**

- (1) Where any interest in real property is acquired, an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which is required to be removed from the real property or which is determined to be adversely affected by the use to which the real property will be put, shall be acquired.
- (2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired under Subsection (1), the building, structure, or other improvement shall be deemed to be a part of the real property to be acquired, notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure, or improvement at the expiration of his term; and the fair market value which the building, structure, or improvement contributes to the fair market value of the property to be acquired, or the fair market value of the building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

- (3) Payment for the buildings, structures, or improvements as set forth in Subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any payment, the tenant shall assign, transfer, and release all his right, title and interest in and to the improvements. Nothing with regard to this acquisition of buildings, structures, or other improvements shall be construed to deprive the tenants of any rights to reject payment and to obtain payment for these property interests in accordance with other laws of this state.

Enacted by Chapter 24, 1972 General Session

**57-12-7 Replacement property.**

- (1) No person shall be required to move or be relocated from land used for his residence and acquired under any of the condemnation or eminent domain laws of this state until he has been offered a comparable replacement dwelling, including the curtilage, which is a decent, safe, clean, and sanitary dwelling, including the curtilage, adequate to accommodate the occupants, available on the private market, and reasonably accessible to public services and places of employment.
- (2) If a program or project cannot proceed to actual construction because comparable sale or rental housing is not available and cannot otherwise be made available, such action shall be taken as is necessary or appropriate to provide this housing by use of funds authorized for the project.
- (3) No person shall be required to move from his dwelling, including the curtilage, after the effective date of this act because of any project of the agency, unless replacement housing is available to, and offered to the property owner.
- (4) The agency shall assist owners of small businesses and family farms in identifying replacement properties available on the private market, located within the jurisdiction of the agency.

Amended by Chapter 321, 1998 General Session

**57-12-8 Advisory program.**

- (1) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person after the effective date of this act, the agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in this act. If the agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, it may offer this person relocation advisory services under such program.
- (2) Each relocation assistance program required by Subsection (1) shall include such measures, facilities, or services as may be necessary or appropriate in order:
  - (a) to determine the needs of displaced persons, business concerns, and nonprofit organizations for relocation assistance;
  - (b) to assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;
  - (c) to supply information concerning programs of the federal, state, and local governments offering assistance to displaced persons and business concerns;
  - (d) to assist in minimizing hardships to displaced persons in adjusting to relocation; and

- (e) to secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program.

Enacted by Chapter 24, 1972 General Session

**57-12-9 Rules of displacing agency.**

- (1)
  - (a) A displacing agency may enact rules to assure that:
    - (i) the payments and assistance authorized by this chapter are administered in a manner that is fair, reasonable, and as uniform as practicable;
    - (ii) a displaced person who makes proper application for a payment authorized by this chapter is paid promptly after a move or, in hardship cases, is paid in advance; and
    - (iii) any person aggrieved by a determination as to eligibility for a payment authorized by this chapter, or the amount of a payment, may have the person's application reviewed by the head of the displacing agency.
  - (b) Each displacing agency that has not adopted rules under Subsection (1)(a) shall comply with the rules promulgated by the Utah Department of Transportation relating to displaced persons in right-of-way acquisitions.
- (2) Each displacing agency shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

**57-12-10 Displacing agency may contract for services or function through another agency.**

To prevent unnecessary expense and duplication of functions and to promote uniform and effective administration of relocation assistance programs for displaced persons, the displacing agency may enter into contracts with any person for services in connection with these programs, or may carry out its functions under this act through any agency or any federal agency or instrumentality.

Enacted by Chapter 24, 1972 General Session

**57-12-11 Payments not income or resources for welfare or tax purposes.**

No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of the state's individual income tax, corporation franchise tax, or other tax laws. These payments shall not be considered as income or resources of any recipient of public assistance, and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled.

Enacted by Chapter 24, 1972 General Session

**57-12-12 Judicial review.**

- (1) Any person aggrieved by an order concerning relocation assistance may obtain judicial review.
- (2) Venue for judicial review of informal adjudicative proceedings is in the district court of the county in which the real property taken for public use is located.

Amended by Chapter 161, 1987 General Session

**57-12-13 Procedure for acquisition of property.**

Any agency acquiring real property as to which it has the power to acquire under the eminent domain or condemnation laws of this state shall comply with the following policies:

- (1) Every reasonable effort shall be made to acquire expeditiously real property by negotiation.
- (2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.
- (3) Before the initiation of negotiations for real property, an amount shall be established which is reasonably believed to be just compensation therefor, and such amount shall be offered for the property. In no event shall such amount be less than the lowest approved appraisal of the fair market value of the property. Any decrease or increase of the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate the just compensation for real property acquired and for damages to remaining real property shall be separately stated.
- (4) No owner shall be required to surrender possession of real property acquired through federal or federally assisted programs before the agreed purchase price is paid or there is deposited with a court having jurisdiction of condemnation of such property, in accordance with applicable law, for the benefit of the owner an amount not less than the lowest approved appraisal of the fair market value of such property or the amount of the award of compensation in the condemnation proceeding of such property.
- (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least 90 days' written notice from the date by which such move is required.
- (6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.
- (7) In no event shall the time of condemnation be advanced, on negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other coercive action be taken to compel an agreement on the price to be paid for the property.
- (8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.
- (9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

Enacted by Chapter 24, 1972 General Session

**57-12-14 Dispute resolution -- Additional appraisal.**

- (1) If the agency and the private property owner or displaced person disagree on any issue arising out of this chapter, the private property owner may submit the dispute for mediation or arbitration according to the procedures and requirements of Section 13-43-204.
- (2)
  - (a) The private property owner or displaced person may request that the mediator or arbitrator authorize an additional appraisal.
  - (b) If the mediator or arbitrator determines that an additional appraisal is reasonably necessary to reach a resolution of the case, the mediator or arbitrator may:
    - (i) have an additional appraisal of the property prepared by an independent appraiser; and
    - (ii) require the agency to pay the costs of the first additional appraisal.

Amended by Chapter 306, 2007 General Session

## **Chapter 13**

### **Solar Easements**

#### **57-13-1 Definitions.**

As used in this act:

- (1) "Solar easement" means a right, whether or not stated in the form of restriction, easement, covenant, or conditions in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace for the purpose of ensuring adequate exposure of a solar energy system as defined herein.
- (2) "Solar energy system" means a system of apparatus and equipment capable of collecting and converting incident solar radiation into heat, or mechanical or electrical energy, and transferring these forms of energy by a separate apparatus to storage or to point of use, including, but not limited to, water heating, space heating or cooling, electric energy generation or mechanical energy generation.
- (3) "Passive solar system" means a system which uses structural elements of the building, to provide for collection, storage, and distribution of solar energy for heating or cooling.
- (4) "Solar skyspace" means the space between a solar energy collector and the sun which must remain unobstructed such that on any given clear day of the year, not more than 10% of the collectable insolation shall be blocked.

Enacted by Chapter 82, 1979 General Session

#### **57-13-2 Creation of solar easement -- Writing required -- Contents -- Enforcement.**

- (1) Any property owner may grant a solar easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded and indexed in the office of the recorder of the county in which the easement is granted. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar easement may terminate upon the conditions stated herein.
- (2) Any deed, will, or other instrument that creates a solar easement shall include, but the contents need not be limited to:
  - (a) a description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement;

- (b) a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the solar easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;
  - (c) any terms or conditions under which the solar easement is granted or may be terminated;
  - (d) any provisions for compensation of the owner of the real property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the real property subject to the solar easement, or compensation of the owner of the real property subject to the solar easement for maintaining the solar easement; and
  - (e) any other provisions necessary or desirable to execute the instrument.
- (3) A solar easement may be enforced by injunction or proceedings in injunction or other civil action.

Enacted by Chapter 82, 1979 General Session

### **Chapter 13a Easement for Water Conveyance**

#### **57-13a-101 Definitions.**

As used in this chapter:

- (1) "Water conveyance" means a canal, ditch, pipeline, or other means of conveying water.
- (2) "Water user" means a water user or the water user's predecessor whose water being conveyed is represented by a water right recognized under state law or by shares in a mutual irrigation company.

Enacted by Chapter 175, 1997 General Session

#### **57-13a-102 Prescriptive easement for water conveyance.**

- (1) A prescriptive easement may be established if a water user has maintained a water conveyance for a period of 20 years during which the use has been:
  - (a) continuous;
  - (b) open and notorious; and
  - (c) adverse.
- (2) If Subsections (1)(a) and (b) are established, there is a rebuttable presumption that the use has been adverse.

Enacted by Chapter 175, 1997 General Session

#### **57-13a-103 Notice of easement.**

The holder of an easement established as provided by Section 57-13a-102 may file a notice describing the easement in the office of the county recorder of each county in which the easement or a portion of the easement is located.

Enacted by Chapter 318, 2007 General Session

**57-13a-104 Abandonment of prescriptive easement for water conveyance.**

- (1) A holder of a prescriptive easement for a water conveyance established under Section 57-13a-102 may, in accordance with this section, abandon all or part of the easement.
- (2) A holder of a prescriptive easement for a water conveyance established under Section 57-13a-102 who seeks to abandon the easement or part of the easement shall:
  - (a) in each county where the easement or part of the easement is located:
    - (i) file in the office of the county recorder a notice of intent to abandon the prescriptive easement that describes the easement or part of the easement to be abandoned; and
    - (ii) publish the notice of intent to abandon the prescriptive easement once a week for two consecutive weeks in:
      - (A) a local newspaper of general circulation that is published in the area generally served by the water conveyance that utilizes the easement; or
      - (B) if a newspaper described in Subsection (2)(a)(ii)(A) does not exist, in a newspaper of general circulation in the county;
  - (b) post copies of the notice of intent to abandon the prescriptive easement in three public places located within the area generally served by the water conveyance that utilizes the easement;
  - (c) mail a copy of the notice of intent to abandon the prescriptive easement to each municipal and county government where the easement or part of the easement is located;
  - (d) in accordance with Section 45-1-101, publish a copy of the notice of intent to abandon the prescriptive easement on the public legal notice website described in Subsection 45-1-101(2)(b); and
  - (e) after meeting the requirements of Subsections (2)(a), (b), (c), and (d) and at least 45 days after the last day on which the holder of the easement publishes the notice of intent to abandon the prescriptive easement in accordance with Subsection (2)(a)(ii), file in the office of the county recorder for each county where the easement or part of the easement is located a notice of abandonment that contains the same description required by Subsection (2)(a)(i).
- (3)
  - (a) Upon completion of the requirements described in Subsection (2) by the holder of a prescriptive easement for a water conveyance established under Section 57-13a-102:
    - (i) all interest to the easement or part of the easement abandoned by the holder of the easement is extinguished; and
    - (ii) subject to each legal right that exists as described in Subsection (3)(b), the owner of a servient estate whose land was encumbered by the easement or part of the easement abandoned may reclaim the land area occupied by the former easement or part of the easement and resume full utilization of the land without liability to the former holder of the easement.
  - (b) Abandonment of a prescriptive easement under this section does not affect a legal right to have water delivered or discharged through the water conveyance and easement established by a person other than the holder of the easement who abandons an easement as provided in this section.

Enacted by Chapter 267, 2013 General Session

**Chapter 13b  
Easement for Historical Livestock Trail Act**

**Part 1**  
**General Provisions**

**57-13b-101 Title.**

This chapter is known as the "Easement for Historical Livestock Trail Act."

Enacted by Chapter 118, 2005 General Session

**57-13b-102 Definition.**

As used in this chapter, "historical livestock trail" means property over which livestock has historically traveled to or from a grazing area or market.

Enacted by Chapter 118, 2005 General Session

**Part 2**  
**Prescriptive Easement**

**57-13b-201 Prescriptive easement for livestock trail.**

- (1) A prescriptive easement may be established if:
  - (a) a property owner uses an historical livestock trail that crosses another person's property for a period of 20 years; and
  - (b) the use of the other owner's property as an historical livestock trail for the 20-year period described in Subsection (1)(a) is:
    - (i) continuous;
    - (ii) open and notorious; and
    - (iii) adverse.
- (2) If a property owner establishes that a use is continuous and open and notorious under Subsections (1)(b)(i) and (ii), there is a rebuttable presumption that the use is adverse.
- (3) Notwithstanding Subsections (1) and (2), a prescriptive easement under this chapter may only be established on private lands.

Enacted by Chapter 118, 2005 General Session

**Chapter 14**  
**Limitations on Landowner Liability**

**Part 1**  
**General Provisions**

**57-14-101 Title -- Purpose.**

- (1) This chapter is known as "Limitations on Landowner Liability."

- (2) The purpose of this chapter is to limit the liability of public and private land owners toward a person entering the owner's land as a trespasser or for recreational purposes, whether by permission or by operation of Title 73, Chapter 29, Public Waters Access Act.

Renumbered and Amended by Chapter 212, 2013 General Session

**57-14-102 Definitions.**

As used in this chapter:

- (1) "Charge" means the admission price or fee asked in return for permission to enter or go upon the land.
- (2) "Child" means an individual who is 16 years of age or younger.
- (3) "Inherent risks" means those dangers, conditions, and potentials for personal injury or property damage that are an integral and natural part of participating in an activity for a recreational purpose.
- (4)
  - (a) "Land" means any land within the state boundaries.
  - (b) "Land" includes roads, railway corridors, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty.
- (5) "Owner" means the possessor of any interest in the land, whether public or private land, including a tenant, a lessor, a lessee, an occupant, or person in control of the land.
- (6) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes.
- (7) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof:
  - (a) hunting;
  - (b) fishing;
  - (c) swimming;
  - (d) skiing;
  - (e) snowshoeing;
  - (f) camping;
  - (g) picnicking;
  - (h) hiking;
  - (i) studying nature;
  - (j) waterskiing;
  - (k) engaging in water sports;
  - (l) engaging in equestrian activities;
  - (m) using boats;
  - (n) mountain biking;
  - (o) riding narrow gauge rail cars on a narrow gauge track that does not exceed 24 inch gauge;
  - (p) using off-highway vehicles or recreational vehicles;
  - (q) viewing or enjoying historical, archaeological, scenic, or scientific sites;
  - (r) aircraft operations; and
  - (s) equestrian activity, skateboarding, skydiving, paragliding, hang gliding, roller skating, ice skating, walking, running, jogging, bike riding, or in-line skating.
- (8) "Serious physical injury" means any physical injury or set of physical injuries that:
  - (a) seriously impairs a person's health;
  - (b) was caused by use of a dangerous weapon as defined in Section 76-1-601;
  - (c) involves physical torture or causes serious emotional harm to a person; or

- (d) creates a reasonable risk of death.
- (9) "Trespasser" means a person who enters on the land of another without:
  - (a) express or implied permission; or
  - (b) invitation.

Renumbered and Amended by Chapter 212, 2013 General Session  
Amended by Chapter 278, 2013 General Session

## **Part 2**

### **Liability Relating to Recreational Use**

#### **57-14-201 Owner owes no duty of care or duty to give warning -- Exceptions.**

Except as provided in Subsections 57-14-204(1) and (2), an owner of land owes no duty of care to keep the land safe for entry or use by any person entering or using the land for any recreational purpose or to give warning of a dangerous condition, use, structure, or activity on the land.

Renumbered and Amended by Chapter 212, 2013 General Session

#### **57-14-202 Use of private land without charge -- Effect.**

Except as provided in Subsection 57-14-204(1), an owner of land who either directly or indirectly invites or permits without charge, or for a nominal fee of no more than \$1 per year, any person to use the owner's land for any recreational purpose, or an owner of a public access area open to public recreational access under Title 73, Chapter 29, Public Waters Access Act, does not:

- (1) make any representation or extend any assurance that the land is safe for any purpose;
- (2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land; or
- (4) owe any duty to curtail the owner's use of the land during its use for recreational purposes.

Renumbered and Amended by Chapter 212, 2013 General Session

#### **57-14-203 Land leased to state or political subdivision for recreational purposes.**

Unless otherwise agreed in writing, Sections 57-14-201 and 57-14-202 are applicable to the duties and liability of an owner of land leased to the state or any subdivision of the state for recreational purposes.

Renumbered and Amended by Chapter 212, 2013 General Session

#### **57-14-204 Liability not limited where willful or malicious conduct involved or admission fee charged.**

- (1) Nothing in this part limits any liability that otherwise exists for:
  - (a) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
  - (b) deliberate, willful, or malicious injury to persons or property; or

- (c) an injury suffered where the owner of land charges a person to enter or go on the land or use the land for any recreational purpose.
- (2) For purposes of Subsection (1)(c), if the land is leased to the state or a subdivision of the state, any consideration received by the owner for the lease is not a charge within the meaning of this section.
- (3) Any person who hunts upon a cooperative wildlife management unit, as authorized by Title 23, Chapter 23, Cooperative Wildlife Management Units, is not considered to have paid a fee within the meaning of this section.
- (4) Owners of a dam or reservoir who allow recreational use of the dam or reservoir and its surrounding area and do not themselves charge a fee for that use, are considered not to have charged for that use within the meaning of Subsection (1)(c), even if the user pays a fee to the Division of Parks and Recreation for the use of the services and facilities at that dam or reservoir.
- (5) The state or a subdivision of the state that owns property purchased for a railway corridor is considered not to have charged for use of the railway corridor within the meaning of Subsection (1)(c), even if the user pays a fee for travel on a privately owned rail car that crosses or travels over the railway corridor of the state or a subdivision of the state:
  - (a) allows recreational use of the railway corridor and its surrounding area; and
  - (b) does not charge a fee for that use.

Renumbered and Amended by Chapter 212, 2013 General Session

**57-14-205 Person using land of another not relieved from duty to exercise care.**

This part may not be construed to relieve any person, using the land of another for recreational purposes, from any obligation which the person may have in the absence of this chapter to exercise care in use of the land and in activities on the land, or from the legal consequences of failure to employ care.

Renumbered and Amended by Chapter 212, 2013 General Session

**Part 3**  
**Liability Relating to Trespassers**

**57-14-301 Owner liability to trespasser.**

- (1) Except as provided in Subsection (2), with respect to a trespasser, an owner does not:
  - (a) make any representation or extend any assurance that the land is safe for any purpose;
  - (b) owe any duty of care to the trespasser;
  - (c) assume responsibility for or incur liability for any injury to, the death of, or damage to property of, a trespasser; or
  - (d) owe any duty to curtail the owner's use of the land.
- (2) Notwithstanding Subsection (1) and except as provided in Subsection (3), an owner may be subject to liability for serious physical injury or death to a trespasser if:
  - (a)
    - (i) the trespasser is a child;
    - (ii) the serious physical injury or death is caused by an artificial condition on the land;
    - (iii) the owner knows or reasonably should know that:

- (A) the artificial condition exists;
- (B) the artificial condition poses an unreasonable risk of serious physical injury or death to a child; and
- (C) a child is likely to trespass at the location of the artificial condition;
- (iv) the artificial condition is not of a type that a child, because of the child's youth, would discover exists or would not realize that the artificial condition poses a risk of serious physical injury or death; and
- (v) the owner fails to take reasonable measures to eliminate, or to protect against serious physical injury or death from, the artificial condition;
- (b)
  - (i) the serious physical injury or death:
    - (A) occurs on a limited area of the land that the owner knows, or reasonably should know, is constantly intruded upon by trespassers; and
    - (B) is caused by an activity conducted by the owner that poses a risk of serious physical injury or death to a trespasser; and
  - (ii) the owner fails to conduct the activity described in Subsection (2)(b)(i)(B) with reasonable care for a trespasser's safety.
- (3)
  - (a) An owner is not subject to liability for serious physical injury or death to a trespasser if the conduct of the owner that results in serious physical injury or death is permitted or justified under Title 76, Chapter 2, Part 4, Justification Excluding Criminal Responsibility, or any other provision of law.
  - (b) An owner is not subject to liability for serious physical injury or death to a trespasser under Subsection (2) if the burden on the owner to eliminate, or to protect against serious physical injury or death from, the artificial condition outweighs the risk of serious physical injury or death posed by the artificial condition.
  - (c) An owner is not subject to liability for serious physical injury or death to a trespasser under Subsection (2) if the serious injury or death is caused by an irrigation canal or ditch.
  - (d) A public transit district is not subject to liability for a serious physical injury or death to a trespasser under Subsection (2) if the serious injury or death is caused by a trespasser entering into a fixed guideway, railroad right-of-way, or on transit facilities or premises in violation of Section 56-1-18.5 or Section 41-6a-1005.
- (4) Nothing in this chapter shall impose liability on an owner except to the extent liability existed as of May 14, 2013.

Enacted by Chapter 212, 2013 General Session

## **Part 4**

### **Inherent Risks of Certain Activities**

#### **57-14-401 Inherent risks of activities with a recreational purpose on certain lands.**

- (1) Notwithstanding Section 57-14-202 to the contrary, a person may not make a claim against or recover from an owner of any land, as defined in this chapter, including land in developed or improved, urban or semi-rural areas opened to the general public without charge, such as a lake, pond, park, trail, waterway, or other recreation site, for personal injury or property damage

caused by the inherent risks of participating in an activity with a recreational purpose on the land.

- (2) Nothing in this section may be construed to relieve a person participating in a recreational purpose from an obligation that the person would have in the absence of this section to exercise due care or from the legal consequences of a failure to exercise due care.

Enacted by Chapter 212, 2013 General Session

## **Chapter 16**

### **Mobile Home Park Residency Act**

#### **57-16-1 Short title.**

This act shall be known and may be cited as the "Mobile Home Park Residency Act."

Enacted by Chapter 178, 1981 General Session

#### **57-16-2 Purpose of chapter.**

The fundamental right to own and protect land and to establish conditions for its use by others necessitate that the owner of a mobile home park be provided with speedy and adequate remedies against those who abuse the terms of a tenancy. The high cost of moving mobile homes, the requirements of mobile home parks relating to their installation, and the cost of landscaping and lot preparation necessitate that the owners of mobile homes occupied within mobile home parks be provided with protection from actual or constructive eviction. It is the purpose of this chapter to provide protection for both the owners of mobile homes located in mobile home parks and for the owners of mobile home parks.

Enacted by Chapter 178, 1981 General Session

#### **57-16-3 Definitions.**

As used in this chapter:

- (1) "Amenities" means the following physical, recreational or social facilities located at a mobile home park:
  - (a) a club house;
  - (b) a park;
  - (c) a playground;
  - (d) a swimming pool;
  - (e) a hot tub;
  - (f) a tennis court; or
  - (g) a basketball court.
- (2) "Change of use" means a change of the use of a mobile home park, or any part of it, for a purpose other than the rental of mobile home spaces.
- (3) "Fees" means other charges incidental to a resident's tenancy including, but not limited to, late fees, charges for pets, charges for storage of recreational vehicles, charges for the use of park facilities, and security deposits.

- (4) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit, which when erected on a site, may be used with or without a permanent foundation as a family dwelling.
- (5) "Mobile home park" means any tract of land on which two or more mobile home spaces are leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.
- (6) "Mobile home space" means a specific area of land within a mobile home park designed to accommodate one mobile home.
- (7) "Rent" means charges paid for the privilege of occupying a mobile home space, and may include service charges and fees.
- (8) "Resident" means an individual who leases or rents space in a mobile home park.
- (9) "Service charges" means separate charges paid for the use of electrical and gas service improvements which exist at a mobile home space, or for trash removal, sewage and water, or any combination of the above.
- (10) "Settlement discussion expiration" means:
  - (a) the resident has failed to give a written notice of dispute within the period specified in Subsection 57-16-4.1(2); or
  - (b) the resident and management of the mobile home park have met together under Subsection 57-16-4.1(3) but were unsuccessful in resolving the dispute in their meeting.

Amended by Chapter 255, 2002 General Session

**57-16-4 Termination of lease or rental agreement -- Required contents of lease -- Increases in rents or fees -- Sale of homes -- Notice regarding planned reduction or restriction of amenities.**

- (1) A mobile home park or its agents may not terminate a lease or rental agreement upon any ground other than as specified in this chapter.
- (2) Each agreement for the lease of mobile home space shall be written and signed by the parties.
- (3) Each lease shall contain at least the following information:
  - (a) the name and address of the mobile home park owner and any persons authorized to act for the owner, upon whom notice and service of process may be served;
  - (b) the type of the leasehold, whether it be term or periodic, and, in leases entered into on or after May 6, 2002, a conspicuous disclosure describing the protection a resident has under Subsection (1) against unilateral termination of the lease by the mobile home park except for the causes described in Section 57-16-5;
  - (c)
    - (i) a full disclosure of all rent, service charges, and other fees presently being charged on a periodic basis; and
    - (ii) a full disclosure of utility infrastructure owned by the mobile home park owner or its agent that is maintained through service charges and fees charged by the mobile home park owner or its agent;
  - (d) the date or dates on which the payment of rent, fees, and service charges are due; and
  - (e) all rules that pertain to the mobile home park that, if broken, may constitute grounds for eviction, including, in leases entered into on or after May 6, 2002, a conspicuous disclosure regarding:
    - (i) the causes for which the mobile home park may terminate the lease as described in Section 57-16-5; and
    - (ii) the resident's rights to:

- (A) terminate the lease at any time without cause, upon giving the notice specified in the resident's lease; and
  - (B) advertise and sell the resident's mobile home.
- (4)
- (a) Increases in rent or fees for periodic tenancies are unenforceable until 60 days after notice of the increase is mailed to the resident.
  - (b) If service charges are not included in the rent, the mobile home park may:
    - (i) increase service charges during the leasehold period after giving notice to the resident; and
    - (ii) pass through increases or decreases in electricity rates to the resident.
  - (c) Annual income to the park for service charges may not exceed the actual cost to the mobile home park of providing the services on an annual basis.
  - (d) In determining the costs of the services, the mobile home park may include maintenance costs related to those utilities that are part of the service charges.
  - (e) The mobile home park may not alter the date on which rent, fees, and service charges are due unless the mobile home park provides a 60-day written notice to the resident before the date is altered.
- (5)
- (a) Except as provided in Subsection (3)(b), a rule or condition of a lease that purports to prevent or unreasonably limit the sale of a mobile home belonging to a resident is void and unenforceable.
  - (b) The mobile home park:
    - (i) may reserve the right to approve the prospective purchaser of a mobile home who intends to become a resident;
    - (ii) may not unreasonably withhold that approval;
    - (iii) may require proof of ownership as a condition of approval; or
    - (iv) may unconditionally refuse to approve any purchaser of a mobile home who does not register before purchasing the mobile home.
- (6) If all of the conditions of Section 41-1a-116 are met, a mobile home park may request the names and addresses of the lienholder or owner of any mobile home located in the park from the Motor Vehicle Division.
- (7)
- (a) A mobile home park may not restrict a resident's right to advertise for sale or to sell a mobile home.
  - (b) A mobile home park may limit the size of a "for sale" sign affixed to the mobile home to not more than 144 square inches.
- (8) A mobile home park may not compel a resident who wishes to sell a mobile home to sell it, either directly or indirectly, through an agent designated by the mobile home park.
- (9) A mobile home park may require that a mobile home be removed from the park upon sale if:
- (a) the mobile home park wishes to upgrade the quality of the mobile home park; and
  - (b) the mobile home either does not meet minimum size specifications or is in a rundown condition or is in disrepair.
- (10) Within 30 days after a mobile home park proposes reducing or restricting amenities, the mobile home park shall:
- (a) schedule at least one meeting for the purpose of discussing the proposed restriction or reduction of amenities with residents; and
  - (b) provide at least 10 days advance written notice of the date, time, location, and purposes of the meeting to each resident.

- (11) If a mobile home park uses a single-service meter, the mobile home park owner shall include a full disclosure on a resident's utility bill of the resident's utility charges.
- (12) The mobile home park shall ensure that the following are posted at all times in a conspicuous place in a common area of the mobile home park:
  - (a) a copy of this chapter; and
  - (b) a notice that:
    - (i) summarizes the rights and responsibilities described in this chapter;
    - (ii) includes information on how to use the helpline described in Title 57, Chapter 16a, Mobile Home Park Helpline; and
    - (iii) is in a form approved by the Office of the Attorney General.

Amended by Chapter 233, 2015 General Session

**57-16-4.1 Meeting to attempt resolution of disputes.**

- (1) If a mobile home park determines that a resident has failed to comply with a mobile home park rule, the mobile home park may not terminate the lease agreement or commence legal proceedings without first giving a written notice of noncompliance to the resident. The written notice of noncompliance shall:
  - (a) specify in detail each and every rule violation then claimed by the mobile home park; and
  - (b) advise the resident of the resident's rights under Subsection (2).
- (2) If the resident disputes the occurrences of noncompliance claimed by the mobile home park in the written notice of noncompliance, the resident has the right to require management of the mobile home park to participate in a meeting with the resident by giving to the mobile home park, within five days after receiving the written notice of noncompliance, a written notice disputing the occurrences of breach and requesting a meeting with management of the mobile home park to attempt to resolve the dispute. If the resident fails to give the mobile home park a written notice of dispute within the seven-day period, the resident's right to request a meeting under this section is considered to be waived.
- (3) If the resident gives a timely written notice under Subsection (2), the resident and management of the mobile home park shall meet in person in a settlement discussion to attempt to resolve the dispute between the parties. The meeting shall take place within two days after the resident gives the written notice under Subsection (2), unless both parties agree to a later date.
- (4) Subsections (1), (2), and (3) do not apply to a rule violation arising from:
  - (a) behavior described in Subsection 57-16-5(1)(c); or
  - (b) nonpayment or rent, fees, or service charges.

Enacted by Chapter 255, 2002 General Session

**57-16-5 Cause required for terminating lease -- Causes -- Cure periods -- Notice.**

- (1) An agreement for the lease of mobile home space in a mobile home park may be terminated by mutual agreement or for any one or more of the following causes:
  - (a) failure of a resident to comply with a mobile home park rule:
    - (i) relating to repair, maintenance, or construction of awnings, skirting, decks, or sheds for a period of 60 days after receipt by a resident of a written notice of noncompliance from the mobile home park under Subsection 57-16-4.1(1); or
    - (ii) relating to any other park rule for a period of seven days after the latter to occur of settlement discussion expiration or receipt by the resident of a written notice of noncompliance from the mobile home park, except relating to maintenance of a resident's

- yard and space, the mobile home park may elect not to proceed with the seven-day cure period and may provide the resident with written notice as provided in Subsection (2);
- (b) repeated failure of a resident to abide by a mobile home park rule, if the original written notice of noncompliance states that another violation of the same or a different rule might result in forfeiture without any further period of cure;
  - (c) behavior by a resident or any other person who resides with a resident, or who is an invited guest or visitor of a resident, that threatens or substantially endangers the security, safety, well-being, or health of other persons in the park or threatens or damages property in the park including:
    - (i) use or distribution of illegal drugs;
    - (ii) distribution of alcohol to minors; or
    - (iii) commission of a crime against property or a person in the park;
  - (d) nonpayment of rent, fees, or service charges for a period of five days after the due date;
  - (e) a change in the land use or condemnation of the mobile home park or any part of it; or
  - (f) a prospective resident provides materially false information on the application for residency regarding the prospective resident's criminal history.
- (2) If the mobile home park elects not to proceed with the seven-day cure period in Subsection (1)(a)(ii), a 15-day written notice of noncompliance shall:
- (a) state that if the resident does not perform the resident's duties or obligations under the lease agreement or rules of the mobile home park within 15 days after receipt by the resident of the written notice of noncompliance, the mobile home park may enter onto the resident's space and cure any default;
  - (b) state the expected reasonable cost of curing the default;
  - (c) require the resident to pay all costs incurred by the mobile home park to cure the default by the first day of the month following receipt of a billing statement from the mobile home park;
  - (d) state that the payment required under Subsection (2)(b) shall be considered additional rent; and
  - (e) state that the resident's failure to make the payment required by Subsection (2)(b) in a timely manner shall be a default of the resident's lease and shall subject the resident to all other remedies available to the mobile home park for a default, including remedies available for failure to pay rent.

Amended by Chapter 255, 2002 General Session

**57-16-6 Action for lease termination -- Prerequisite procedure.**

A legal action to terminate a lease based upon a cause set forth in Section 57-16-5 may not be commenced except in accordance with the following procedure:

- (1) Before issuance of any summons and complaint, the mobile home park shall send or serve written notice to the resident or person:
  - (a) by delivering a copy of the notice personally;
  - (b) by sending a copy of the notice through registered or certified mail addressed to the resident or person at the person's place of residence;
  - (c) if the resident or person is absent from the person's place of residence, by leaving a copy of the notice with some person of suitable age and discretion at the individual's residence and sending a copy through registered or certified mail addressed to the resident or person at the person's place of residence; or
  - (d) if a person of suitable age or discretion cannot be found, by affixing a copy of the notice in a conspicuous place on the resident's or person's mobile home and also sending a copy

through registered or certified mail addressed to the resident or person at the person's place of residence.

(2) The notice required by Subsection (1) shall set forth:

- (a) the cause for the notice and, if the cause is one which can be cured, the time within which the resident or person has to cure; and
- (b) the time after which the mobile home park may commence legal action against the resident or person if cure is not effected, as follows:
  - (i) In the event of failure to abide by a mobile home park rule, the notice shall provide for a cure period as provided in Subsections 57-16-5(1)(a) and (2), except in the case of repeated violations and, shall state that if a cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.
  - (ii) If a resident, a member, or invited guest or visitor of the resident's household commits repeated violations of a rule, a summons and complaint may be issued three days after a notice is served.
  - (iii) If a resident, a member, or invited guest or visitor of the resident's household behaves in a manner that threatens or substantially endangers the well-being, security, safety, or health of other persons in the park or threatens or damages property in the park, eviction proceedings may commence immediately.
  - (iv) If a resident does not pay rent, fees, or service charges, the notice shall provide a five-day cure period and, that if cure is not timely effected, or a written agreement made between the mobile home park and the resident allowing for a variation in the rule or cure period, eviction proceedings may be initiated immediately.
  - (v) If a lease is terminated because of a planned change in land use or condemnation of the park or a portion of the park, the notice required by Section 57-16-18 serves as notice of the termination of the lease.

(3)

- (a) Eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1)(a), (b), and (e) shall be brought in accordance with the Utah Rules of Civil Procedure and may not be treated as unlawful detainer actions under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.
- (b) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(c) and (d) may, at the election of the mobile home park, be treated as actions brought under this chapter and the unlawful detainer provisions of Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer.
- (c) If unlawful detainer is charged, the court shall endorse on the summons the number of days within which the defendant is required to appear and defend the action, which shall not be less than five days or more than 20 days from the date of service.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 55, 2008 General Session

### **57-16-7 Rules of parks.**

(1)

- (a) A mobile home park may promulgate rules related to the health, safety, and appropriate conduct of residents and to the maintenance and upkeep of such park. No change in rule that is unconscionable is valid.

(b)

- (i) No new or amended rule shall take effect, nor provide the basis for an eviction notice, until the expiration of at least:
    - (A) 120 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$2,000 in order to comply with the rule;
    - (B) 90 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses greater than \$250 up to \$2,000 in order to comply with the rule; or
    - (C) 60 days after its promulgation if it is a rule that requires a resident to make exterior, physical improvements to the resident's mobile home or mobile home space and to incur expenses of \$250 or less in order to comply with the rule.
  - (ii) Each resident, as a condition precedent to a rule under this Subsection (1)(b) becoming effective, shall be provided with a copy of each new or amended rule that does not appear in the resident's lease agreement promptly upon promulgation of the rule.
  - (iii) For purposes of determining which period of time applies under Subsection (1)(b)(i), the mobile home park may rely upon a good-faith estimate obtained by the mobile home park from a licensed contractor.
- (c) Within 30 days after the mobile home park proposes amendments to the mobile home park rules, the mobile home park shall schedule at least one meeting for the purpose of discussing the proposed rule amendments with residents and shall provide at least 10 days advance written notice of the date, time, location, and purposes of the meeting to all residents.
- (2) A mobile home park may specify the type of material used, and the methods used in the installation of, underskirting, awnings, porches, fences, or other additions or alterations to the exterior of a mobile home, and may also specify the tie-down equipment used in a mobile home space, in order to insure the safety and good appearance of the park; but under no circumstances may it require a resident to purchase such material or equipment from a supplier designated by the mobile home park.
- (3) No mobile home park may charge an entrance fee, exit fee, nor installation fee, but reasonable landscaping and maintenance requirements may be included in the mobile home park rules. The resident is responsible for all costs incident to connection of the mobile home to existing mobile home park facilities and for the installation and maintenance of the mobile home on the mobile home space.
- (4) Nothing in this section shall be construed to prohibit a mobile home park from requiring a reasonable initial security deposit.

Amended by Chapter 255, 2002 General Session

**57-16-7.5 Payment of rent required after notice -- Summary judgment.**

- (1)
  - (a) Any resident shall continue to pay the mobile home park all rent required by the lease after having been served with any notice pursuant to this chapter, except a notice for nonpayment of rent.
  - (b) In cases not involving payment of rent, the mobile home park may accept rent without waiving any rights under this chapter.
- (2) If the resident fails to pay rent, the mobile home park shall be entitled to summary judgment for:
  - (a) the rent owed;
  - (b) termination of the lease; and
  - (c) restitution of the premises.

- (3) The summary judgment as provided in Subsection (2) shall be granted even if a five-day notice to pay or quit was not served, so long as another appropriate notice under this chapter has been served.

Enacted by Chapter 114, 1997 General Session

**57-16-8 Payment of rent and fees during pendency of eviction proceeding.**

If a resident elects to contest an eviction proceeding, all rents, fees, and service charges due and incurred during the pendency of the action shall be paid into court according to the current mobile home park payment schedule. Failure of the resident to pay such amounts may, in the discretion of the court, constitute grounds for granting summary judgment in favor of the mobile home park. Upon final termination of the issues between the parties, the court shall order all amounts paid into court paid to the mobile home park. The prevailing party is also entitled to court costs and reasonable attorney's fees.

Enacted by Chapter 178, 1981 General Session

**57-16-9 Lienholder's liability for rent and fees.**

- (1) Notwithstanding Sections 38-3-2 and 70A-9a-402, the lienholder of record of a mobile home, or if there is no lienholder, the owner of a mobile home, is primarily liable to the mobile home park owner or operator for rent and service charges if a mobile home is not removed within 10 days after receipt of written notice that a mobile home has been abandoned, as defined in Section 57-16-13, or that a writ of restitution has been issued. The lienholder or owner of a mobile home, however, is only liable for rent that accrues from the day the lienholder or owner of a mobile home receives notice. Rent shall be paid on a monthly basis on the due date established in the lease agreement. The lienholder or owner of a mobile home is not responsible for any rent if the mobile home is removed within 10 days after receipt of the notice.
- (2) If the lienholder pays rent and service charges as provided by this section, the lienholder shall have the unconditional right to resell the mobile home within the park, subject to the purchaser being approved for residency by the park, which approval cannot be unreasonably withheld, and subject to Subsection (4). If the lienholder or owner of a mobile home does not commence paying rent and service charges to the mobile home park within 30 days after receipt of a written notice provided by Subsection (1), the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park and the lienholder or owner of a mobile home shall be liable for all rent which accrues from the date of the notice to the date the mobile home is removed from the park.
- (3) The notice required under Subsection (1) shall be sent to the lienholder or owner of a mobile home by certified mail, return receipt requested, and shall inform the lienholder or owner of a mobile home that the mobile home park may require the lienholder or owner of a mobile home to remove the mobile home from the park if the lienholder or owner of a mobile home has not commenced paying rent and service charges to the park within 30 days after receipt of the notice.
- (4) The mobile home park may require the lienholder to remove a mobile home covered by this section from the park if the mobile home, at the time of sale, is in rundown condition or disrepair, if the mobile home does not meet the park's minimum size specifications, or if the mobile home does not comply with reasonable park rules. The lienholder shall have 60 days to make repairs and comply with park rules after notice of required repairs and rule violations is given to the lienholder by the park owner or its agent.

- (5) If a lienholder or owner of a mobile home does not commence paying rent and service charges to the park within 30 days after receipt of a written notice provided under Subsection (1), and if the lienholder or owner of a mobile home does not remove the mobile home from the park within the 30-day period, the park has the right to immediately remove the mobile home from the park and store it on behalf of the lienholder or owner of a mobile home. The mobile home park has the right to recover moving and storage costs from the lienholder or owner of a mobile home.
- (6) The prevailing party is entitled to court costs and reasonable attorney fees for any action commenced to enforce any rights under this section.
- (7) If a lienholder pays rent and service charges as provided in Subsection (2), the mobile home is not considered abandoned under Section 57-16-13; however, the personal property in the mobile home is considered abandoned.

Amended by Chapter 256, 2001 General Session

**57-16-10 Utility service to mobile home parks -- Limitation on providers' charges.**

Local water, sewer, and sanitation entities, including those administered by municipalities and counties which provide water, sewer, or garbage collection services shall not receive a greater percentage net return from supplying a mobile home park than said entity receives from other residential customers. The net return is determined by taking into consideration the costs of maintenance and depreciation of the mobile home park facilities and all savings on administrative costs, including cost of billing residents.

Enacted by Chapter 178, 1981 General Session

**57-16-11 Rights and remedies not exclusive.**

The rights and remedies granted by this chapter are cumulative and not exclusive.

Enacted by Chapter 178, 1981 General Session

**57-16-12 Waiver of rights and duties prohibited.**

No park or resident may agree to waive any right, duty, or privilege conferred by this chapter.

Enacted by Chapter 178, 1981 General Session

**57-16-13 Abandonment.**

Abandonment of a mobile home space and a mobile home within a mobile home park is presumed in either of the following situations:

- (1)
  - (a) the resident or occupant of the mobile home has not notified the park that the resident or occupant will be absent from the mobile home space or mobile home, and the resident or occupant fails to pay rent within 45 days after the due date; and
  - (b) the mobile home park owner has no reasonable evidence, other than the presence of the resident's or occupant's personal property, that the resident or occupant is continuing to occupy the mobile home space and the mobile home; or
- (2)

- (a) the resident or occupant of the mobile home has not notified the park that the resident or occupant will be absent from the mobile home space where the mobile home is located, and the resident or occupant fails to pay rent when due; and
- (b) the resident's or occupant's personal property has been removed from the mobile home, and there is no reasonable evidence that the resident or occupant is occupying the mobile home space or mobile home.

Amended by Chapter 91, 2002 General Session

**57-16-14 Abandoned premises -- Retaking by owner -- Liability of resident or occupant -- Personal property of resident or occupant left on mobile home space.**

- (1) In the event of abandonment under Section 57-16-13, the park may retake the mobile home space and attempt to relet the space at a fair rental value. The resident or occupant who abandoned the premises is liable:
  - (a) for the entire rent, service charges, and fees that would otherwise be due until the premise is relet or for a period not to exceed 90 days, whichever comes first; and
  - (b) any costs incurred by the park necessary to relet the mobile home space at fair market value, including the costs of:
    - (i) moving the mobile home from the mobile home space;
    - (ii) storing the mobile home; and
    - (iii) restoring the mobile home space to a reasonable condition, including the cost of replacing or repairing landscaping that was damaged by the resident or occupant.
- (2)
  - (a) If the resident or occupant has abandoned the mobile home space, the mobile home, or both, and has left personal property, including the mobile home, on the mobile home space, the park is entitled to remove the property from the mobile home space, store it for the resident or occupant, and recover actual moving and storage costs from the resident, the occupant, or both. With respect to the mobile home, however, the park may elect to contact the lienholder under Section 57-16-9, or to store the mobile home on the mobile home space, while attempting to notify the resident or occupant under Subsection (2)(b)(i).
  - (b)
    - (i) The park shall make reasonable efforts to notify the resident or occupant of the location of the personal property, and that the personal property will be sold at the expiration of 30 days if not redeemed and removed by the resident or occupant. Reasonable efforts require that the park send written notice by regular mail to the resident or occupant at the last-known address within the park if the park is unaware of any subsequent address. To redeem the personal property, the resident or occupant is required to pay the reasonable storage and moving charges.
    - (ii) If the personal property has been in storage for over 30 days, notice has been given as required by Subsection (2)(b)(i), and the resident or occupant has made no reasonable effort to recover the personal property, the park may:
      - (A) sell the personal property and apply the proceeds toward any amount the resident or occupant owes; or
      - (B) donate the personal property to charity or dispose of the property.
  - (c) Any excess money from the sale of the personal property, including the mobile home, shall be handled as specified in Title 67, Chapter 4a, Part 2, Standards for Determining When Property Is Abandoned or Unclaimed.

- (d) Nothing contained in this chapter shall be in derogation of or alter the owner's rights under Title 38, Chapter 3, Lessors' Liens.

Enacted by Chapter 256, 2001 General Session

**57-16-15 Eviction proceeding.**

- (1) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(a), (b), and (e), and eviction proceedings commenced under this chapter based on causes of action set forth in Subsections 57-16-5(1)(c) and (d), in which a landlord elects to bring an action under this chapter and not under the unlawful detainer provisions of Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, shall comply with the following:
  - (a) A judgment may be entered upon the merits or upon default. A judgment entered in favor of the plaintiff may:
    - (i) include an order of restitution of the premises; and
    - (ii) declare the forfeiture of the lease or agreement.
  - (b) The jury, or the court if the proceedings are tried without a jury or upon the defendant's default, shall assess the damages resulting to the plaintiff from any of the following:
    - (i) waste of the premises during the resident's tenancy, if waste is alleged in the complaint and proved; and
    - (ii) the amount of rent due.
  - (c) If the lease or agreement provides for reasonable attorney fees, the court shall order reasonable attorney fees to the prevailing party.
  - (d) Whether or not the lease or agreement provides for court costs and attorney fees, if the proceeding is contested, the court shall order court costs and attorney fees to the prevailing party.
  - (e) Except as provided in Subsection (1)(f), after judgment has been entered under this section, judgment and restitution may be enforced no sooner than 15 days from the date the judgment is entered. The person who commences the action shall mail through registered or certified mail a copy of the judgment to the resident or the resident's agent or attorney as required by the Utah Rules of Civil Procedure.
  - (f) If a resident tenders to the mobile home park postjudgment rent, in the form of cash, cashier's check, or certified funds, then restitution may be delayed for the period of time covered by the postjudgment rent, which time period shall not exceed 15 days from the date of the judgment unless a longer period is agreed to in writing by the mobile home park.
- (2) Eviction proceedings commenced under this chapter and based on causes of action set forth in Subsections 57-16-5(1)(c) and (d), in which the mobile home park has elected to treat as actions also brought under the unlawful detainer provisions of Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, shall be governed by Sections 78B-6-811 and 78B-6-812 with respect to judgment for restitution, damages, rent, enforcement of the judgment and restitution.
- (3) The provisions in Section 78B-6-812 shall apply to this section except the enforcement time limits in Subsections (1)(e) and (f) shall govern.

Renumbered and Amended by Chapter 340, 2011 General Session

**57-16-16 Mobile home park residents' associations.**

- (1) As used in this section:

- (a) "Park operator" means an owner, operator, or manager of a mobile home park, including an employee, agent, or independent contractor of the owner, operator, or manager.
  - (b) "Primary resident association" means, for a mobile home park with more than one resident association, the resident association that has more members than any other resident association within the mobile home park.
  - (c) "Resident association" means an organization of mobile home park residents organized to address their common interests and concerns related to the mobile home park.
  - (d) "Resident entity" means a noncommercial entity that:
    - (i) advocates for residents of the mobile home park; or
    - (ii) addresses issues relating to mobile home parks that affect or are of concern to residents of the mobile home park.
- (2)
- (a) Residents in a mobile home park may:
    - (i) form a resident association; and
    - (ii) participate in a regional, state, or national resident association or advocacy group.
  - (b) A resident association may limit membership in a resident association to owners of manufactured homes within a mobile home park if the purpose of the resident association is to purchase some or all of the mobile home park.
  - (c)
    - (i) There may be more than one resident association for a mobile home park.
    - (ii) A park operator is not required to acknowledge any resident association other than the primary resident association.
- (3) At a meeting at which a majority of members are present, resident association members may:
- (a) elect officers of the resident association; and
  - (b) adopt bylaws of the resident association.
- (4)
- (a) Except in an emergency, a resident association shall provide seven days' notice of a resident association meeting to all residents of the mobile home park.
  - (b) A resident of a mobile home park may attend a meeting of a resident association, whether or not the resident is a member of the resident association.
- (5)
- (a) An officer or member of a resident association may not be held personally responsible or liable for an act or omission of the resident association or of another officer or member of the resident association.
  - (b) Subsection (5)(a) may not be construed to limit the liability of an individual who is an officer or member of a resident association for the individual's act or omission.
- (6) A park operator may not:
- (a) be a member of a resident association;
  - (b) attend a meeting of the resident association unless given a written invitation to the meeting by an officer of the resident association;
  - (c) unlawfully interfere with the resident association's operation;
  - (d) interfere with a resident's right to contact a state or local health department, a municipality, or other group to complain about the health and safety conditions of the mobile home park; or
  - (e) harass or threaten a resident association.
- (7) A resident association may not:
- (a) impose fees, dues, or assessments, upon its members unless a majority of the members agree to the imposition of fees, dues, or assessments; or
  - (b) harass or threaten a park operator.

- (8) A park operator shall permit meetings by a resident association located within the park relating to manufactured home living or social or educational purposes, including forums for or speeches by public officials or candidates for public office.
- (9) Except for reasonable time, place, and manner limitations, a park operator may not prohibit or adopt a rule prohibiting a mobile home park resident or a resident entity from exercising within the mobile home park the right of free expression for noncommercial purposes, including peacefully organizing, assembling, canvassing, petitioning, leafleting, or distributing written, noncommercial material within the mobile home park.
- (10)
- (a) A resident association may schedule with the park operator the use of the mobile home park's common facilities, if any, free of charge.
  - (b) A resident association is responsible for any damage to the mobile home park's common facilities caused by a member of the resident association or a guest or invitee while the resident association uses a common facility.
  - (c) A park operator may reasonably limit the frequency of a resident association's use of a common facility if the limitation allows use at least once per week.
  - (d) A park operator may not:
    - (i) charge a resident or resident association a security deposit to use a common facility of the mobile home park that exceeds the amount normally and uniformly charged as a security deposit for use of the common facility; or
    - (ii) except as provided in Subsection (10)(e), require a resident or resident association to obtain liability insurance in order to use a common facility.
  - (e) A park operator may require liability insurance if:
    - (i) the rules of the mobile home park permit the consumption of alcoholic beverages in a common facility; and
    - (ii) alcoholic beverages are to be served at a meeting or private function of the resident association in the common facility.
- (11)
- (a) A park operator may not alter or refuse to renew an existing rental agreement, change a rule of the mobile home park, enforce a mobile home park rule in an unreasonable or nonuniform way, bring or threaten to bring an eviction action or other civil action, or take any other action in retaliation based primarily on a resident:
    - (i) expressing an intention to complain or having complained to a governmental agency about a matter relating to the mobile home park;
    - (ii) making a complaint in good faith to the park operator;
    - (iii) filing or expressing an intention to file a lawsuit or administrative action against the park operator; or
    - (iv) testifying in a judicial or administrative proceeding or before a public body.
  - (b) Subsection (11)(a) does not limit a defense available under the law to a resident in an eviction action.
- (12) This section may not be construed to prohibit a park operator from:
- (a) evicting a tenant as provided in other provisions of this chapter; or
  - (b) exercising other rights the park operator has under applicable law.

Amended by Chapter 15, 2010 General Session

**57-16-17 Authority of political subdivisions.**

This chapter does not prevent a city, county, or municipality from mediating and enforcing state statutes governing a mobile home park.

Enacted by Chapter 133, 2004 General Session

**57-16-18 Notice required for change in land use or condemnation -- Local ordinances forbidden.**

- (1)
  - (a) The owner of a mobile home park shall send notice using first-class mail to each resident of the mobile home park of any planned change in land use or condemnation of the park or any portion of the park at least nine months before the day on which the resident is required to vacate the mobile home park.
  - (b) Subsection (1)(a) does not apply to a mobile home park condemned by a government entity.
- (2) If the planned change in land use or condemnation requires the approval of a governmental agency, the mobile home park owner, in addition to the notice required by Subsection (1), shall send notice using first-class mail of the date set for the initial hearing before the governmental agency to each resident at least seven days before the date scheduled for the initial hearing.
- (3) If a resident is not a resident of the mobile home park at the time notice was sent under Subsection (1), the owner shall give written notice, of the change of use to the resident before the resident occupies the mobile home space, either by first-class mail or personal service.
- (4) During the period of time between the provision of notice under Subsection (1) and the day on which the resident is required to vacate the mobile home park, the mobile home park owner may not increase rent.
- (5) A town, city, or county may not enact any ordinance governing the closure of a mobile home park.

Enacted by Chapter 55, 2008 General Session

**Chapter 16a  
Mobile Home Park Helpline**

**Part 1  
General Provisions**

**57-16a-101 Title.**

- (1) This chapter is known as the "Mobile Home Park Helpline."
- (2) This part is known as "General Provisions."

Enacted by Chapter 233, 2015 General Session

**57-16a-102 Definitions.**

As used in this chapter:

- (1) "Act" means Title 57, Chapter 16, Mobile Home Park Residency Act.
- (2) "Assisting attorney" means a member of the Utah State Bar who the helpline administrator designates to assist in administering the helpline, in accordance with the provisions of this chapter.

- (3) "Caller" means a resident, a mobile home owner, or a park owner who calls the helpline.
- (4) "Helpline" means a direct public telephone number that a resident, a mobile home owner, or a park owner may call with inquiries related to the act.
- (5) "Mobile home" means a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within the unit that when erected on a site may be used with or without a permanent foundation as a dwelling unit.
- (6) "Mobile home lot" means an area within a mobile home park designed to accommodate one mobile home.
- (7) "Mobile home owner" means a person who:
  - (a) owns a mobile home; and
  - (b) leases or rents from a park owner the mobile home lot on which the mobile home is located.
- (8) "Mobile home park" means any tract of land on which two or more lots are leased, or offered for lease or rent, to accommodate mobile homes for residential purposes.
- (9) "Park owner" means a person who owns a mobile home park, including the person's agent.
- (10) "Resident" means a person who leases or rents a mobile home from the mobile home owner.
- (11) "Supervised student" means a law student at the S.J. Quinney College of Law who, under the supervision of a member of the Utah State Bar, participates in the law clinic established under this chapter.

Enacted by Chapter 233, 2015 General Session

## **Part 2**

### **Helpline Administration and Process**

#### **57-16a-201 Title.**

This part is known as "Helpline Administration and Process."

Enacted by Chapter 233, 2015 General Session

#### **57-16a-202 Helpline administration.**

- (1) A helpline is created to assist a resident, a mobile home owner, or a park owner with disputes related to the act.
- (2) The University of Utah S.J. Quinney College of Law shall administer the helpline in accordance with the provisions of this chapter.
- (3) In administering the helpline, the S.J. Quinney College of Law shall:
  - (a) establish a phone number for the helpline; and
  - (b) create a law clinic that consists of:
    - (i) a helpline administrator who is employed by the S.J. Quinney College of Law and is an active member of the Utah State Bar;
    - (ii) one or more supervised students; and
    - (iii) if necessary, one or more assisting attorneys.
- (4) The helpline administrator, a supervised student, or an assisting attorney shall:
  - (a) receive and respond to calls made through the helpline;
  - (b) inform a helpline caller of the rights, responsibilities, and remedies described in the act;
  - (c) receive complaints from a helpline caller that allege a violation of the act;
  - (d) create a record of each call that includes:

- (i) whether the caller is a resident, a mobile home owner, or a park owner;
  - (ii) the subject of the call, including whether the call alleges a violation of the act;
  - (iii) if the call alleges a violation of the act, information regarding whether the respondent was contacted;
  - (iv) the services provided to the caller, if any; and
  - (v) the outcome of the dispute, if known; and
  - (e) maintain a record described in Subsection (4)(d) for at least one year after the day on which the record is created.
- (5) The helpline administrator shall, beginning in 2016, on or before November 30 of each year, submit to the Political Subdivisions Interim Committee a report that, for the 12 months before the day on which the helpline administrator submits the report, states:
- (a) the number of calls that the helpline administrator, a supervised student, or an assisting attorney received through the helpline;
  - (b) a brief summary of each call, including:
    - (i) whether a resident, a mobile home owner, or a park owner made the call;
    - (ii) the subject of the call;
    - (iii) the nature of any service provided to the caller; and
    - (iv) the outcome of the matter, if known; and
  - (c) any recommendations regarding changes to the helpline or the act.

Amended by Chapter 348, 2016 General Session

**57-16a-203 Helpline process.**

- (1) A helpline caller may call the helpline regarding the rights, responsibilities, and remedies described in the act.
- (2) If a helpline caller alleges a violation of the act, the helpline administrator, a supervised student, or an assisting attorney shall inform the caller of the rights, responsibilities, and remedies described in the act.
- (3) Any record or recommendation that relates to the helpline administration is not admissible as evidence in a judicial proceeding.

Enacted by Chapter 233, 2015 General Session

## **Chapter 17**

### **Residential Renters' Deposits**

**57-17-1 Return or explanation of retainage upon termination of tenancy.**

Owners or designated agents requiring deposits however denominated from renters leasing or renting residential dwelling units shall either return those deposits at the termination of the tenancy or provide the renter with written notice explaining why any deposit refundable under the terms of the lease or rental agreement is being retained.

Enacted by Chapter 74, 1981 General Session

**57-17-2 Non-refundable deposit -- Written notice required.**

If there is a written agreement and if any part of the deposit is to be made non-refundable, it must be so stated in writing to the renter at the time the deposit is taken by the owner or designated agent.

Enacted by Chapter 74, 1981 General Session

**57-17-3 Deductions from deposit -- Written itemization -- Time for return.**

- (1) Upon termination of a tenancy, the owner or the owner's agent may apply property or money held as a deposit toward the payment of rent, damages to the premises beyond reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the unit.
- (2) No later than 30 days after the day on which a renter vacates and returns possession of a rental property to the owner or the owner's agent, the owner or the owner's agent shall deliver to the renter at the renter's last known address:
  - (a) the balance of any deposit;
  - (b) the balance of any prepaid rent; and
  - (c) if the owner or the owner's agent made any deductions from the deposit or prepaid rent, a written notice that itemizes and explains the reason for each deduction.
- (3) If an owner or the owner's agent fails to comply with the requirements described in Subsection (2), the renter may serve the owner or the owner's agent, in accordance with Subsection (4), a notice that:
  - (a) states:
    - (i) the names of the parties to the rental agreement;
    - (ii) the day on which the renter vacated the rental property;
    - (iii) that the owner or the owner's agent has failed to comply with the requirements described in Subsection (2); and
    - (iv) the address where the owner or the owner's agent may send the items described in Subsection (2); and
  - (b) is substantially in the following form:

**TENANT'S NOTICE TO PROVIDE DEPOSIT DISPOSITION**

TO: (insert owner or owner's agent's name)

RE: (insert address of rental property)

NOTICE IS HEREBY GIVEN THAT WITHIN FIVE (5) CALENDAR DAYS pursuant to Utah Code Sections 57-17-3 et seq., the owner or the owner's agent must provide the tenant, at the address below, a refund of the balance of any security deposit, the balance of any prepaid rent, and a notice of any deductions from the security deposit or prepaid rent as allowed by law. NOTICE IS FURTHER GIVEN that the tenant vacated the property on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOTICE IS FURTHER GIVEN that failure to comply with this notice will require the owner to refund the entire security deposit, the full amount of any prepaid rent, and a penalty of \$100. If the entire security deposit, the full amount of any prepaid rent, and the penalty of \$100 is not tendered to the tenant, and the tenant is required to initiate litigation to enforce the provisions of the statute, the owner may be liable for the tenant's court costs and attorney fees.

Tenant's Name(s): \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

This is a legal document. Please read and comply with the document's terms.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Return of Service

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I swear and attest that I served this notice in compliance with Utah Code Section 57-17-3 by: \_\_\_\_ Delivering a copy to the owner or the owner's agent personally at the address provided in the lease agreement; \_\_\_\_ Leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement because the owner or the owner's agent was absent from the address provided in the lease agreement; \_\_\_\_ Affixing a copy in a conspicuous place at the address provided in the lease agreement because a person of suitable age or discretion could not be found at the address provided in the lease agreement; or \_\_\_\_ Sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

The owner's address to which the service was effected is:

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
\_\_\_\_\_ (server's signature)

Self-Authentication Declaration

Pursuant to Utah Code Section 78B-5-705, I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
\_\_\_\_\_ (server's signature)

(4) A notice described in Subsection (3) shall be served:

(a)

- (i) by delivering a copy to the owner or the owner's agent personally at the address provided in the lease agreement;
- (ii) if the owner or the owner's agent is absent from the address provided in the lease agreement, by leaving a copy with a person of suitable age and discretion at the address provided in the lease agreement; or
- (iii) if a person of suitable age or discretion cannot be found at the address provided in the lease agreement, by affixing a copy in a conspicuous place at the address provided in the lease agreement; or

(b) by sending a copy through registered or certified mail to the owner or the owner's agent at the address provided in the lease agreement.

(5) Within five business days after the day on which the notice described in Subsection (3) is served, the owner or the owner's agent shall comply with the requirements described in Subsection (2).

Amended by Chapter 384, 2016 General Session

**57-17-4 Holder of owner's or designated agent's interest bound by provisions.**

The holder of the owner's or designated agent's interest in the premises at the time of termination of the tenancy shall be bound by the provisions of this act.

Enacted by Chapter 74, 1981 General Session

**57-17-5 Failure to return deposit or prepaid rent or to give required notice -- Recovery of deposit, penalty, costs, and attorney fees.**

(1) If an owner or the owner's agent fails to comply with the requirements described in Subsection 57-17-3(5), the renter may:

(a) recover from the owner:

- (i) if the owner or the owner's agent failed to timely return the balance of the renter's deposit, the full deposit;
  - (ii) if the owner or the owner's agent failed to timely return the balance of the renter's prepaid rent, the full amount of the prepaid rent; and
  - (iii) a civil penalty of \$100; and
- (b) file an action in district court to enforce compliance with the provisions of this section.
- (2) In an action under Subsection (1)(b), the court shall award costs and attorney fees to the prevailing party if the court determines that the opposing party acted in bad faith.
- (3) A renter is not entitled to relief under this section if the renter fails to serve a notice in accordance with Subsection 57-17-3(3).
- (4) This section does not preclude an owner or a renter from recovering other damages to which the owner or the renter is entitled.

Amended by Chapter 258, 2015 General Session

## **Chapter 18**

### **Land Conservation Easement Act**

#### **57-18-1 Short title.**

This chapter is known as the "Land Conservation Easement Act."

Enacted by Chapter 155, 1985 General Session

#### **57-18-2 Definition and characteristics of conservation easement.**

- (1) As used in this chapter, "conservation easement" means an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open land.
- (2) A conservation easement is an interest in land and runs with the land benefited or burdened by the easement.
- (3) A conservation easement is valid whether it is appurtenant or in gross.
- (4) A conservation easement is enforceable by the holder to the easement and its successors and assigns. A conservation easement is enforceable against the grantor and its successors and assigns.

Enacted by Chapter 155, 1985 General Session

#### **57-18-3 Acquisition of conservation easement.**

A charitable organization which qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code or a governmental entity may acquire a conservation easement by purchase, gift, devise, grant, lease, or bequest.

Enacted by Chapter 155, 1985 General Session

#### **57-18-4 Requirements for creation.**

- (1) Any property owner may grant a conservation easement to any other qualified person as defined in Section 57-18-3 in the same manner and with the same effect as any other conveyance of an interest in real property.
- (2)
  - (a) A conservation easement shall be in writing and shall be recorded in the office of the recorder of the county in which the easement is granted.
  - (b) Within 10 days after a conservation easement is recorded, the owner of real property for which the conservation easement is granted shall deliver to the assessor of the county in which the property is located a copy of the conservation easement and proof that the conservation easement has been recorded.
  - (c) Before January 1, 2012, each owner of property subject to a conservation easement recorded before May 10, 2011, shall deliver to the assessor of the county in which the property is located a copy of the conservation easement and proof that the conservation easement has been recorded.
- (3) The instrument that creates a conservation easement shall identify and describe the land subject to the conservation easement by legal description, specify the purpose for which the easement is created, and include a termination date or a statement that the easement continue in perpetuity.
- (4) Any qualified person, as defined in Section 57-18-3, that receives a conservation easement shall disclose to the easement's grantor, at least three days prior to the granting of the easement, the types of conservation easements available, the legal effect of each easement, and that the grantor should contact an attorney concerning any possible legal and tax implications of granting a conservation easement.

Amended by Chapter 157, 2011 General Session

#### **57-18-5 Termination.**

A conservation easement may be terminated, in whole or in part, by release, abandonment, merger, nonrenewal, conditions set forth in the instrument creating the conservation easement, or in any other lawful manner in which easements may be terminated.

Enacted by Chapter 155, 1985 General Session

#### **57-18-6 Enforcement.**

- (1) A conservation easement may be enforced or protected by injunctive relief granted by a court in a proceeding initiated by the grantor or holder of the easement.
- (2) In addition to injunctive relief, the holder of a conservation easement is entitled to recover money damages.
- (3) The holder of a conservation easement may enter the real property burdened or benefited by the easement at reasonable times and in a reasonable manner to ensure compliance.

Enacted by Chapter 155, 1985 General Session

#### **57-18-7 Conservation easement not obtained through eminent domain -- Conservation easement may not interfere with eminent domain.**

- (1) No conservation easement, or right-of-way or access to a conservation easement may be obtained through the use of eminent domain.

- (2) The existence of a conservation easement may not defeat or interfere with the otherwise proper exercise of eminent domain under Title 78B, Chapter 6, Part 5, Eminent Domain.

Amended by Chapter 3, 2008 General Session

## **Chapter 19**

### **Timeshare and Camp Resort Act**

#### **57-19-1 Short title.**

This chapter is known and may be cited as the "Timeshare and Camp Resort Act."

Enacted by Chapter 73, 1987 General Session

#### **57-19-2 Definitions.**

As used in this chapter:

- (1) "Accommodation" means:
- (a) a hotel or motel room;
  - (b) a condominium or cooperative unit;
  - (c) a cabin;
  - (d) a lodge;
  - (e) an apartment; or
  - (f) a private or commercial structure designed for overnight occupancy by one or more individuals.
- (2) "Advertisement" means a written, printed, oral, audio, electronic, or visual offer that:
- (a) is made by direct or general solicitation to one or more individuals; and
  - (b)
    - (i) contains an offer to sell an interest; or
    - (ii) contains a solicitation to visit or obtain additional information about a development.
- (3) "Amendment" means a change to an approved registration that is required under Section 57-19-9 or by a division rule made under this chapter.
- (4) "Association" means an organized body consisting solely of owners of timeshare interests in a timeshare development, including developers or purchasers.
- (5) "Business day" means a day other than a Saturday, Sunday, or state or federal holiday.
- (6) "Camping site" means a space designed or promoted for the purpose of locating a trailer, tent, tent trailer, recreational vehicle, pickup camper, motor home, or other similar device used for land-based portable housing.
- (7) "Camp resort" means an enterprise that has as its primary purpose the offering of a camp resort interest.
- (8) "Camp resort interest" means the right to use and occupy a camping site.
- (9) "Consolidation" means the registration of one or more additional sites or interests in a development after the division approves the development's registration.
- (10) "Developer" means a person that:
- (a) establishes, owns, offers, sells, or operates a timeshare development or camp resort; or
  - (b) engages one or more other persons to establish, own, offer, sell, or operate a timeshare development or camp resort on the person's behalf.
- (11)

- (a) "Development" means an enterprise with the primary purpose of offering an interest in a camp resort or timeshare development.
- (b) "Development" includes:
  - (i) a single-site development; or
  - (ii) a multiple-site development.
- (12) "Director" means the director of the division.
- (13) "Direct sales presentation" means an in-person, telephonic, or Internet-based communication that presents an offer to purchase an interest in a development to one or more prospective purchasers.
- (14) "Division" means the Division of Real Estate of the Department of Commerce.
- (15) "Executive director" means the executive director of the Department of Commerce.
- (16)
  - (a) "Interest" means a right that a purchaser receives in exchange for consideration to use and occupy a camping site or an accommodation in a development:
    - (i) on a recurring basis; and
    - (ii) for a period of time that is less than one year during any given year, regardless of whether the time is determined in advance.
  - (b) "Interest" includes a membership agreement, sale, lease, deed, license, or right-to-use agreement.
- (17) "Offer" means a solicitation solely intended to result in a person purchasing an interest in a development.
- (18) "Property report" means the form of a written disclosure described in Section 57-19-11.
- (19) "Purchaser" means a person who purchases an interest in a development.
- (20) "Registration" means:
  - (a) for a development, an approved application for registration described in Section 57-19-5; or
  - (b) for a salesperson, an approved application for registration described in Section 57-19-15.
- (21) "Renewal" or "renew" means extending a development's or a salesperson's registration for an additional period on or before the registration's expiration date.
- (22)
  - (a) "Sale" or "sell" means selling an interest in a development for value.
  - (b) "Sale" or "sell" does not include charging a reasonable fee to offset the administrative costs of transferring an interest in a development.
- (23)
  - (a) "Salesperson" means an individual who, for compensation and as agent for another, is engaged in obtaining commitments of persons to purchase an interest in a development by making direct sales presentations to those persons.
  - (b) "Salesperson" does not include a purchaser or an owner of a timeshare interest engaged in the referral of persons without making a direct sales presentation.
- (24)
  - (a) "Site" means a geographic location where one or more camping sites or accommodations are located.
  - (b) "Site" includes a geographic location where one or more camping sites or accommodations are located that is constructed in phases and is under common management.
- (25) "Timeshare development" means an enterprise with the primary purpose of offering a timeshare interest, including an interest that gives the purchaser the right to use and occupy an accommodation at a single- or multiple-site development.

(26) "Timeshare estate" means a small, undivided fractional fee interest in real property by which the purchaser does not receive any right to use an accommodation except as provided by contract, declaration, or other instrument defining a legal right.

(27)

- (a) "Timeshare interest" means a right to occupy fixed or variable accommodations during three or more separate fixed or variable time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.
- (b) "Timeshare interest" includes a timeshare estate.

Amended by Chapter 255, 2016 General Session

### **57-19-3 Rules.**

The director may make, amend, and repeal rules, forms, and orders when necessary to carry out the provisions of this chapter.

Enacted by Chapter 73, 1987 General Session

### **57-19-4 Unregistered sales prohibited.**

Except as provided in Section 57-19-26, it is unlawful for a person to offer or sell in this state an interest in a development unless the development is registered under this chapter or the person holds a temporary permit described in Section 57-19-6.

Amended by Chapter 255, 2016 General Session

### **57-19-5 Registration -- Filing application.**

- (1) A person may apply for registration of a development by filing with the division:
  - (a) an application in the form prescribed by the director;
  - (b) the written disclosure described in Section 57-19-11; and
  - (c) financial statements and other information that the director may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as being reasonably necessary to determine whether the requirements of this chapter have been met and whether any of the events specified in Subsection 57-19-13(1)(g) have occurred.
- (2) An interest in a development that is encumbered by a lien, mortgage, or other encumbrance may not be accepted for registration or offered to the public unless:
  - (a) adequate release or nondisturbance clauses are contained in the encumbering instruments to reasonably assure that the purchaser's interest in the development will not be defeated; or
  - (b) the division accepts other equivalent assurances that, in the division's opinion, meet the purposes of this Subsection (2).
- (3)
  - (a) A person who applies for a development registration shall include with the application a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for each interest over 100, up to a maximum of \$2,500 for each application.
  - (b) If the division determines that an on-site inspection of the development is necessary, the development shall pay the division the actual amount of the costs and expenses incurred by the division in performing the on-site inspection.
- (4) A person may add an additional site or interest to an approved development registration by:
  - (a) filing an application for consolidation accompanied by an additional fee of \$200 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application; and

- (b) providing the information required under Subsection (1) for each additional site or interest.

Amended by Chapter 255, 2016 General Session

**57-19-6 Effective date of application.**

- (1) An application for registration filed pursuant to Section 57-19-5 is effective upon the expiration of 30 business days following its filing with the director, unless:
  - (a) an order denying the application pursuant to Section 57-19-13 is in effect;
  - (b) a prior effective date has been ordered by the director; or
  - (c) the director has, before that date, notified the applicant of a defect in the registration application.
- (2) An applicant shall consent to the delay of effectiveness until the director by order declares the registration to be effective.
- (3)
  - (a) Notwithstanding Section 57-19-4, the division may grant a developer a temporary permit that allows a developer to advertise, offer, or sell an interest:
    - (i) before the developer's application for registration is approved; and
    - (ii) for a period of 30 days or less.
  - (b) To obtain a temporary permit, the developer shall:
    - (i) submit an application to the division for a temporary permit in the form required by the division;
    - (ii) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary permit fee of \$100;
    - (iii) provide evidence acceptable to the division that all funds received by the developer or marketing agent will be placed into an independent escrow with instructions that funds will not be released until a final registration has been granted;
    - (iv) give to each purchaser and potential purchaser a copy of the proposed property report that the developer has submitted to the division with the initial application; and
    - (v) give to each purchaser the opportunity to cancel the purchase in accordance with Section 57-19-12.
  - (c) Upon the issuance of an approved registration, a purchaser shall have an additional opportunity to cancel the purchase if the division determines that there is a substantial difference in the disclosures contained in the final property report and those given to the purchaser in the proposed property report.
- (4)
  - (a) Notwithstanding Section 57-19-4, a developer or a person acting on behalf of a developer may market and accept a reservation and deposit from a prospective purchaser before submitting to the division an application for registration or a temporary permit if:
    - (i) the deposit is placed in a non-interest bearing escrow account with a licensed real estate broker, a title company, or another escrow that the division approves in advance; and
    - (ii) the deposit is guaranteed to be fully refundable at any time at the request of the prospective purchaser.
  - (b) A deposit that a prospective purchaser tenders under Subsection (4)(a) may not be released to the developer until after:
    - (i) the division approves the development's registration; and
    - (ii) the prospective purchaser executes a written purchase contract creating a binding obligation to purchase.

Amended by Chapter 255, 2016 General Session

**57-19-7 Prior permits.**

Any permit to market a development issued by the division before April 27, 1987, is considered to be an effective registration, but is subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit.

Amended by Chapter 255, 2016 General Session

**57-19-8 Filing proposed documents.**

- (1) Every developer shall file with the director at least five business days before using any of the following in this state:
  - (a) the proposed form of the developer's sales contracts; and
  - (b) a copy or the text of any supplements to the written disclosure required under Section 57-19-11.
- (2) If the text, rather than a copy, of the materials described in Subsection (1) is filed, the developer shall file the copy, including an electronic version, of the materials with the director within five business days after the day on which the materials are first used.
- (3) A developer shall notify the division within five business days if the developer is convicted in any court of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.
- (4) A developer shall notify the division within five business days if the developer files a petition in bankruptcy or if any other event occurs that could result in a material adverse effect on the development.
- (5)
  - (a) If any suit by or against a developer results in a court finding that the developer engaged in fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in a real estate transaction, the developer shall promptly give the division a copy of the final order, settlement agreement, consent agreement, or other document evidencing resolution of the case at the trial level, whether or not an appeal is anticipated.
  - (b) A developer's failure to comply with Subsection (5)(a) may, in the discretion of the division, constitute grounds for the division withholding any approval under this chapter.

Amended by Chapter 255, 2016 General Session

**57-19-9 Duration of registration -- Amendment and renewal -- Supplemental disclosure -- Notice of amendment.**

- (1) Registration of a development is effective for a period of one year and may, upon application, be renewed for successive periods of one year each.
- (2)
  - (a) A registration may be amended at any time, for any reason, by filing an amended application for registration.
  - (b) The amended registration shall become effective in accordance with Section 57-19-6.
- (3)

- (a) The developer shall supplement the property report as often as is necessary to keep the required information reasonably current.
  - (b) The supplements described in Subsection (3)(a) shall be filed with the director in accordance with Section 57-19-8.
- (4)
- (a) A developer shall provide timely notice to the director of any event that occurs that could result in a material adverse effect on the conduct of the operation of the development.
  - (b) In addition to the notification described in Subsection (4)(a), the developer shall, within 30 days after the day on which an event described in Subsection (4)(a) occurs, file an amendment to the registration disclosing the information previously provided.
- (5) Each application for renewal of a registration and each supplementary filing described in this section shall be accompanied by a fee of \$200.

Amended by Chapter 255, 2016 General Session

**57-19-10 Effect of application or registration -- Misleading statements to prospective purchasers a misdemeanor.**

- (1) Neither the fact that an application for registration or the written disclosures required by this chapter have been filed, nor the fact that a development has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does either of these facts mean that the director has determined in any way the merits or qualifications of, or recommended or given approval to, any person, developer, or transaction involving an interest in a development.
- (2) It is a class A misdemeanor to make or cause to be made to any purchaser or prospective purchaser any offering or document filed under this chapter that is untrue, incomplete, or misleading.

Amended by Chapter 255, 2016 General Session

**57-19-11 Disclosure required.**

- (1) Except as provided in Section 57-19-26, any person who sells or offers to sell an interest in a development located in this state, or who sells or offers to sell in this state an interest in a development located outside of this state, shall provide to a prospective purchaser, before the prospective purchaser signs an agreement to purchase an interest in the development or gives any item of value for the purchase of an interest in the development, a written statement that provides a full and fair disclosure of information regarding the development and the purchaser's rights and obligations associated with the purchase of an interest in the development.
- (2) The written disclosure described in Subsection (1):
- (a) may include electronic files; and
  - (b) shall:
    - (i) be on the property report form required by the division; and
    - (ii) include:
      - (A) the name and address of the developer;
      - (B) a statement regarding whether the developer has ever been convicted of a felony or any misdemeanor involving theft, fraud, or dishonesty, or enjoined from, assessed any civil penalty for, or found to have engaged in the violation of any law designed to protect consumers;

- (C) a brief description of the developer's experience in timeshare, camp resort, or any other real estate development;
- (D) a brief description of the interest that is being offered in the development;
- (E) a description of any provisions to protect the purchaser's interest from loss due to foreclosure on any underlying financial obligation of the development;
- (F) a statement that the development will not issue more interests during a 12-month period than the development can accommodate during the 12-month period;
- (G) any event that has occurred since the date of the offer that may have a material adverse effect on the operation of the development; and
- (H) any other information the director considers necessary for the protection of purchasers.

Amended by Chapter 255, 2016 General Session

**57-19-12 Purchaser's right to cancel.**

- (1)
  - (a) An agreement to purchase an interest in a development may be cancelled, at the option of the purchaser, if:
    - (i) the purchaser delivers a written notice of cancellation to the developer at the developer's business address by:
      - (A) hand; or
      - (B) certified mail, return receipt requested, or a delivery service that provides proof of delivery; and
    - (ii) the notice is delivered or postmarked not later than midnight of the fifth business day after the day on which the agreement is signed.
  - (b) In computing the number of business days for purposes of this section, the day on which the agreement was signed is not included.
  - (c) Within 30 days after the day on which the developer receives a timely notice of cancellation, the developer shall refund any money or other consideration paid by the purchaser.
- (2) Every agreement to purchase an interest in a development that is subject to this chapter shall include the following statement in at least 10-point bold upper-case type, immediately preceding the space for the purchaser's signature: "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR A DELIVERY SERVICE THAT PROVIDES PROOF OF DELIVERY, WRITTEN NOTICE OF CANCELLATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH BUSINESS DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING THE NUMBER OF BUSINESS DAYS, THE DAY ON WHICH THE CONTRACT IS SIGNED IS NOT INCLUDED."

Amended by Chapter 255, 2016 General Session

**57-19-13 Suspension, revocation, or denial of registration -- Fine.**

- (1) Subject to Section 57-19-17, if the director finds that an applicant or developer has engaged in an act described in Subsection (2), the director may:
  - (a) deny an application for registration of a development;
  - (b) suspend or revoke an existing registration; or
  - (c) except as provided in Subsection (3), impose a fine of not more than \$5,000.

- (2) Subsection (1) applies if the director finds that:
- (a) the developer's advertising or sales techniques or trade practices have been or are deceptive, false, or misleading;
  - (b) the developer fails to file a copy of the developer's sales contract forms as required under Section 57-19-8;
  - (c) the developer fails to comply with any provision of this chapter or any rule adopted under this chapter that materially affects or would affect the rights of a purchaser or prospective purchaser of an interest in a development, or that materially affects the administration of this chapter;
  - (d) the developer makes a fraudulent offer of an interest in a development to a purchaser or prospective purchaser of the interest;
  - (e) the developer's application or any amendment to an application is incomplete in any material respect;
  - (f) the developer's application or any amendment to an application contains material misrepresentations or omissions of material fact that are necessary to make the statements contained in the application or amendment not misleading;
  - (g) the developer or any officer or director of the developer has been:
    - (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;
    - (ii) enjoined from, assessed a civil penalty for, or found to have engaged in a violation of any law designed to protect consumers; or
    - (iii) engaged in dishonest practices in any industry involving sales to consumers;
  - (h) the developer has represented or is representing to purchasers in connection with the offer or sale of an interest in a development that any accommodations, related facilities, or amenities are planned, without reasonable grounds to believe that they will be completed within a reasonable time;
  - (i) the developer disposes, conceals, or diverts any funds or assets so as to defeat the rights of purchasers;
  - (j) the developer fails to provide to a purchaser a copy of the written disclosure required by Section 57-19-11; or
  - (k) the developer, the developer's successor in interest, or a managing association discloses a purchaser's name, address, or email address to an unaffiliated entity without first obtaining written consent from the purchaser, unless the disclosure is in response to a subpoena or an order of a court or administrative tribunal.
- (3) The authority to impose a fine under this section does not apply to Subsection (2)(e).
- (4) Notwithstanding Subsection (2)(k), a developer shall, upon request by the division, provide the division a list of each purchaser's name, address, and email address.

Amended by Chapter 255, 2016 General Session

**57-19-14 Registration of salesperson.**

Except as provided in Section 57-19-26, it is unlawful for a person to act as a salesperson and market a development in this state without first registering under this chapter as a salesperson.

Amended by Chapter 255, 2016 General Session

**57-19-15 Application for registration of salesperson.**

- (1) A person may apply for registration as a salesperson under this chapter by filing with the director an application in the form prescribed by the director, including:

- (a) a statement regarding whether the applicant has ever been:
    - (i) convicted of:
      - (A) a felony; or
      - (B) a misdemeanor involving theft, fraud, or dishonesty; or
    - (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the violation of a law designed to protect a consumer;
  - (b)
    - (i) a statement describing the applicant's employment history for the five years immediately preceding the day on which the application is filed; and
    - (ii) a statement regarding whether a termination of employment during the period described in Subsection (1)(b)(i) is a result of theft, fraud, or an act of dishonesty;
  - (c) evidence of the applicant's honesty, integrity, truthfulness, and reputation; and
  - (d) any other information that the director, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, considers necessary to protect a purchaser's interests.
- (2)
- (a) Notwithstanding the requirements for a regulatory fee under Section 63J-1-504, at the time an applicant files an application, the applicant shall pay to the division a fee of \$100.
  - (b) The fee for registration described in Subsection (2)(a) is waived for a person licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.
- (3)
- (a) Registration as a salesperson is effective for two years after the day on which the registration is approved by the director, unless the director specifies otherwise.
  - (b) To renew a registration, a salesperson shall:
    - (i) file a form prescribed by the director for that purpose; and
    - (ii) pay a renewal fee of \$100.

Amended by Chapter 255, 2016 General Session

**57-19-16 Denial, revocation, or suspension of registration of salesperson -- Fine.**

- (1) Subject to Section 57-19-17, if the division finds that an applicant or salesperson has engaged in an act described in Subsection (2), the division may:
  - (a) deny an application for registration as a salesperson;
  - (b) suspend or revoke an existing registration; or
  - (c) impose a civil penalty not to exceed \$5,000.
- (2) Subsection (1) applies if the division finds that the applicant or salesperson:
  - (a) files, or causes to be filed, with the division a document that contains untrue or misleading information;
  - (b) makes an untrue or misleading statement of material fact;
  - (c) fails to state a material fact that is necessary in order to make the statements made not misleading in light of the circumstances under which the statements are made;
  - (d) employs a device, scheme, or artifice to defraud, or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person;
  - (e) subsequent to the effective date of registration as a salesperson, is:
    - (i) convicted of:
      - (A) a felony; or
      - (B) a misdemeanor involving theft, fraud, or dishonesty; or
    - (ii) enjoined from, assessed a civil penalty for, or found to have engaged in a violation of any law designed to protect consumers;

- (f) violates this chapter;
- (g) engages in an activity that constitutes dishonest dealing; or
- (h) engages in unprofessional conduct as defined by statute or rule made by the director.

Amended by Chapter 255, 2016 General Session

**57-19-17 Administrative procedures.**

- (1) The director may summarily deny an application for registration under any of the provisions of Section 57-19-13 or 57-19-16. If a registration is denied, the applicant may, within 10 days after receipt of notice of the denial, request a hearing before an administrative law judge. The director shall schedule the hearing within 30 days after receipt of the applicant's request and give notice of the hearing in writing to the applicant, specifying the reasons for denial of the registration. If, as a result of the hearing, it is determined that the applicant is qualified to be registered, the registration shall be issued.
- (2) Before an existing registration is suspended or revoked, or a fine imposed, the director shall schedule a hearing before an administrative law judge and give notice in writing to the affected person as prescribed in Title 13, Chapter 1, Department of Commerce, and the rules of procedure for hearings before the Department of Commerce. If, as a result of the hearing, the administrative law judge finds that there has been a violation of this chapter, the registration shall be suspended or revoked, or a fine imposed, by written order of the director in concurrence with the executive director.
- (3) The developer or salesperson has the right to appear at the hearing, in person or by counsel, to be heard and to examine witnesses appearing in connection with the complaint. At the hearing, all witnesses shall be sworn by the administrative law judge, and stenographic notes or a tape recording of the proceeding shall be taken and filed as a part of the record in the case. Any party to the proceeding shall be furnished a copy of the stenographic notes or tape recording at a reasonable cost. The administrative law judge shall render a decision within 60 days after the completion of the hearing. The executive director and the director shall concurrently make the final decision and promptly notify the parties to the proceedings, in writing, of the ruling, order, or decision.
- (4) The developer or salesperson, or any person aggrieved, may appeal any adverse ruling, order, or decision of the executive director and the director to the district court for the county in which the hearing was held, within 30 days from the date of service of notice of the ruling, order, or decision upon him. At the time of filing the notice of appeal, the appellant shall file with the notice a bond for costs on appeal in the amount of \$200, conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed.

Amended by Chapter 225, 1989 General Session

**57-19-18 Investigation -- Publication.**

- (1) The director may make any investigations or requests for information, within or outside of this state, that he considers necessary:
  - (a) to determine whether any registration under this chapter should be granted, denied, or revoked;
  - (b) to determine whether any person has violated or is about to violate any of the provisions of this chapter or any rule or order under this chapter; or
  - (c) to aid in the enforcement of this chapter.

- (2) The director may publish information concerning any violation of this chapter or any rule or order under this chapter.

Enacted by Chapter 73, 1987 General Session

**57-19-19 Subpoenas -- Evidence.**

- (1) For the purposes of any investigation or proceeding under this chapter, the director, or any officer designated by him, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant or material to the inquiry.
- (2) A person who disobeys any subpoena lawfully issued by the director, or who refuses to testify to any matters regarding which he may be lawfully interrogated, is subject to the provisions of Section 78B-6-313.

Amended by Chapter 3, 2008 General Session

**57-19-20 Injunctive relief -- Cease and desist order.**

- (1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, and that it would be in the public interest to stop those acts or practices, the director may either:
  - (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or
  - (b) issue an administrative cease and desist order.
- (2) If an administrative cease and desist order is issued pursuant to Subsection (1), the person upon whom the order is served may, within 10 days after receiving the order, request that a hearing be held before an administrative law judge. If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. Pending the hearing, the order remains in effect.
- (3) If, at the hearing, a finding is made that there has been a violation of this chapter, the director, with the concurrence of the executive director, may issue an order making the cease and desist order permanent. If no hearing is requested, and if the person fails to cease the act or practice, or after discontinuing the act or practice again commences it, the director shall file suit in the district court of the county in which the act or practice occurred, or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.
- (4) Whether or not the director has issued a cease and desist order, the attorney general, in the name of the state or of the director, may bring an action in any court of competent jurisdiction to enjoin any act or practice constituting a violation of any provision of this chapter, and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

Amended by Chapter 382, 2008 General Session

**57-19-21 Voidable agreements.**

- (1) Any agreement to purchase an interest in a development that violates Section 57-19-4 or 57-19-14 may, at the option of the purchaser, be voided and the purchaser's entire consideration recovered together with interest at the legal rate, costs, and reasonable attorney fees.
- (2) No suit under this section may be brought more than two years after the later of:

- (a) the day on which the agreement is signed; or
- (b) the day on which the purchaser knew or reasonably should have known of the violation.

Amended by Chapter 255, 2016 General Session

**57-19-22 Violation a misdemeanor.**

Any person who willfully violates any provision of this chapter is guilty of a class B misdemeanor.

Amended by Chapter 241, 1991 General Session

**57-19-23 Prosecution.**

The director may refer any available evidence concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may, in his discretion, with or without such a referral, institute the appropriate civil or criminal proceedings under this chapter.

Enacted by Chapter 73, 1987 General Session

**57-19-24 Violation of Consumer Sales Practice Act.**

For purposes of applying Title 13, Chapter 11, Utah Consumer Sales Practices Act, any material violation of the provisions of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

Enacted by Chapter 73, 1987 General Session

**57-19-25 Remedies nonexclusive.**

The remedies provided in this chapter are cumulative and nonexclusive, and do not affect any other remedy available at law.

Enacted by Chapter 73, 1987 General Session

**57-19-26 Exemptions.**

- (1) Unless entered into for the purpose of evading the provisions of this chapter, the following transactions are exempt from registration:
  - (a) an isolated transaction by an owner of an interest in a development or by a person holding the owner's executed power of attorney;
  - (b) an offer or sale by a governmental entity; and
  - (c) a resale of an interest that is:
    - (i) acquired:
      - (A) by the developer who initially registered the development or by the managing association of the development; and
      - (B) through a foreclosure, quitclaim deed, deed in lieu of foreclosure, or equivalent means;
    - (ii) not offered as part of a development that includes one or more interests that are unregistered or have been registered by a different developer or as part of a different development; and
    - (iii) closed after the developer or managing association provides a purchaser the disclosures required by Section 57-19-11 and the right to rescind required by Section 57-19-12.

- (2) After a resale by a developer or managing association that is claimed to be exempt under Subsection (1)(c), the division retains jurisdiction to:
  - (a) investigate a complaint regarding the resale; and
  - (b) if applicable, take an administrative action against the developer or managing association on the basis of unprofessional conduct, as described in Section 57-19-13.
- (3)
  - (a) The director may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or by order, exempt any person from any requirement of this chapter if the director finds that the offering of an interest in a development is essentially noncommercial.
  - (b) The offering of an interest in a development that has 10 or fewer interests is considered essentially noncommercial.
  - (c) A person who does not meet the requirements described in Subsection (3)(b), but believes that a proposed offering of more than 10 interests in a development is essentially noncommercial, may request an order of exemption from the director.
  - (d) To request an order of exemption under this section, a person shall submit to the director a request for agency action in accordance with Section 63G-4-201.

Amended by Chapter 255, 2016 General Session

## **Chapter 20**

### **Local Rent Control Prohibition**

#### **57-20-1 Rent and fee control prohibition.**

- (1) A county, city, or town may not enact an ordinance or resolution that would control rents or fees on private residential property unless it has the express approval of the Legislature.
- (2) This section does not impair the right of a state agency, county, city, or town to enforce its zoning, building, and planning authority.

Amended by Chapter 365, 2006 General Session

## **Chapter 21**

### **Utah Fair Housing Act**

#### **57-21-1 Short title.**

This chapter is known as the "Utah Fair Housing Act."

Enacted by Chapter 233, 1989 General Session

#### **57-21-2 Definitions.**

As used in this chapter:

- (1) "Affiliate" means the same as that term is defined in Section 16-6a-102.
- (2) "Aggrieved person" includes a person who:
  - (a) claims to have been injured by a discriminatory housing practice; or
  - (b) believes that the person will be injured by a discriminatory housing practice that is about to occur.

- (3) "Commission" means the Labor Commission.
- (4) "Complainant" means an aggrieved person, including the director, who has commenced a complaint with the division.
- (5) "Conciliation" means the attempted resolution of an issue raised in a complaint of discriminatory housing practices by the investigation of the complaint through informal negotiations involving the complainant, the respondent, and the division.
- (6) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.
- (7) "Conciliation conference" means the attempted resolution of an issue raised in a complaint or by the investigation of a complaint through informal negotiations involving the complainant, the respondent, and the division. The conciliation conference is not subject to Title 63G, Chapter 4, Administrative Procedures Act.
- (8) "Covered multifamily dwelling" means:
  - (a) a building consisting of four or more dwelling units if the building has one or more elevators; and
  - (b) the ground floor units in other buildings consisting of four or more dwelling units.
- (9) "Director" means the director of the division or a designee.
- (10)
  - (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
  - (b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. Sec. 802.
- (11) "Discriminate" includes segregate or separate.
- (12) "Discriminatory housing practice" means an act that is unlawful under this chapter.
- (13) "Division" means the Division of Antidiscrimination and Labor established under the commission.
- (14) "Dwelling" means:
  - (a) a building or structure, or a portion of a building or structure, occupied as, designed as, or intended for occupancy as a residence of one or more families; or
  - (b) vacant land that is offered for sale or lease for the construction or location of a dwelling as described in Subsection (14)(a).
- (15)
  - (a) "Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with:
    - (i) a parent or another person having legal custody of the one or more individuals; or
    - (ii) the designee of the parent or other person having custody, with the written permission of the parent or other person.
  - (b) The protections afforded against discrimination on the basis of familial status apply to a person who:
    - (i) is pregnant;
    - (ii) is in the process of securing legal custody of any individual who has not attained the age of 18 years; or
    - (iii) is a single individual.
- (16) "Gender identity" has the meaning provided in the Diagnostic and Statistical Manual (DSM-5). A person's gender identity can be shown by providing evidence, including, but not limited to, medical history, care or treatment of the gender identity, consistent and uniform assertion of the

gender identity, or other evidence that the gender identity is sincerely held, part of a person's core identity, and not being asserted for an improper purpose.

- (17) "National origin" means the place of birth of an individual or of any lineal ancestors.
- (18) "Person" includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.
- (19) "Presiding officer" has the same meaning as provided in Section 63G-4-103.
- (20) "Real estate broker" or "salesperson" means a principal broker, an associate broker, or a sales agent as those terms are defined in Section 61-2f-102.
- (21) "Respondent" means a person against whom a complaint of housing discrimination has been initiated.
- (22) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- (23) "Sexual orientation" means an individual's actual or perceived orientation as heterosexual, homosexual, or bisexual.
- (24) "Source of income" means the verifiable condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

Amended by Chapter 13, 2015 General Session

**57-21-2.5 Supremacy over local regulations -- No special class created for other purposes.**

- (1) This chapter supersedes and preempts any ordinance, regulation, standard, or other legal action by a local government entity, a state entity, or the governing body of a political subdivision that relates to the prohibition of discrimination in housing.
- (2) This chapter shall not be construed to create a special or protected class for any purpose other than housing.

Enacted by Chapter 13, 2015 General Session

**57-21-2.7 Nonseverability.**

Laws of Utah 2015, Chapter 13, is the result of the Legislature's balancing of competing interests. Accordingly, if any phrase, clause, sentence, provision, or subsection enacted or amended in this chapter by Laws of Utah 2015, Chapter 13, is held invalid in a final judgment by a court of last resort, the remainder of the enactments and amendments of Laws of Utah 2015, Chapter 13, affecting this chapter shall be thereby rendered without effect and void.

Enacted by Chapter 13, 2015 General Session

Revisor instructions Chapter 13, 2015 General Session

**57-21-3 Exemptions -- Sale by private individuals -- Nonprofit organizations -- Noncommercial transactions.**

- (1) This chapter does not apply to a single-family dwelling unit sold or rented by its owner if:
  - (a) the owner is not a partnership, association, corporation, or other business entity;
  - (b) the owner does not own an interest in four or more single-family dwelling units held for sale or lease at the same time;

- (c) during a 24-month period, the owner does not sell two or more single-family dwelling units in which the owner was not residing or was not the most recent resident at the time of sale;
  - (d) the owner does not retain or use the facilities or services of a real estate broker or salesperson; and
  - (e) the owner does not use a discriminatory housing practice under Subsection 57-21-5(2) in the sale or rental of the dwelling.
- (2) This chapter does not apply to a dwelling or a temporary or permanent residence facility if:
- (a) the discrimination is by sex, sexual orientation, gender identity, or familial status for reasons of personal modesty or privacy, or in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution or the Utah Constitution; and
  - (b) the dwelling or the temporary or permanent residence facility is:
    - (i) operated by a nonprofit or charitable organization;
    - (ii) owned by, operated by, or under contract with a religious organization, a religious association, a religious educational institution, or a religious society;
    - (iii) owned by, operated by, or under contract with an affiliate of an entity described in Subsection (2)(b)(ii); or
    - (iv) owned by or operated by a person under contract with an entity described in Subsection (2)(b)(ii).
- (3) This chapter, except for Subsection 57-21-5(2), does not apply to the rental of a room in a single-family dwelling by an owner-occupant of the single-family dwelling to another person if:
- (a) the dwelling is designed for occupancy by four or fewer families; and
  - (b) the owner-occupant resides in one of the units.
- (4)
- (a)
    - (i) Unless membership in a religion is restricted by race, color, sex, or national origin, this chapter does not prohibit an entity described in Subsection (4)(a)(ii) from:
      - (A) limiting the sale, rental, or occupancy of a dwelling or temporary or permanent residence facility the entity owns or operates for primarily noncommercial purposes to persons of the same religion; or
      - (B) giving preference to persons of the same religion when selling, renting, or selecting occupants for a dwelling, or a temporary or permanent residence facility, the entity owns or operates for primarily noncommercial purposes.
    - (ii) The following entities are entitled to the exemptions described in Subsection (4)(a)(i):
      - (A) a religious organization, association, or society; or
      - (B) a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.
  - (b)
    - (i) This chapter does not prohibit an entity described in Subsection (4)(b)(ii) from:
      - (A) limiting the sale, rental, or occupancy of a dwelling, or a temporary or permanent residence facility, the entity owns or operates to persons of a particular religion, sex, sexual orientation, or gender identity; or
      - (B) giving preference to persons of a particular religion, sex, sexual orientation, or gender identity when selling, renting, or selecting occupants for a dwelling, or a temporary or permanent residence facility, the entity owns or operates.
    - (ii) The following entities are entitled to the exemptions described in Subsection (4)(b)(i):
      - (A) an entity described in Subsection (4)(a)(ii); and

- (B) a person who owns a dwelling, or a temporary or permanent residence facility, that is under contract with an entity described in Subsection (4)(a)(ii).
- (5)
- (a) If the conditions of Subsection (5)(b) are met, this chapter does not prohibit a private club not open to the public, including a fraternity or sorority associated with an institution of higher education, from:
    - (i) limiting the rental or occupancy of lodgings to members; or
    - (ii) giving preference to its members.
  - (b) This Subsection (5) applies only if the private club owns or operates the lodgings as an incident to its primary purpose and not for a commercial purpose.
- (6) This chapter does not prohibit distinctions based on inability to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.
- (7) This chapter does not prohibit a nonprofit educational institution from:
- (a) requiring its single students to live in a dwelling, or a temporary or permanent residence facility, that is owned by, operated by, or under contract with the nonprofit educational institution;
  - (b) segregating a dwelling, or a temporary or permanent residence facility, that is owned by, operated by, or under contract with the nonprofit educational institution on the basis of sex or familial status or both:
    - (i) for reasons of personal modesty or privacy; or
    - (ii) in the furtherance of a religious institution's free exercise of religious rights under the First Amendment of the United States Constitution or the Utah Constitution; or
  - (c) otherwise assisting another person in making a dwelling, or a temporary or permanent residence facility, available to students on a sex-segregated basis as may be permitted by:
    - (i) regulations implementing the federal Fair Housing Amendments Act of 1988;
    - (ii) Title IX of the Education Amendments of 1972; or
    - (iii) other applicable law.
- (8) This chapter does not prohibit any reasonable local, state, or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling.
- (9) A provision of this chapter that pertains to familial status does not apply to the existence, development, sale, rental, advertisement, or financing of an apartment complex, condominium, or other housing development designated as housing for older persons, as defined by Title VIII of the Civil Rights Act of 1968, as amended.

Amended by Chapter 13, 2015 General Session

**57-21-4 Conduct and requirements excluded -- Defenses.**

- (1) Except as provided in Subsection 57-21-5(4), this chapter does not:
- (a) require any person to exercise a higher degree of care toward a person who has a disability than toward a person who does not have a disability;
  - (b) relieve any person of obligations generally imposed on all persons regardless of disability in a written lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement; or
  - (c) prohibit any program, service, facility, or privilege intended to habilitate, rehabilitate, or accommodate a person with a disability.
- (2) It is a defense to a complaint or action brought under this chapter that the complainant has a disability that, in the circumstances and even with reasonable accommodation, poses a serious

threat to the health or safety of the complainant or others. The burden of proving this defense is upon the respondent.

Amended by Chapter 114, 1993 General Session

**57-21-5 Discriminatory practices enumerated -- Protected persons, classes enumerated.**

- (1) It is a discriminatory housing practice to do any of the following because of a person's race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity:
  - (a)
    - (i) refuse to sell or rent after the making of a bona fide offer;
    - (ii) refuse to negotiate for the sale or rental; or
    - (iii) otherwise deny or make unavailable a dwelling from any person;
  - (b) discriminate against a person in the terms, conditions, or privileges:
    - (i) of the sale or rental of a dwelling; or
    - (ii) in providing facilities or services in connection with the dwelling; or
  - (c) represent to a person that a dwelling is not available for inspection, sale, or rental when the dwelling is available.
- (2) It is a discriminatory housing practice to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement, or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity, or expresses any intent to make any such preference, limitation, or discrimination.
- (3) It is a discriminatory housing practice to induce or attempt to induce, for profit, a person to buy, sell, or rent a dwelling by making a representation about the entry or prospective entry into the neighborhood of persons of a particular race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity.
- (4) A discriminatory housing practice includes:
  - (a) a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford that person full enjoyment of the premises, except that in the case of a rental, the landlord, where it is reasonable to do so, may condition permission for a modification on the renter agreeing to restore the interior of the premises, when reasonable, to the condition that existed before the modification, reasonable wear and tear excepted;
  - (b) a refusal to make a reasonable accommodation in a rule, policy, practice, or service when the accommodation may be necessary to afford the person equal opportunity to use and enjoy a dwelling; and
  - (c) in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct the covered multifamily dwellings in a manner that:
    - (i) the covered multifamily dwellings have at least one building entrance on an accessible route, unless it is impracticable to have one because of the terrain or unusual characteristics of the site; and
    - (ii) with respect to covered multifamily dwellings with a building entrance on an accessible route:

- (A) the public use and common use portions of the covered multifamily dwelling are readily accessible to and usable by a person with a disability;
  - (B) all the doors designed to allow passage into and within the covered multifamily dwellings are sufficiently wide to allow passage by a person with a disability who is in a wheelchair; and
  - (C) all premises within the covered multifamily dwellings contain the following features of adaptive design:
    - (I) an accessible route into and through the covered multifamily dwelling;
    - (II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
    - (III) reinforcements in the bathroom walls to allow later installation of grab bars; and
    - (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver about and use the space.
- (5) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity based upon a person's association with another person.

Amended by Chapter 13, 2015 General Session

**57-21-6 Discriminatory housing practices regarding residential real estate-related transactions -- Discriminatory housing practices regarding the provisions of brokerage services.**

- (1)
- (a) It is a discriminatory housing practice for a person whose business includes engaging in residential real estate-related transactions to discriminate against a person in making available a residential real estate-related transaction, or in the terms or conditions of the residential real estate-related transaction, because of race, color, religion, sex, disability, familial status, source of income, national origin, sexual orientation, or gender identity.
  - (b) Residential real estate-related transactions include:
    - (i) making or purchasing loans or providing other financial assistance:
      - (A) for purchasing, constructing, improving, repairing, or maintaining a dwelling; or
      - (B) secured by residential real estate; or
    - (ii) selling, brokering, or appraising residential real property.
- (2) It is a discriminatory housing practice to, because of race, color, religion, sex, disability, familial status, source of income, national origin, sexual orientation, or gender identity:
- (a) deny a person access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; or
  - (b) discriminate against a person in the terms or conditions of access, membership, or participation in the organization, service, or facility.
- (3) This section also applies to a discriminatory housing practice because of race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity based upon a person's association with another person.

Amended by Chapter 13, 2015 General Session

**57-21-7 Prohibited conduct -- Aiding or abetting in discriminatory actions -- Obstruction of division investigation -- Reprisals.**

- (1) It is a discriminatory housing practice to do any of the following:
  - (a) coerce, intimidate, threaten, or interfere with a person:
    - (i) in the exercise or enjoyment of a right granted or protected under this chapter;
    - (ii) because that person exercised a right granted or protected under this chapter; or
    - (iii) because that person aided or encouraged any other person in the exercise or enjoyment of a right granted or protected under this chapter;
  - (b) aid, abet, incite, compel, or coerce a person to engage in a practice prohibited by this chapter;
  - (c) attempt to aid, abet, incite, compel, or coerce a person to engage in a practice prohibited by this chapter;
  - (d) obstruct or prevent a person from complying with this chapter, or any order issued under this chapter;
  - (e) resist, prevent, impede, or interfere with the director or a division employee or representative in the performance of duty under this chapter; or
  - (f) engage in a reprisal against a person because that person:
    - (i) opposed a practice prohibited under this chapter; or
    - (ii) filed a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.
- (2) This section also applies to discriminatory housing practices because of race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity based upon a person's association with another person.

Amended by Chapter 13, 2015 General Session

**57-21-8 Jurisdiction -- Commission -- Division.**

- (1) The commission has jurisdiction over the subject of housing discrimination under this chapter and may delegate the responsibility of receiving, processing, and investigating allegations of discriminatory housing practices and enforcing this chapter to the division.
- (2) The commission may:
  - (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules necessary to administer this chapter;
  - (b) appoint and prescribe the duties of investigators, legal counsel, and other employees and agents that it considers necessary for the enforcement of this chapter; and
  - (c) issue subpoenas to compel the attendance of witnesses or the production of evidence for use in any investigation, conference, or hearing conducted by the division, and if a person fails to comply with a subpoena, petition a court of competent jurisdiction for an order to show cause why that person should not be held in contempt.
- (3) The division:
  - (a) may receive, reject, investigate, and determine complaints alleging discriminatory housing practices prohibited by this chapter;
  - (b) shall attempt conciliation between the parties through informal efforts, conference, persuasion, or other reasonable methods for the purposes of resolving the complaint;
  - (c) may seek prompt judicial action for appropriate temporary or preliminary relief pending final disposition of a complaint if the division and the commission conclude that an action is necessary to carry out the purposes of this chapter;
  - (d) may, with the commission, initiate a civil action in a court of competent jurisdiction to:
    - (i) enforce the rights granted or protected under this chapter;
    - (ii) seek injunctive or other equitable relief, including temporary restraining orders, preliminary injunctions, or permanent injunctions;

- (iii) seek damages;
- (iv) enforce final commission orders on the division's own behalf or on behalf of another person in order to carry out the purposes of this chapter; and
- (v) enforce the terms of a conciliation agreement in the event of a breach;
- (e) may initiate formal agency action under Title 63G, Chapter 4, Administrative Procedures Act; and
- (f) may promote public awareness of the rights and remedies under this chapter by implementing programs to increase the awareness of landlords, real estate agents, and other citizens of their rights and responsibilities under the Utah Fair Housing Act, but may not solicit fair housing complaints or cases.

Amended by Chapter 244, 2016 General Session

**57-21-9 Procedure for an aggrieved person to file a complaint -- Conciliation -- Investigation -- Determination.**

- (1) An aggrieved person may file a written verified complaint with the division within 180 days after an alleged discriminatory housing practice occurs.
- (2)
  - (a) The commission shall adopt rules consistent with the provisions of 24 C.F.R. Sec. 115.3 (1990), relating to procedures under related federal law, to govern:
    - (i) the form of the complaint;
    - (ii) the form of any answer to the complaint;
    - (iii) procedures for filing or amending a complaint or answer; and
    - (iv) the form of notice to parties accused of the acts or omissions giving rise to the complaint.
  - (b) The commission may, by rule, prescribe any other procedure pertaining to the division's processing of the complaint.
- (3) During the period beginning with the filing of the complaint and ending with the director's determination, the division shall, to the extent feasible, engage in conciliation with respect to the complaint.
- (4) The division shall commence proceedings to investigate and conciliate a complaint alleging a discriminatory housing practice within 30 days after the filing of the complaint. After the commencement of an investigation, any party may request that the commission review the proceedings to insure compliance with the requirements of this chapter.
- (5) The division shall complete the investigation within 100 days after the filing of the complaint, unless it is impracticable to do so. If the division is unable to complete the investigation within 100 days after the filing of the complaint, the division shall notify the complainant and respondent in writing of the reasons for the delay.
- (6)
  - (a) If, as a result of the division's investigation, the director determines that there is no reasonable cause to support the allegations in the complaint, the director shall issue a written determination dismissing the complaint.
  - (b) If the director dismisses the complaint pursuant to Subsection (6)(a), the complainant may request that the director reconsider the dismissal pursuant to Section 63G-4-302.
  - (c) Notwithstanding the provisions of Title 63G, Chapter 4, Administrative Procedures Act, the director's determination to dismiss a complaint or, in the case of a request for reconsideration, the director's order denying reconsideration is not subject to further agency action or direct judicial review. However, the complainant may commence a private action pursuant to Section 57-21-12.

- (7) If, as a result of the division's investigation of a complaint, the director determines that there is reasonable cause to support the allegations in the complaint, all of the following apply:
- (a) The division shall informally endeavor to eliminate or correct the discriminatory housing practice through a conciliation conference between the parties, presided over by the division. Nothing said or done in the course of the conciliation conference may be made public or admitted as evidence in a subsequent proceeding under this chapter without the written consent of the parties concerned.
  - (b) If the conciliation conference results in voluntary compliance with this chapter, a conciliation agreement, approved by the division, setting forth the resolution of the issues shall be executed by the parties. The parties or the division may enforce the conciliation agreement in an action filed in a court of competent jurisdiction.
  - (c) If the division is unable to obtain a conciliation agreement, the director shall issue a written determination stating the director's findings and ordering any appropriate relief under Section 57-21-11.

Amended by Chapter 244, 2016 General Session

**57-21-10 Judicial election or formal adjudicative hearing.**

- (1) If, pursuant to Subsection 57-21-9(7)(c), the director issues a written determination finding reasonable cause to believe that a discriminatory housing practice has occurred, or is about to occur, a respondent may obtain de novo review of the determination by submitting a written request for a formal adjudicative hearing to be conducted by the commission's Division of Adjudication in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to the director within 30 days from the date of issuance of the determination. If the director does not receive a timely request for review, the director's determination becomes the final order of the commission and is not subject to further agency action or direct judicial review.
- (2) If a respondent files a timely request for review pursuant to Subsection (1):
- (a) any respondent, complainant, or aggrieved party may elect to have the de novo review take place in a civil action in the district court rather than in a formal adjudicative hearing with the Division of Adjudication by filing an election with the commission in accordance with rules established by the commission pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form and time period for the election;
  - (b) the complainant shall file a complaint for review in the forum selected pursuant to Subsection (2)(a) within 30 days after the completion of the forum selection process; and
  - (c) the commission shall determine whether the director's determination is supported by substantial evidence.
- (3) If, pursuant to Subsection (2)(c), the commission determines that the director's determination is supported by substantial evidence, the commission shall provide legal representation on behalf of the aggrieved person, including the filing of a complaint for review as required by Subsection (2)(b), to support and enforce the director's determination in the de novo review proceeding. Notwithstanding any provisions of Title 63G, Chapter 4, Administrative Procedures Act, the commission's determination regarding the existence or nonexistence of substantial evidence to support the director's determination is not subject to further agency action or direct judicial review.
- (4) Upon timely application, an aggrieved person may intervene with respect to the issues to be determined in a formal adjudicative hearing or in a civil action brought under this section.
- (5) If a formal adjudicative hearing is elected, all of the following apply:

- (a) The presiding officer shall commence the formal adjudicative hearing within 150 days after the respondent files a request for review of the director's determination unless it is impracticable to do so.
- (b) The investigator who investigated the matter may not participate in the formal adjudicative hearing, except as a witness, nor may the investigator participate in the deliberations of the presiding officer.
- (c) Any party to the complaint may file a written request to the Division of Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.
- (d) A final order of the commission under this section is subject to judicial review as provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.
- (6) If a civil action is elected, the commission is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter.
- (7) The commission shall make final administrative disposition of the complaint alleging a discriminatory housing practice within one year after the filing of the complaint, unless it is impracticable to do so. If the commission is unable to make final administrative disposition within one year, the commission shall notify the complainant, respondent, and any other interested party in writing of the reasons for the delay.

Amended by Chapter 382, 2008 General Session

**57-21-11 Relief granted -- Civil penalties -- Enforcement of final order.**

- (1) Under Sections 57-21-9 and 57-21-10, if the director, presiding officer, commissioner, Appeals Board, or court finds reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, the director, presiding officer, commissioner, Appeals Board, or court may order, as considered appropriate:
  - (a) the respondent to cease any discriminatory housing practice;
  - (b) actual damages, reasonable attorneys' fees and costs to the aggrieved person; and
  - (c) any permanent or temporary injunction, temporary restraining order, or other appropriate order.
- (2) In addition to the relief granted to an aggrieved person under Subsection (1), in order to vindicate the public interest, the director, presiding officer, or court may also assess civil penalties against the respondent in an amount not exceeding:
  - (a) \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;
  - (b) \$25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five-year period ending on the date of the filing of the complaint; or
  - (c) \$50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this complaint.
- (3) The time periods in Subsections (2)(b) and (c) may be disregarded if the acts constituting the discriminatory housing practice are committed by the same natural person who has previously been adjudged to have committed a discriminatory housing practice.
- (4) The division may file a petition in a district court of competent jurisdiction for:
  - (a) the enforcement of a final department order; and
  - (b) for any appropriate temporary relief or restraining order necessary for the enforcement of a final commission order.

Amended by Chapter 375, 1997 General Session

**57-21-12 Other rights of action.**

- (1) In addition to the procedure outlined in Subsection 57-21-9(1), a person aggrieved by a discriminatory housing practice may commence a private civil action in a court of competent jurisdiction within two years after an alleged discriminatory housing practice occurred, within two years after the termination of an alleged discriminatory housing practice, or within two years after a breach of a conciliation agreement. The division shall inform the aggrieved person in writing about this option within 30 days after the aggrieved person files a complaint under Section 57-21-9.
- (2)
  - (a) Except as provided in Subsection (2)(b), the computation of this two-year time period does not include any time during which an administrative proceeding under this chapter was pending with respect to a complaint filed under this chapter.
  - (b) The tolling of the two-year time period does not apply to actions arising from a breach of a conciliation agreement.
- (3) An aggrieved person may commence a private civil action even though a complaint has been filed with the division, in which case the division is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter after:
  - (a) the beginning of a civil action brought by a complainant or aggrieved person; or
  - (b) the parties have reached an agreement in settlement of claims arising from the complaint.
- (4) An aggrieved person may not file a private civil action under this section if:
  - (a) the division has obtained a conciliation agreement, except for the purpose of enforcing the terms of the conciliation agreement; or
  - (b) a formal adjudicative hearing has been commenced under Section 57-21-10 regarding the same complaint.
- (5) Upon written application by a person alleging a discriminatory housing practice prohibited under this chapter in a private civil action, or by a person against whom the violations are alleged, the court may:
  - (a) appoint an attorney for the applicant; and
  - (b) authorize the commencement or continuation of a private civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.
- (6) Upon timely application, the division may intervene in a private civil action brought under this subsection if the division certifies that the case is of general importance.
- (7) In a private civil action, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may:
  - (a) order the respondent to cease any discriminatory housing practice;
  - (b) award to the plaintiff actual damages, punitive damages, and reasonable attorney fees and costs; and
  - (c) grant, as the court considers appropriate, any permanent or temporary injunction, temporary restraining order, or other order as may be appropriate, including civil penalties under Section 57-21-11.
- (8) This chapter does not preclude any private right of action by an aggrieved person based on otherwise applicable law not included in this chapter.

Amended by Chapter 13, 2015 General Session

**57-21-13 Disclosure of information.**

- (1) Conciliation agreements and the director's determination and order are public records.
- (2) Subject to Subsection (3), neither the commission nor its staff may divulge or make public information gained from any investigation, settlement negotiation, conciliation, hearing, or administrative proceeding before the commission, except as follows:
  - (a) Information used by the director in making any determination may be provided to all interested parties for the purpose of preparation for and participation in the investigation and any proceedings before the commission or court.
  - (b) General statistical information may be disclosed provided identities of individuals or parties are not disclosed.
  - (c) Information may be disclosed for inspection upon proper request by the attorney general or other legal representatives of the state or commission.
  - (d) Information may be disclosed for information and reporting requirements of the federal government.
- (3) The commission or its staff may not divulge or make public any information gained from any investigation, settlement negotiation, conciliation, hearing, or administrative proceeding before the commission if a privacy interest entitled to protection by law exists or the commission determines that disclosure will not further the purposes of this chapter.

Amended by Chapter 375, 1997 General Session

**57-21-14 Effect of federal action.**

The commencement of an action in a federal court of competent jurisdiction for relief under federal law based upon any act prohibited by this chapter bars the commencement or continuation of any adjudicative proceeding before the division or state court proceeding in connection with the same claims under this chapter.

Enacted by Chapter 114, 1993 General Session

**Chapter 22**  
**Utah Fit Premises Act**

**57-22-1 Short title.**

This chapter is known as the "Utah Fit Premises Act."

Enacted by Chapter 314, 1990 General Session

**57-22-2 Definitions.**

As used in this chapter:

- (1) "Owner" means the owner, lessor, or sublessor of a residential rental unit. A managing agent, leasing agent, or resident manager is considered an owner for purposes of notice and other communication required or allowed under this chapter unless the agent or manager specifies otherwise in writing in the rental agreement.

- (2) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use and occupancy of a residential rental unit.
- (3) "Renter" means any person entitled under a rental agreement to occupy a residential rental unit to the exclusion of others.
- (4) "Residential rental unit" means a renter's principal place of residence and includes the appurtenances, grounds, and facilities held out for the use of the residential renter generally, and any other area or facility provided to the renter in the rental agreement. It does not include facilities contained in a boarding or rooming house or similar facility, mobile home lot, or recreational property rented on an occasional basis.

Enacted by Chapter 314, 1990 General Session

**57-22-3 Duties of owners and renters -- Generally.**

- (1) Each owner and his agent renting or leasing a residential rental unit shall maintain that unit in a condition fit for human habitation and in accordance with local ordinances and the rules of the board of health having jurisdiction in the area in which the residential rental unit is located. Each residential rental unit shall have electrical systems, heating, plumbing, and hot and cold water.
- (2) Each renter shall cooperate in maintaining his residential rental unit in accordance with this chapter.
- (3) This chapter does not apply to breakage, malfunctions, or other conditions which do not materially affect the physical health or safety of the ordinary renter.
- (4) Any duty in this act may be allocated to a different party by explicit written agreement signed by the parties.

Enacted by Chapter 314, 1990 General Session

**57-22-4 Owner's duties.**

- (1) To protect the physical health and safety of the ordinary renter, an owner:
  - (a) may not rent the premises unless they are safe, sanitary, and fit for human occupancy; and
  - (b) shall:
    - (i) maintain common areas of the residential rental unit in a sanitary and safe condition;
    - (ii) maintain electrical systems, plumbing, heating, and hot and cold water;
    - (iii) maintain any air conditioning system in an operable condition;
    - (iv) maintain other appliances and facilities as specifically contracted in the rental agreement; and
    - (v) for buildings containing more than two residential rental units, provide and maintain appropriate receptacles for garbage and other waste and arrange for its removal, except to the extent that the renter and owner otherwise agree.
- (2) Except as otherwise provided in the rental agreement, an owner shall provide the renter at least 24 hours prior notice of the owner's entry into the renter's residential rental unit.
- (3) Before an owner and a prospective renter enter into a rental agreement, the owner shall:
  - (a) provide the prospective renter a written inventory of the condition of the residential rental unit, excluding ordinary wear and tear;
  - (b) furnish the renter a form to document the condition of the residential rental unit and then allow the resident a reasonable time after the renter's occupancy of the residential rental unit to complete and return the form; or

- (c) provide the prospective renter an opportunity to conduct a walkthrough inspection of the residential rental unit.
- (4) At or before the commencement of the rental term under a rental agreement, an owner shall:
  - (a) disclose in writing to the renter:
    - (i) the owner's name, address, and telephone number; or
    - (ii)
      - (A) the name, address, and telephone number of any person authorized to manage the residential rental unit; or
      - (B) the name, address, and telephone number of any person authorized to act for and on behalf of the owner for purposes of receiving notice under this chapter or performing the owner's duties under this chapter or under the rental agreement, if the person authorized to manage the residential rental unit does not have authority to receive notice under this chapter; and
  - (b) provide the renter:
    - (i) an executed copy of the rental agreement, if the rental agreement is a written agreement; and
    - (ii) a copy of any rules and regulations applicable to the residential rental unit.
- (5) An owner's failure to comply with a requirement of Subsection (2), (3), or (4) may not:
  - (a) be used by the renter as a basis to excuse the renter's compliance with a rental agreement; or
  - (b) give rise to any cause of action against the owner.

Amended by Chapter 98, 2012 General Session

**57-22-4.1 Failure to deliver possession of residential rental unit -- Renter's option to terminate rental agreement -- Abatement of rent.**

- (1) If an owner fails to deliver possession of a residential rental unit on the date provided in the rental agreement:
  - (a) the renter may, by written notice to the owner, terminate the rental agreement; or
  - (b) if the renter chooses not to terminate the rental agreement, rent abates until the owner delivers possession as provided in the rental agreement.
- (2) If a renter terminates a rental agreement under Subsection (1)(a), the owner shall, as promptly as reasonable, return to the renter all prepaid rent and any security deposit.

Enacted by Chapter 98, 2012 General Session

**57-22-5 Renter's duties -- Cleanliness and sanitation -- Compliance with written agreement -- Destruction of property, interference with peaceful enjoyment prohibited.**

- (1) Each renter shall:
  - (a) comply with the rules of the board of health having jurisdiction in the area in which the residential rental unit is located which materially affect physical health and safety;
  - (b) maintain the premises occupied in a clean and safe condition and shall not unreasonably burden any common area;
  - (c) dispose of all garbage and other waste in a clean and safe manner;
  - (d) maintain all plumbing fixtures in as sanitary a condition as the fixtures permit;
  - (e) use all electrical, plumbing, sanitary, heating, and other facilities and appliances in a reasonable manner;

- (f) occupy the residential rental unit in the manner for which it was designed, but the renter may not increase the number of occupants above that specified in the rental agreement without written permission of the owner;
  - (g) be current on all payments required by the rental agreement; and
  - (h) comply with each rule, regulation, or requirement of the rental agreement, including any prohibition on, or the allowance of, smoking tobacco products within the residential rental unit, or on the premises, or both.
- (2) A renter may not:
- (a) intentionally or negligently destroy, deface, damage, impair, or remove any part of the residential rental unit or knowingly permit any person to do so;
  - (b) interfere with the peaceful enjoyment of the residential rental unit of another renter; or
  - (c) unreasonably deny access to, refuse entry to, or withhold consent to enter the residential rental unit to the owner, agent, or manager for the purpose of making repairs to the unit.

Amended by Chapter 352, 2010 General Session

**57-22-5.1 Crime victim's right to new locks -- Domestic violence victim's right to terminate rental agreement -- Limits an owner relating to assistance from public safety agency.**

- (1) As used in this section:
- (a) "Crime victim" means a victim of:
    - (i) domestic violence, as defined in Section 77-36-1;
    - (ii) stalking as defined in Section 76-5-106.5;
    - (iii) a crime under Title 76, Chapter 5, Part 4, Sexual Offenses;
    - (iv) burglary or aggravated burglary under Section 76-6-202 or 76-6-203; or
    - (v) dating violence, consisting of verbal, emotional, psychological, physical, or sexual abuse of one person by another in a dating relationship.
  - (b) "Public safety agency" means a governmental entity that provides fire protection, law enforcement, ambulance, medical, or similar service.
- (2) An acceptable form of documentation of an act listed in Subsection (1) is:
- (a) a protective order protecting the renter issued pursuant to Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, subsequent to a hearing of which the petitioner and respondent have been given notice under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; or
  - (b) a copy of a police report documenting an act listed in Subsection (1).
- (3)
- (a) A renter who is a crime victim may require the renter's owner to install a new lock to the renter's residential rental unit if the renter:
    - (i) provides the owner with an acceptable form of documentation of an act listed in Subsection (1); and
    - (ii) pays for the cost of installing the new lock.
  - (b) An owner may comply with Subsection (3)(a) by:
    - (i) rekeying the lock if the lock is in good working condition; or
    - (ii) changing the entire locking mechanism with a locking mechanism of equal or greater quality than the lock being replaced.
  - (c) An owner who installs a new lock under Subsection (3)(a) may retain a copy of the key that opens the new lock.
  - (d) Notwithstanding any rental agreement, an owner who installs a new lock under Subsection (3)
    - (a) shall refuse to provide a copy of the key that opens the new lock to the perpetrator of the act listed in Subsection (1).

- (e) Notwithstanding Section 78B-6-814, if an owner refuses to provide a copy of the key under Subsection (3)(d) to a perpetrator who is not barred from the residential rental unit by a protective order but is a renter on the rental agreement, the perpetrator may file a petition with a court of competent jurisdiction within 30 days to:
    - (i) establish whether the perpetrator should be given a key and allowed access to the residential rental unit; or
    - (ii) whether the perpetrator should be relieved of further liability under the rental agreement because of the owner's exclusion of the perpetrator from the residential rental unit.
  - (f) Notwithstanding Subsection (3)(e)(ii), a perpetrator may not be relieved of further liability under the rental agreement if the perpetrator is found by the court to have committed the act upon which the landlord's exclusion of the perpetrator is based.
- (4) A renter who is a victim of domestic violence, as defined in Section 77-36-1, may terminate a rental agreement if the renter:
- (a) is in compliance with:
    - (i) all provisions of Section 57-22-5; and
    - (ii) all obligations under the rental agreement;
  - (b) provides the owner:
    - (i) written notice of termination; and
    - (ii) a protective order protecting the renter from a domestic violence perpetrator or a copy of a police report documenting that the renter is a victim of domestic violence and did not participate in the violence; and
  - (c) no later than the date that the renter provides a notice of termination under Subsection (4)(b) (i), pays the owner the equivalent of 45 days' rent for the period beginning on the date that the renter provides the notice of termination.
- (5) An owner may not:
- (a) impose a restriction on a renter's ability to request assistance from a public safety agency; or
  - (b) penalize or evict a renter because the renter makes reasonable requests for assistance from a public safety agency.

Amended by Chapter 279, 2011 General Session

**57-22-6 Renter remedies for deficient condition of residential rental unit.**

- (1) As used in this section:
- (a) "Corrective period" means:
    - (i) for a standard of habitability, three calendar days; and
    - (ii) for a requirement imposed by a rental agreement, 10 calendar days.
  - (b) "Deficient condition" means a condition of a residential rental unit that:
    - (i) violates a standard of habitability or a requirement of the rental agreement; and
    - (ii) is not caused by:
      - (A) the renter, the renter's family, or the renter's guest or invitee; and
      - (B) a use that would violate:
        - (I) the rental agreement; or
        - (II) a law applicable to the renter's use of the residential rental unit.
  - (c) "Notice of deficient condition" means the notice described in Subsection (2).
  - (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).
  - (e) "Renter remedy" means:
    - (i) a rent abatement remedy; or
    - (ii) a repair and deduct remedy.

(f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).

(g) "Standard of habitability" means a standard:

- (i) relating to the condition of a residential rental unit; and
- (ii) that an owner is required to ensure that the residential rental unit meets as required under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).

(2)

(a) If a renter believes that the renter's residential rental unit has a deficient condition, the renter may give the owner written notice as provided in Subsection (2)(b).

(b) A notice under Subsection (2)(a) shall:

- (i) describe each deficient condition;
- (ii) state that the owner has the corrective period, stated in terms of the applicable number of days, to correct each deficient condition;
- (iii) state the renter remedy that the renter has chosen if the owner does not, within the corrective period, take substantial action toward correcting each deficient condition;
- (iv) provide the owner permission to enter the residential rental unit to make corrective action; and
- (v) be served on the owner as provided in:
  - (A) Section 78B-6-805; or
  - (B) the rental agreement.

(3)

(a) As used in this Subsection (3), "dangerous condition" means a deficient condition that poses a substantial risk of:

- (i) imminent loss of life; or
- (ii) significant physical harm.

(b) If a renter believes that the renter's residential rental unit has a dangerous condition, the renter may notify the owner of the dangerous condition by any means that is reasonable under the circumstances.

(c) An owner shall:

- (i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous condition, commence remedial action to correct the dangerous condition; and
- (ii) diligently pursue remedial action to completion.

(d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

(4)

(a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before the end of the corrective period, toward correcting a deficient condition described in a notice of deficient condition:

- (i) if the renter chose the rent abatement remedy in the notice of deficient condition:
  - (A) the renter's rent is abated as of the date of the notice of deficient condition to the owner;
  - (B) the rental agreement is terminated;
  - (C) the owner shall immediately pay to the renter:
    - (I) the entire security deposit that the renter paid under the rental agreement; and
    - (II) a prorated refund for any prepaid rent, including any rent the renter paid for the period after the date on which the renter gave the owner the notice of deficient condition; and
  - (D) the renter shall vacate the residential rental unit within 10 calendar days after the expiration of the corrective period; or
- (ii) if the renter chose the repair and deduct remedy in the notice of deficient condition, and subject to Subsection (4)(c), the renter:

- (A) may:
  - (I) correct the deficient condition described in the notice of deficient condition; and
  - (II) deduct from future rent the amount the renter paid to correct the deficient condition, not to exceed an amount equal to two months' rent; and
- (B) shall:
  - (I) maintain all receipts documenting the amount the renter paid to correct the deficient condition; and
  - (II) provide a copy of those receipts to the owner within five calendar days after the beginning of the next rental period.
- (b) A renter is not entitled to a renter remedy if the renter is not in compliance with all requirements under Section 57-22-5.
- (c)
  - (i) If a residential rental unit is not fit for occupancy, an owner may:
    - (A) determine not to correct a deficient condition described in a notice of deficient condition; and
    - (B) terminate the rental agreement.
  - (ii) If an owner determines not to correct a deficient condition and terminates the rental agreement under Subsection (4)(c)(i):
    - (A) the owner shall:
      - (I) notify the renter in writing no later than the end of the corrective period; and
      - (II) within 10 calendar days after the owner terminates the rental agreement, pay to the renter:
        - (Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and
        - (Bb) any deposit due the renter;
    - (B) the rent shall be prorated to the date the owner terminates the rental agreement under Subsection (4)(c)(i); and
    - (C) the renter may not be required to vacate the residential rental unit sooner than 10 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).
- (5)
  - (a) After the corrective period expires, a renter may bring an action in district court to enforce the renter remedy that the renter chose in the notice of deficient condition.
  - (b) In an action under Subsection (5)(a), the court shall endorse on the summons that the owner is required to appear and defend the action within three business days.
  - (c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably refused to correct a deficient condition or failed to use due diligence to correct a deficient condition, the renter is entitled, in addition to the applicable renter remedy, to:
    - (i) any damages; and
    - (ii) court costs and a reasonable attorney fee.
  - (d) An owner who disputes that a condition of the residential rental unit violates a requirement of the rental agreement may file a counterclaim in an action brought against the owner under Subsection (5)(a).
- (6) An owner may not be held liable under this chapter for a claim for mental suffering or anguish.

Repealed and Re-enacted by Chapter 352, 2010 General Session

**57-22-7 Limitation on counties and municipalities.**

- (1) A county or municipality may not adopt an ordinance, resolution, or regulation that is inconsistent with this chapter.

- (2)
- (a) Subsection (1) may not be construed to limit the ability of a county or municipality to enforce an applicable administrative remedy with respect to a residential rental unit for a violation of a county or municipal ordinance, subject to Subsection (2)(b).
  - (b) A county or municipality's enforcement of an administrative remedy may not have the effect of:
    - (i) modifying the time requirements of a corrective period, as defined in Section 57-22-6;
    - (ii) limiting or otherwise affecting a tenant's remedies under Section 57-22-6; or
    - (iii) modifying an owner's obligation under this chapter to a tenant relating to the habitability of a residential rental unit.
- (3) A municipality with a good landlord program under Section 10-1-203.5 may not limit an owner's participation in the program or reduce program benefits to the owner because of renter or crime victim action that the owner is prohibited under Subsection 57-22-5.1(5) from restricting or penalizing.

Amended by Chapter 289, 2012 General Session

## **Chapter 23**

### **Real Estate Cooperative Marketing Act**

#### **57-23-1 Short title.**

This chapter is known as the "Real Estate Cooperative Marketing Act."

Enacted by Chapter 262, 1991 General Session

#### **57-23-2 Definitions.**

As used in this chapter:

- (1) "Cooperative" means a form of coownership of real estate in which:
  - (a) the fee interest in the real estate is held by a corporation, partnership, trust, or other legal entity;
  - (b) an individual's interest in the cooperative is evidenced in a form such as stock, participation shares, membership certificates, or similar instrument; and
  - (c) the participating individual's right of occupancy is demonstrated by a proprietary lease or similar instrument.
- (2) "Division" means the Division of Real Estate of the Department of Commerce.

Enacted by Chapter 262, 1991 General Session

#### **57-23-3 Administration by division.**

This chapter shall be administered by the Division of Real Estate.

Enacted by Chapter 262, 1991 General Session

#### **57-23-4 Exclusions.**

This chapter does not apply to:

- (1) an interest in real estate regulated under Title 57, Chapter 19, Timeshare and Camp Resort Act;
- (2) an offering for an interest in real estate which is regulated under:
  - (a) Title 61, Chapter 1, Utah Uniform Securities Act;
  - (b) the securities laws of any state; or
  - (c) federal securities laws; or
- (3) a sale of manufactured housing licensed under Title 58, Chapter 56, Building Inspector and Factory Built Housing Licensing Act, unless the sale is made in conjunction with an offering or sale of a cooperative interest under this chapter.

Amended by Chapter 14, 2011 General Session

**57-23-5 License required.**

Except as provided by Section 61-2f-202, an individual may not offer, sell, or otherwise dispose of a cooperative interest in this state unless the individual is licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, as a principal broker, associate broker, or sales agent.

Amended by Chapter 379, 2010 General Session

**57-23-6 Disclosure required.**

- (1) An individual may not offer, sell, or otherwise dispose of a cooperative interest in this state without making oral and written disclosure to the prospective purchaser regarding:
  - (a) the actual property interest being sold;
  - (b) the actual right of occupancy associated with that property interest;
  - (c) any encumbrance to which the property interest is subject; and
  - (d) the terms of any financing, refinancing, prior sale, resale, or loan assumption to which the property interest is subject.
- (2) The disclosure required under Subsection (1) must be made prior to signing the purchase contract, the proprietary lease, or similar documents intended by the parties to complete the sale or disposal of the cooperative interest.

Amended by Chapter 169, 1992 General Session

**57-23-7 Investigatory powers and proceedings of division.**

- (1) The division may:
  - (a) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order made by the division under this chapter;
  - (b) require or permit any person to file a statement in writing, under oath or otherwise as the division determines, as to all the facts and circumstances concerning the matter to be investigated.
- (2) For the purpose of any investigation or proceeding under this chapter:
  - (a) the division may administer oaths or affirmations; and
  - (b) upon its own motion or upon the request of any party, the division may:
    - (i) subpoena witnesses;
    - (ii) compel their attendance;
    - (iii) take evidence; and

- (iv) require the production of any matter which is relevant to the investigation, including:
  - (A) the existence, description, nature, custody, condition and location of any books, documents, or other tangible records;
  - (B) the identity and location of persons having knowledge of relevant facts; or
  - (C) any other matter reasonably calculated to lead to the discovery of material evidence.
- (3) Upon failure of any person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected by the subpoena or information sought to be discovered under the subpoena, the division may apply to the district court for an order compelling compliance.

Enacted by Chapter 169, 1992 General Session

**57-23-8 Enforcement powers of division -- Cease and desist orders.**

- (1)
  - (a) If the director has reason to believe that any person has been or is engaging in conduct violating this chapter, or has violated any lawful order or rule of the division, the director shall issue and serve upon the person a cease and desist order. The director may also order the person to take whatever affirmative actions the director determines to be necessary to carry out the purposes of this chapter.
  - (b) The person served with an order under Subsection (1)(a) may request an adjudicative proceeding within 10 days after receiving the order. The cease and desist order remains in effect pending the hearing.
  - (c) The division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.
- (2)
  - (a) After the hearing the director may issue a final order making the cease and desist order permanent if the director finds there has been a violation of this chapter.
  - (b) If no hearing is requested and the person served does not obey the director's order, the director may file suit in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter. The action shall be filed in the district court in the county in which the conduct occurred, where the person served with the cease and desist order either resides or carries on business.
- (3) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-23-10.

Amended by Chapter 382, 2008 General Session

**57-23-9 Voidable agreements.**

Any agreement to purchase an interest in a real estate cooperative entered into in violation of this chapter may, at the option of the purchaser, be voided and the purchaser's entire consideration paid together with interest at the legal rate, any costs, and reasonable attorney's fees shall be recovered. However, no suit under this section may be brought more than two years after:

- (1) the date the agreement is signed; or
- (2) the date the purchaser knew or reasonably should have known of the violation.

Enacted by Chapter 169, 1992 General Session

**57-23-10 Prosecution -- Penalties.**

- (1) The director may refer any available evidence concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the appropriate prosecuting attorney, who may, in turn, institute the appropriate civil or criminal proceedings under this chapter.
- (2) Any person who willfully violates any provision of this chapter is guilty of a class B misdemeanor.
- (3) For purposes of applying Title 13, Chapter 11, Utah Consumer Sales Practices Act, any material violation of the provisions of this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.
- (4) The remedies provided in this chapter are cumulative and nonexclusive, and do not affect any other remedy available at law.

Enacted by Chapter 169, 1992 General Session

**Chapter 24  
Display of Flag**

**57-24-101 Definitions.**

As used in this chapter:

- (1)
  - (a) "Flag" means a depiction or emblem:
    - (i)
      - (A) of the flag of the United States as provided in United States Code Title 4, Chapter 1, The Flag; or
      - (B) of the state flag of Utah as provided in Section 63G-1-501;
    - (ii) made from fabric or cloth; and
    - (iii) with measurements that do not exceed three feet by five feet.
  - (b) "Flag" does not include a depiction or emblem made from:
    - (i) lights;
    - (ii) paint;
    - (iii) roofing;
    - (iv) siding;
    - (v) paving materials;
    - (vi) flora;
    - (vii) balloons; or
    - (viii) any other building, landscaping, or decorative component.
- (2) "Resident" means:
  - (a) a renter as defined in Section 57-22-2;
  - (b) a resident as defined in Section 57-16-3; or
  - (c) a unit owner as defined in Section 57-8-3.
- (3) "Residential property management authority" means:
  - (a) an owner as defined in Section 57-22-2;
  - (b) a mobile home park as defined in Section 57-16-3;
  - (c) a mobile home park residents' association established in accordance with Section 57-16-16;
  - (d) an association of unit owners as defined in Section 57-8-3; or
  - (e) a management committee as defined in Section 57-8-3.

Amended by Chapter 382, 2008 General Session

**57-24-102 Restriction on prohibition of display of flag.**

- (1) A residential property management authority may not prohibit a resident from displaying a flag:
  - (a) consistent with the guidelines in United States Code Title 4, Chapter 1, The Flag;
  - (b) within an area over which the resident has exclusive control; and
  - (c) from a staff, pole, or window.
- (2) In any action to enforce this section, the prevailing party shall be awarded costs and reasonable attorney fees.
- (3) This section does not apply to a contract or agreement entered into before May 3, 2004.

Enacted by Chapter 44, 2004 General Session

**Chapter 25**  
**Uniform Environmental Covenants Act**

**57-25-101 Title -- Scope.**

- (1) This chapter is known as the "Uniform Environmental Covenants Act."
- (2)
  - (a) This chapter applies to an environmental covenant created on or after May 1, 2006.
  - (b) Title 19, Chapter 10, Environmental Institutional Control Act, applies to an environmental covenant created before May 1, 2006.
- (3) For the purposes of this chapter and Title 19, Chapter 10, Environmental Institutional Control Act, an environmental institutional control, as defined in Section 19-10-102, is considered an environmental covenant.

Enacted by Chapter 51, 2006 General Session

**57-25-102 Definitions.**

As used in this chapter:

- (1) "Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.
- (2) "Agency" means the Utah Department of Environmental Quality or other state or federal agency that determines or approves the environmental response project under which the environmental covenant is created.
- (3) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.
- (4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.
- (5) "Environmental response project" means a plan, risk assessment, or work performed for environmental remediation of real property or surface and groundwater on or beneath the real property and conducted:

- (a) under a federal or state program governing environmental remediation of real property, including under Title 19, Environmental Quality Code;
  - (b) incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or
  - (c) under the state voluntary clean-up program authorized in Title 19, Chapter 8, Voluntary Cleanup Program.
- (6) "Holder" means the grantee of an environmental covenant as specified in Subsection 57-25-103(1).
- (7) "Jurisdiction" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (8) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Enacted by Chapter 51, 2006 General Session

**57-25-103 Nature of rights -- Subordination of interests.**

- (1)
- (a) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder.
  - (b) An environmental covenant may identify more than one holder.
  - (c) The interest of a holder is an interest in real property.
- (2) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.
- (3)
- (a) An agency is bound by any obligation it affirmatively assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant.
  - (b) Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.
- (4) The following requirements apply to interests in real property in existence at the time an environmental covenant is created or amended:
- (a) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.
  - (b) This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.
- (c)
- (i) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record.
  - (ii) If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.
- (d) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Enacted by Chapter 51, 2006 General Session

**57-25-104 Contents of environmental covenant.**

- (1) An environmental covenant must:
  - (a) state that the instrument is an environmental covenant executed under this chapter;
  - (b) contain a legally sufficient description of the real property subject to the covenant;
  - (c) describe the activity and use limitations on the real property;
  - (d) identify every holder;
  - (e) be signed by the agency, every holder, and unless waived by the agency, every owner of the fee simple of the real property subject to the covenant; and
  - (f) identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.
- (2) In addition to the information required by Subsection (1), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:
  - (a) requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
  - (b) requirements for periodic reporting describing compliance with the covenant;
  - (c) rights of access to the property granted in connection with implementation or enforcement of the covenant;
  - (d) a brief narrative description of the contamination and remedy, including:
    - (i) the contaminants of concern;
    - (ii) the pathways of exposure;
    - (iii) limits on exposure; and
    - (iv) the location and extent of the contamination;
  - (e) limitation on amendment or termination of the covenant in addition to those contained in Sections 57-25-109 and 57-25-110; and
  - (f) rights of the holder in addition to its right to enforce the covenant under Section 57-25-111.
- (3) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

Enacted by Chapter 51, 2006 General Session

**57-25-105 Validity -- Effect on other instruments.**

- (1) An environmental covenant that complies with this chapter runs with the land.
- (2) An environmental covenant that is otherwise effective is valid and enforceable even if:
  - (a) it is not appurtenant to an interest in real property;
  - (b) it can be or has been assigned to a person other than the original holder;
  - (c) it is not of a character that has been recognized traditionally at common law;
  - (d) it imposes a negative burden;
  - (e) it imposes an affirmative obligation on a person having an interest in the real property or on the holder;
  - (f) the benefit or burden does not touch or concern real property;
  - (g) there is no privity of estate or contract;
  - (h) the holder dies, ceases to exist, resigns, or is replaced; or
  - (i) the owner of an interest subject to the environmental covenant and the holder are the same person.

- (3)
  - (a) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interests described in Subsection (2) or because it was identified as an easement, servitude, deed restriction, or other interest.
  - (b) This chapter does not apply in any other respect to an instrument covered under Subsection (3)(a).
- (4) This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under Utah law.

Enacted by Chapter 51, 2006 General Session

**57-25-106 Relationship to other land use law.**

- (1) This chapter does not authorize a use of real property that is otherwise prohibited by:
  - (a) a zoning law;
  - (b) law other than this chapter regulating use of real property; or
  - (c) a recorded instrument that has priority over the environmental covenant.
- (2) An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter.

Enacted by Chapter 51, 2006 General Session

**57-25-107 Notice.**

- (1) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:
  - (a) each person that signed the covenant;
  - (b) each person holding a recorded interest in the real property subject to the covenant;
  - (c) each person in possession of the real property subject to the covenant;
  - (d) each municipality or other unit of local government in which real property subject to the covenant is located; and
  - (e) any other person that the agency requires.
- (2) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Enacted by Chapter 51, 2006 General Session

**57-25-108 Recording.**

- (1)
  - (a) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located.
  - (b) For purposes of indexing, a holder shall be treated as a grantee.
- (2) Except as otherwise provided in Subsection 57-25-109(3), an environmental covenant is subject to Utah laws governing recording and priority of interests in real property.

Enacted by Chapter 51, 2006 General Session

**57-25-109 Duration -- Amendment by court action.**

- (1) An environmental covenant is perpetual unless it is:
  - (a)
    - (i) limited to a specific duration by its terms; or
    - (ii) terminated by the occurrence of a specific event;
  - (b) terminated by consent under Section 57-25-110;
  - (c) terminated under Subsection (2);
  - (d) terminated by foreclosure of an interest that has priority over the environmental covenant; or
  - (e) terminated or modified in an eminent domain proceeding, but only if:
    - (i) the agency that signed the covenant is a party to the proceeding;
    - (ii) all persons identified in Subsections 57-25-110(1) and (2) are given notice of the pendency of the proceeding; and
    - (iii) the court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.
- (2)
  - (a) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in Subsections 57-25-110(1) and (2) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.
  - (b) The Department of Environmental Quality's determination under Subsection (2)(a) or its failure to make a determination upon request is subject to review under Title 63G, Chapter 4, Administrative Procedures Act.
  - (c) A federal agency's determination under Subsection (2)(a) or its failure to make a determination upon request is subject to review under applicable federal law.
- (3) Except as otherwise provided in Subsections (1) and (2), an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.
- (4) An environmental covenant may not be extinguished, limited, or impaired by application of Title 57, Chapter 9, Marketable Record Title.

Amended by Chapter 382, 2008 General Session

**57-25-110 Amendment or termination by consent.**

- (1) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:
  - (a) the agency;
  - (b) unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
  - (c) each person that originally signed the covenant, unless:
    - (i) the person waived in a signed record the right to consent;
    - (ii) the executive director of the Department of Environmental Quality finds that the person:
      - (A) no longer exists;
      - (B) is not legally competent to sign the amendment or termination; or
      - (C) cannot be located or identified with the exercise of reasonable diligence; or
    - (iii) a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

- (d) except as otherwise provided in Subsection (4)(b), the holder.
- (2) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.
- (3) Except for an assignment undertaken under a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.
- (4) Except as otherwise provided in an environmental covenant:
  - (a) a holder may not assign its interest without consent of the other parties; and
  - (b) a holder may be removed and replaced by agreement of the other parties specified in Subsection (1).
- (5) A court of competent jurisdiction may fill a vacancy in the position of holder.
- (6) A person required by Subsection (1) to sign the amendment or termination may authorize in writing another person to sign the amendment or termination on the person's behalf.

Enacted by Chapter 51, 2006 General Session

**57-25-111 Enforcement of environmental covenant.**

- (1) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:
  - (a) a party to the covenant;
  - (b) the agency;
  - (c) any person to whom the covenant expressly grants power to enforce;
  - (d) a person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or
  - (e) a municipality or other unit of local government in which the real property subject to the covenant is located.
- (2) This chapter does not limit the regulatory authority of the agency under law other than this chapter with respect to an environmental response project.
- (3) A person is not responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.
- (4) In addition to Subsection (1), an agency may recover its costs for actions which, in its discretion, it may take to enforce or protect the environmental covenant.

Enacted by Chapter 51, 2006 General Session

**57-25-112 Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among jurisdictions that enact it.

Enacted by Chapter 51, 2006 General Session

**57-25-113 Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101 of that Act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 U.S.C. Section 7003(b).

Enacted by Chapter 51, 2006 General Session

**57-25-114 Severability.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 51, 2006 General Session

**Chapter 26**  
**Utah Uniform Assignment of Rents Act**

**57-26-101 Title.**

This chapter is known as the "Utah Uniform Assignment of Rents Act."

Enacted by Chapter 139, 2009 General Session

**57-26-102 Definitions.**

As used in this chapter:

- (1) "Assignee" means a person entitled to enforce an assignment of rents.
- (2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property located in this state and from which the rents arise.
- (3) "Assignor" means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.
- (4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
- (5) "Day" means calendar day.
- (6) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank, savings bank, savings and loan association, credit union, or trust company.
- (7) "Document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.
- (8) "Notification" means a document containing information that this chapter requires a person to provide to another, signed by the person required to provide the information.
- (9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (10) "Proceeds" means personal property that is received or collected on account of a tenant's obligation to pay rents.
- (11) "Purchase" means to take by sale, lease, discount, negotiation, mortgage, pledge, trust deed, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (12) "Rents" means:
  - (a) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;
  - (b) sums payable to an assignor under a policy of rental interruption insurance covering real property;

- (c) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;
  - (d) sums payable to terminate an agreement to possess or occupy real property of another person;
  - (e) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or
  - (f) any other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this chapter.
- (13) "Secured obligation" means an obligation the performance of which is secured by an assignment of rents.
- (14) "Security instrument" means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property.
- (15) "Security interest" means an interest in property that arises by agreement and secures performance of an obligation.
- (16) "Sign" means, with present intent to authenticate or adopt a document:
- (a) to execute or adopt a tangible symbol; or
  - (b) to attach to or logically associate with the document an electronic sound, symbol, or process.
- (17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (18) "Submit for recording" means to submit a document complying with applicable legal standards, with required fees and taxes, to the appropriate governmental office under Title 57, Chapter 3, Recording of Documents.
- (19) "Tenant" means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

Enacted by Chapter 139, 2009 General Session

**57-26-103 Manner of giving notification.**

- (1) Except as otherwise provided in Subsections (3) and (4), a person gives a notification or a copy of a notification under this chapter:
- (a) by depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address as specified in Subsection (2), with first-class postage or cost of delivery provided for; or
  - (b) if the recipient agreed to receive notification by facsimile transmission, electronic mail, or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.
- (2) The following rules determine the proper address for giving a notification under Subsection (1):
- (a) A person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.
  - (b) A person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

- (c) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.
- (3) If a person giving a notification pursuant to this chapter and the recipient have agreed to the method for giving a notification, any notification must be given by that method.
- (4) If a notification is received by the recipient, it is effective even if it was not given in accordance with Subsection (1) or (3).

Enacted by Chapter 139, 2009 General Session

**57-26-104 Security instrument creates assignment of rents -- Assignment of rents creates security interest.**

- (1) An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.
- (2) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

Enacted by Chapter 139, 2009 General Session

**57-26-105 Recordation -- Perfection of security interest in rents -- Priority of conflicting interests in rents.**

- (1) A document creating an assignment of rents may be submitted for recording in the office of the county recorder for the county in which the property is situated in the same manner as any other document evidencing a conveyance of an interest in real property.
- (2) Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this state other than this chapter would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.
- (3) Except as otherwise provided in Subsection (4), a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:
  - (a) acquires a judicial lien against the rents or the real property from which the rents arise; or
  - (b) purchases an interest in the rents or the real property from which the rents arise.
- (4) A perfected security interest in rents has priority over the rights of a person described in Subsection (3) with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

Enacted by Chapter 139, 2009 General Session

**57-26-106 Enforcement of security interest in rents.**

- (1) An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 57-26-107, 57-26-108, and 57-26-109 or any other method sufficient to enforce the assignment under law of this state other than this chapter.
- (2) From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under Section 57-26-107, the receiver is entitled to collect all rents that:
  - (a) have accrued but remain unpaid on that date; and
  - (b) accrue on or after that date, as those rents accrue.

Enacted by Chapter 139, 2009 General Session

**57-26-107 Enforcement by appointment of receiver.**

- (1) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:
  - (a) the assignor is in default and:
    - (i) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;
    - (ii) it appears likely that the real property may not be sufficient to satisfy the secured obligation;
    - (iii) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or
    - (iv) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or
  - (b) other circumstances exist that would justify the appointment of a receiver under law of this state other than this chapter.
- (2) An assignee may file a petition for the appointment of a receiver in connection with an action:
  - (a) to foreclose the security instrument;
  - (b) for specific performance of the assignment;
  - (c) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or
  - (d) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.
- (3) An assignee that files a petition under Subsection (2) shall also give a copy of the petition in the manner specified in Section 57-26-103 to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.
- (4) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.
- (5) From the date of its appointment, a receiver is entitled to collect rents as provided in Subsection 57-26-106(2). The receiver also has the authority provided in the order of appointment and law of this state other than this chapter.
- (6) The following rules govern priority among receivers:
  - (a) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.
  - (b) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

Enacted by Chapter 139, 2009 General Session

**57-26-108 Enforcement by notification to assignor.**

- (1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under Section 57-26-106. The assignee shall also give a copy of the notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.
- (2) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the assignor receives a notification under Subsection (1).
- (3) An assignee's failure to give a notification under Subsection (1) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted under law of this state other than this chapter.
- (4) An assignee that holds a security interest in rents solely by virtue of Subsection 57-26-104(1) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

Enacted by Chapter 139, 2009 General Session

**57-26-109 Enforcement by notification to tenant.**

- (1) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property. The notification must be signed by the assignee and:
  - (a) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor, and assignment of rents being enforced;
  - (b) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;
  - (c) state that the assignee has the right to collect rents in accordance with the assignment;
  - (d) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;
  - (e) describe the manner in which Subsections (3) and (4) affect the tenant's payment obligations;
  - (f) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and
  - (g) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.
- (2) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with Subsection (1).
- (3) Subject to Subsection (4) and any other claim or defense that a tenant has under law of this state other than this chapter, following receipt of a notification substantially complying with Subsection (1):
  - (a) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee

of rents given by that assignee in accordance with this section and the other assignee has not canceled that notification;

- (b) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;
  - (c) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and
  - (d) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.
- (4) A tenant that has received a notification under Subsection (1) is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:
- (a) 10 days after the date the next regularly scheduled rental payment would be due; or
  - (b) 30 days after the date the tenant receives the notification.
- (5) Upon receiving a notification from another creditor that is entitled to priority under Subsection 57-26-105(3) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under Subsection (1) shall immediately give another notification to the tenant canceling the earlier notification.
- (6) An assignee's failure to give a notification under Subsection (1) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this chapter.
- (7) An assignee that holds a security interest in rents solely by virtue of Subsection 57-26-104(1) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

Enacted by Chapter 139, 2009 General Session

**57-26-110 Notification to tenant -- Form.**

No particular phrasing is required for the notification specified in Section 57-26-109. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of Section 57-26-109:

**NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD**

Tenant: \_\_\_\_\_

Name of Tenant

Property Occupied by Tenant (the "Premises"): \_\_\_\_\_

Address

Landlord: \_\_\_\_\_

Name of landlord

Assignee: \_\_\_\_\_

Name of assignee

Address of Assignee and Telephone Number of Contact Person:

\_\_\_\_\_  
Address of assignee

\_\_\_\_\_  
Telephone number of person to contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under \_\_\_\_\_

Name of document

(the "Assignment of Rents") dated \_\_\_\_\_, and recorded at \_\_\_\_\_  
Date Recording data  
in the \_\_\_\_\_.

Appropriate governmental office under the recording act of this state  
You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default under the Assignment of Rents. Under the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations under the agreement under which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30 days after you receive this notification, neither the Assignee nor the Landlord can hold you in default under your Agreement for nonpayment of that rental payment until 10 days after the due date of that payment or 30 days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations under your Agreement and the effect of this notification.

4. You must pay to the Assignee at the address listed above all rents under your Agreement which are due and payable on the date you receive this notification and all rents accruing under your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due under your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you must begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:  
(a) a written order from a court directing you to pay the rent in a manner specified in that order; or  
(b) written instructions from the Assignee canceling this notification.

\_\_\_\_\_  
Name of assignee

\_\_\_\_\_  
By: Officer/authorized agent of assignee

Enacted by Chapter 139, 2009 General Session

**57-26-111 Effect of enforcement.**

The enforcement of an assignment of rents by one or more of the methods identified in Sections 57-26-107, 57-26-108, and 57-26-109, the application of proceeds by the assignee under Section 57-26-112 after enforcement, the payment of expenses under Section 57-26-113, or an action under Subsection 57-26-114(4) does not:

- (1) make the assignee a purchaser in possession of the real property;
- (2) make the assignee an agent of the assignor;
- (3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

- (4) make the secured obligation unenforceable;
- (5) limit any right available to the assignee with respect to the secured obligation;
- (6) limit, waive, or bar any foreclosure or power of sale remedy under the security instrument;
- (7) violate Section 78B-6-901; or
- (8) bar a deficiency judgment pursuant to any law of this state governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

Enacted by Chapter 139, 2009 General Session

**57-26-112 Application of proceeds.**

Unless otherwise agreed, an assignee that collects rents under this chapter or collects upon a judgment in an action under Subsection 57-26-114(4) shall apply the sums collected in the following order to:

- (1) the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by law of this state other than this chapter, reasonable attorney fees and costs incurred by the assignee;
- (2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;
- (3) payment of the secured obligation;
- (4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and
- (5) the assignor.

Enacted by Chapter 139, 2009 General Session

**57-26-113 Application of proceeds to expenses of protecting real property -- Claims and defenses of tenant.**

- (1) Unless otherwise agreed by the assignee, and subject to Subsection (3), an assignee that collects rents following enforcement under Section 57-26-108 or 57-26-109 need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.
- (2) Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.
- (3) This chapter does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this state other than this chapter.

Enacted by Chapter 139, 2009 General Session

**57-26-114 Turnover of rents -- Commingling and identifiability of rents -- Liability of assignor.**

- (1) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (2) If an assignor collects rents that the assignee is entitled to collect under this chapter:
  - (a) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and
  - (b) the assignee continues to have a security interest in the proceeds so long as they are identifiable.
- (3) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted under law of this state other than this chapter with respect to commingled funds.
- (4) In addition to any other remedy available to the assignee under law of this state other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by Subsection (2), the assignee may recover from the assignor in a civil action:
  - (a) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under Subsection (2); and
  - (b) reasonable attorney fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this state other than this chapter.
- (5) The assignee may maintain an action under Subsection (4) without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in Section 57-26-112.
- (6) Unless otherwise agreed, if an assignee entitled to priority under Subsection 57-26-105(3) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under Section 57-26-108 or 57-26-109, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

Enacted by Chapter 139, 2009 General Session

**57-26-115 Perfection and priority of assignee's security interest in proceeds.**

- (1) In this section:
  - (a) "Article 9" means Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, or, to the extent applicable to any particular issue, Article 9 as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.
  - (b) "Conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:
    - (i) a security interest arising under Article 9; or
    - (ii) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.
- (2) An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.
- (3) Except as otherwise provided in Subsection (4), priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

- (4) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.
- (5) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest arising under a right of recoupment or setoff.

Enacted by Chapter 139, 2009 General Session

**57-26-116 Priority subject to subordination.**

This chapter does not preclude subordination by agreement as to rents or proceeds.

Enacted by Chapter 139, 2009 General Session

**57-26-117 Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Enacted by Chapter 139, 2009 General Session

**57-26-118 Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Enacted by Chapter 139, 2009 General Session

**57-26-119 Application to existing relationships.**

- (1) Except as otherwise provided in this section, this chapter governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before May 12, 2009.
- (2) This chapter does not affect an action or proceeding commenced before May 12, 2009.
- (3) Subsection 57-26-104(1) of this chapter does not apply to any security instrument signed and delivered before May 12, 2009.
- (4) This chapter does not affect:
  - (a) the enforceability of an assignee's security interest in rents or proceeds if, immediately before May 12, 2009, that security interest was enforceable;
  - (b) the perfection of an assignee's security interest in rents or proceeds if, immediately before May 12, 2009, that security interest was perfected; or
  - (c) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before May 12, 2009, the interest of the other person was enforceable and perfected, and that priority was established.

Enacted by Chapter 139, 2009 General Session

## Chapter 27

## **Disclosure of Methamphetamine Contaminated Property Act**

### **Part 1 General Provisions**

#### **57-27-101 Title.**

This chapter is known as the "Disclosure of Methamphetamine Contaminated Property Act."

Enacted by Chapter 194, 2009 General Session

#### **57-27-102 Definitions.**

As used in this chapter:

- (1) "Contaminated" or "contamination" is as defined in Section 19-6-902.
- (2) "Decontaminated" or "decontamination" is as defined in Section 19-6-902.
- (3)
  - (a) "Owner" means the holder of a legal or equitable title or interest in real property.
  - (b) "Owner" includes a shareholder, partner, operator, or other legal entity.
- (4) "Real estate professional" means a licensee under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.

Amended by Chapter 379, 2010 General Session

### **Part 2 Disclosure of Contaminated Property**

#### **57-27-201 Disclosure of contaminated property required.**

- (1) Subject to Section 57-1-37, if an owner or lessor of real property has actual knowledge that the property is currently contaminated from the use, storage, or manufacture of methamphetamines, the owner or lessor shall, in a real property lease, conveyance, or other transaction related to the contaminated property, disclose that the property is contaminated.
- (2)
  - (a) If an owner's or lessor's real property is contaminated from the use, storage, or manufacture of methamphetamines, the owner or lessor may report the contaminated property to a government agency responsible for monitoring the decontamination process and documenting that the test results meet decontamination standards.
  - (b) Notwithstanding Subsection (2)(a), an owner or lessor whose contaminated property is reported in a police action related to the manufacturing of methamphetamines shall be subject to the provisions of Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.
- (3)
  - (a) A person may file a civil action to enforce this chapter.
  - (b) A court may award a prevailing party damages, court costs, and reasonable attorney fees for an action filed under this chapter.

Enacted by Chapter 194, 2009 General Session

**57-27-202 Real estate professional not liable.**

A real estate professional is not liable for an owner or lessor of real property making, or failing to make, a disclosure required by Section 57-27-201, unless the real estate professional is also the owner or lessor of the real property.

Enacted by Chapter 194, 2009 General Session

**57-27-203 Decontamination of real property.**

- (1) A government subdivision or agency may charge an owner or lessor a fee, in accordance with the provisions of Section 63J-1-504, for:
  - (a) a permit issued by the subdivision or agency to decontaminate a property;
  - (b) the subdivision or agency to determine whether or not the property has been decontaminated; and
  - (c) any other related service provided by the subdivision or agency, including investigation or decontamination of the property.
- (2) A government subdivision or agency may not prohibit an owner or lessor from decontaminating the owner's or lessor's real property.

Enacted by Chapter 194, 2009 General Session

**Chapter 28  
Utah Reverse Mortgage Act**

**Part 1  
General Provisions**

**57-28-101 Title.**

- (1) This chapter is known as the "Utah Reverse Mortgage Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 290, 2015 General Session

**57-28-102 Definitions.**

- (1) "Borrower" means an individual who executes an agreement for a reverse mortgage.
- (2) "Dwelling" means:
  - (a) a one- to four-family residence in which the borrower occupies at least one unit;
  - (b) a condominium project approved by the United States Department of Housing and Urban Development; or
  - (c) a manufactured home built after June 1976.
- (3) "Independent housing counselor" means a person who is listed on the United States Department of Housing and Urban Development's Home Equity Conversion Mortgage Counselor Roster described in 24 C.F.R. Part 206.
- (4) "Lender" means a person who makes a reverse mortgage.

- (5) "Line of credit payment option" means a loan disbursement plan for a reverse mortgage under which the lender pays the loan proceeds to the borrower at times and in amounts determined by the borrower.
- (6) "Means-tested program of aid to individuals" means any law or program that relates to payments, allowances, benefits, or services that are provided on a means-tested basis by the state.
- (7) "Principal residence" means the dwelling:
  - (a) that an individual maintains as the individual's permanent place of abode; and
  - (b) where the individual typically spends the majority of the calendar year.
- (8) "Reverse mortgage" means a nonrecourse loan that:
  - (a) is secured by the borrower's principal residence;
  - (b) provides cash advances to the borrower based on the borrower's equity in the borrower's principal residence; and
  - (c) does not require payment of principal or interest until:
    - (i) each borrower dies;
    - (ii) the borrower's principal residence is transferred;
    - (iii) the dwelling that secures the loan is no longer the borrower's principal residence;
    - (iv)
      - (A) the borrower fails to occupy the property that secures the loan for more than 12 months because of physical or mental illness; and
      - (B) no other borrower maintains the property as a principal residence; or
    - (v) the borrower defaults.
- (9) "Tenure payment option" means a loan disbursement plan for a reverse mortgage under which the lender pays the loan proceeds to the borrower in equal monthly installments for as long as the dwelling that secures the reverse mortgage remains the borrower's principal residence.
- (10) "Term payment option" means a loan disbursement plan for a reverse mortgage under which the lender pays the loan proceeds to the borrower in equal monthly installments for a fixed term that is chosen by the lender.

Enacted by Chapter 290, 2015 General Session

## **Part 2**

### **Reverse Mortgage Requirements**

#### **57-28-201 Title.**

This part is known as "Reverse Mortgage Requirements."

Enacted by Chapter 290, 2015 General Session

#### **57-28-202 Borrower requirements.**

A borrower shall:

- (1) be 62 years of age or older; and
- (2) occupy the dwelling that secures the reverse mortgage as a principal residence.

Enacted by Chapter 290, 2015 General Session

**57-28-203 Disclosures to borrower.**

A lender shall give a prospective borrower or a borrower the following written disclosures:

- (1) at the time the lender provides an application for a reverse mortgage to a prospective borrower:
  - (a) a disclosure that explains any adjustable interest rate feature of the reverse mortgage, including:
    - (i) the circumstances under which the interest rate may increase;
    - (ii) any limitation on the amount that the interest rate may increase; and
    - (iii) the effect of an increase in the interest rate; and
  - (b) a list of at least five independent housing counselors that includes each independent housing counselor's name, address, and telephone number;
- (2) at least 10 days before the day on which a reverse mortgage closes, a disclosure that describes:
  - (a) that the prospective borrower's liability under the reverse mortgage is limited;
  - (b) the prospective borrower's rights, obligations, and remedies that relate to:
    - (i) temporary absences, late payments, and payment default by the lender; and
    - (ii) each condition that requires satisfaction of the reverse mortgage; and
  - (c) the projected total cost of the reverse mortgage to the prospective borrower, based on the projected total future loan balance;
- (3) on an annual basis, on or before January 31 of each year, a statement that summarizes:
  - (a) the total principal amount paid to the borrower under the reverse mortgage;
  - (b) the total amount of deferred interest added to the principal; and
  - (c) the outstanding loan balance at the end of the preceding year; and
- (4) if applicable, at least 25 days before the day on which the lender adjusts the interest rate on a reverse mortgage, a disclosure that states:
  - (a) the current index amount;
  - (b) the publication date of the index; and
  - (c) the new interest rate.

Enacted by Chapter 290, 2015 General Session

**57-28-204 Independent counseling.**

- (1) Before a prospective borrower signs a reverse mortgage application, the prospective borrower shall meet with an independent housing counselor.
- (2) During the meeting described in Subsection (1):
  - (a) the prospective borrower and the independent housing counselor shall discuss the financial impacts of a reverse mortgage, including:
    - (i) options other than a reverse mortgage that are or may become available to the prospective borrower;
    - (ii) other home equity conversion options that are or may become available to the prospective borrower, including sale-leaseback financing, a deferred payment loan, and a property tax deferral; and
    - (iii) the financial implications, specific to the prospective borrower, of entering into a reverse mortgage; and
  - (b) the independent housing counselor shall give the prospective borrower a written disclosure that states that a reverse mortgage may:
    - (i) have tax consequences;
    - (ii) affect the prospective borrower's eligibility for assistance under certain state and federal programs; and

- (iii) impact the prospective borrower's estate and heirs.

Enacted by Chapter 290, 2015 General Session

**57-28-205 Costs and repayment.**

A lender may collect the following charges and fees in connection with the origination of a reverse mortgage:

- (1) the actual expenses that the lender incurs in originating and closing the reverse mortgage, including a mortgage broker's fee if the mortgage broker and the lender do not share any pecuniary interests; and
- (2) the actual amount that the lender paid for:
  - (a) a recording fee;
  - (b) a credit report;
  - (c) a survey, if required by the lender or the borrower;
  - (d) a title examination;
  - (e) the lender's title insurance; and
  - (f) an initial appraisal of the real property that secures the reverse mortgage.

Enacted by Chapter 290, 2015 General Session

**57-28-206 Disbursement.**

- (1) Subject to Subsection (2) and except as provided in Subsection (3), a lender shall pay the loan proceeds of a reverse mortgage under a term payment option, a tenure payment option, or a line of credit payment option.
- (2) Under a term payment option or a tenure payment option, upon a borrower's request, the lender shall disburse a portion of the loan proceeds under a line of credit payment option.
- (3) If a reverse mortgage is a fixed interest rate loan, the lender may pay the loan proceeds in a lump sum.

Enacted by Chapter 290, 2015 General Session

**57-28-207 Cooling off period -- Closing.**

- (1) After a prospective borrower accepts, in writing, a lender's written commitment to make a reverse mortgage, the lender may not bind the prospective borrower to the reverse mortgage earlier than seven days after the day on which the prospective borrower gives the written acceptance to the lender.
- (2) During the seven-day period described in Subsection (1), the lender may not require the prospective borrower to close or otherwise proceed with the reverse mortgage.
- (3) A prospective borrower may not waive the provisions of this section.

Enacted by Chapter 290, 2015 General Session

**57-28-208 Federally insured reverse mortgages.**

When a lender makes a reverse mortgage that is federally insured by the United States Department of Housing and Urban Development, the lender satisfies the requirements described in Sections 57-28-202 through 57-28-206 if the lender complies with the federal requirements described in 12 U.S.C. Sec. 1715z-20 and 24 C.F.R. Part 206.

Enacted by Chapter 290, 2015 General Session

**Part 3**  
**Reverse Mortgage Proceeds, Priority, Foreclosure, and Lender Default**

**57-28-301 Title.**

This part is known as "Reverse Mortgage Proceeds, Priority, Foreclosure, and Lender Default."

Enacted by Chapter 290, 2015 General Session

**57-28-302 Treatment of loan proceeds -- Effect on assistance eligibility.**

For purposes of determining a borrower's eligibility and benefits for a means-tested program of aid to individuals:

- (1) a reverse mortgage loan payment made to a borrower shall be treated as proceeds from a loan and not as income; and
- (2) undisbursed funds under a reverse mortgage shall be treated as equity in the borrower's home and not as proceeds from a loan.

Enacted by Chapter 290, 2015 General Session

**57-28-303 Priority.**

- (1) All amounts secured by a reverse mortgage have the same lien priority as the first disbursement under the reverse mortgage.
- (2) For purposes of Subsection (1), the amount secured by the reverse mortgage includes any payment to the borrower from the loan proceeds, regardless of the purpose of the payment.

Enacted by Chapter 290, 2015 General Session

**57-28-304 Foreclosure.**

Before a person initiates foreclosure proceedings on a reverse mortgage, the person shall:

- (1) send the borrower, by certified mail, return receipt requested, written notice that states the grounds for default and foreclosure; and
- (2) provide the borrower at least 30 days after the day on which the person sends the notice described in Subsection (1) to cure the borrower's default.

Amended by Chapter 305, 2016 General Session

**57-28-305 Lender default.**

- (1) A lender who fails to make a loan advance on a non-federally insured reverse mortgage in accordance with the reverse mortgage agreement shall forfeit any right to repayment of the outstanding loan balance.
- (2) After a lender forfeits the lender's right to repayment under Subsection (1), the reverse mortgage loan agreement is void.

Enacted by Chapter 290, 2015 General Session

**Chapter 29**  
**Undivided Fractionalized Long-term Estate Sales Practices Act**

**Part 1**  
**General Provisions**

**57-29-101 Title.**

- (1) This chapter is known as the "Undivided Fractionalized Long-Term Estate Sales Practices Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 381, 2016 General Session

**57-29-102 Definitions.**

As used in this chapter:

- (1) "Commission" means the Real Estate Commission created in Section 61-2f-103.
- (2) "Director" means the director of the Division of Real Estate.
- (3) "Division" means the Division of Real Estate created in Section 61-2-201.
- (4) "Management agreement" means an agreement between a person and each owner of an undivided fractionalized long-term estate in a piece of real property under which the person agrees to manage the leasing or operations of the real property.
- (5) "Master lease" means an agreement under which a person is granted a leasehold interest in real property and may sublease all or a portion of the real property to one or more persons.
- (6) "Master lease tenant" means the lessee in a master lease.
- (7) "Sponsor" means a person who is the original seller of an undivided fractionalized long-term estate.
- (8)
  - (a) "Undivided fractionalized long-term estate" means an ownership interest in real property by two or more persons that is:
    - (i) a tenancy in common; or
    - (ii) a fee estate.
  - (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

Enacted by Chapter 381, 2016 General Session

**57-29-103 Applicability.**

This chapter does not apply to property that is subject to Title 57, Chapter 19, Timeshare and Camp Resort Act.

Enacted by Chapter 381, 2016 General Session

**Part 2**  
**License and Disclosure Requirements**

**57-29-201 Title.**

This part is known as "License and Disclosure Requirements."

Enacted by Chapter 381, 2016 General Session

**57-29-202 License required.**

Except as provided by Section 61-2f-202, a person may not offer, sell, or otherwise dispose of an undivided fractionalized long-term estate unless the person is licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, as a principal broker, associate broker, or sales agent.

Enacted by Chapter 381, 2016 General Session

**57-29-203 Required disclosures.**

- (1) A sponsor or licensee who sells or offers to sell an undivided fractionalized long-term estate shall provide each prospective purchaser a written disclosure, related to the real property in which the undivided fractionalized long-term estate is offered, that:
  - (a) if applicable:
    - (i) includes a copy of any master lease agreement; and
    - (ii) states whether the sponsor is the master lease tenant or an affiliate of the master lease tenant;
  - (b) includes any material information that relates to a current lease or sublease that affects the real property in which the undivided fractionalized long-term estate is offered;
  - (c) includes a copy of:
    - (i) a tenants in common agreement; or
    - (ii) an agreement that forms the substance of the undivided fractionalized long-term estate and includes a definition of the undivided fractionalized interest;
  - (d) describes any improvements to the real property in which the undivided fractionalized long-term estate is offered;
  - (e) includes a copy of any management agreement;
  - (f) describes the relationship, if any, between each property manager and the sponsor; and
  - (g) includes any additional information that an ordinarily prudent purchaser would consider material to deciding whether to purchase the undivided fractionalized long-term estate, as determined by the commission, with concurrence by the division, by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) A sponsor or licensee who sells or offers to sell an undivided fractionalized long-term estate shall provide the written disclosure described in Subsection (1) to the prospective purchaser before the prospective purchaser purchases the undivided fractionalized long-term estate.

Enacted by Chapter 381, 2016 General Session

**Part 3**  
**Investigation and Enforcement**

**57-29-301 Title.**

This part is known as "Investigation and Enforcement."

Enacted by Chapter 381, 2016 General Session

**57-29-302 Rulemaking.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, the commission, with concurrence by the division, may make rules governing:

- (1) the form of the disclosures required under this chapter; and
- (2) enforcement of the provisions of this chapter.

Enacted by Chapter 381, 2016 General Session

**57-29-303 Investigatory powers and proceedings of division.**

- (1) The division may:
  - (a) conduct a public or private investigation to determine whether a person has violated or is about to violate a provision of this chapter; and
  - (b) require or allow a person to file a written statement with the division that relates to the facts and circumstances concerning a matter to be investigated.
- (2) For the purpose of an investigation or proceeding under this chapter, the division may:
  - (a) administer oaths or affirmations; and
  - (b) upon the division's own initiative or upon the request of any party:
    - (i) subpoena a witness;
    - (ii) compel a witness's attendance;
    - (iii) take evidence; or
    - (iv) require the production, within 10 business days, of any information or item that is relevant to the investigation, including:
      - (A) the existence, description, nature, custody, condition, and location of any books, electronic records, documents, or other tangible records;
      - (B) the identity and location of any person who has knowledge of relevant facts; or
      - (C) any other information or item that is reasonably calculated to lead to the discovery of material evidence.
- (3) If a person fails to obey a subpoena or other request made in accordance with this section, the division may file an action in district court for an order compelling compliance.

Enacted by Chapter 381, 2016 General Session

**57-29-304 Enforcement.**

- (1)
  - (a) If the director believes that a person has been or is engaging in conduct that violates this chapter, the director:
    - (i) shall issue and serve upon the person a cease and desist order; and
    - (ii) may order the person to take any action necessary to carry out the purposes of this chapter.
  - (b)
    - (i) A person served with an order under Subsection (1)(a) may request a hearing within 10 days after the day on which the person is served.
    - (ii)
      - (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the director shall schedule a hearing to take place no more than 30 days after the day on which the director receives the request.
      - (B) The cease and desist order remains in effect pending the hearing.

- (iii) If the director fails to schedule a hearing in accordance with Subsection (1)(b)(ii)(A), the cease and desist order is vacated.
- (c) The division shall conduct a hearing described in Subsection (1)(b) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) After a hearing described in Subsection (1)(b):
  - (a) if the director finds that the person violated this chapter, the director may issue a final order making the cease and desist order permanent; or
  - (b) if the director finds that the person did not violate this chapter, the director shall vacate the cease and desist order.
- (3) If a person served with an order under Subsection (1)(a) does not request a hearing and the person fails to comply with the director's order, the director may file suit in district court in the name of the Department of Commerce and the Division of Real Estate to enjoin the person from violating this chapter.
- (4) The remedies and action provided in this section are not exclusive but are in addition to any other remedies or actions available under Section 57-29-305.

Enacted by Chapter 381, 2016 General Session

**57-29-305 Voidable agreements.**

- (1)
  - (a) If a sponsor violates a provision of this chapter in entering into an agreement to purchase an undivided fractionalized long-term estate, the purchaser may rescind the agreement.
  - (b) A purchaser may rescind an agreement under this Subsection (1) at any time before the closing.
- (2) A purchaser who rescinds an agreement in accordance with Subsection (1) is entitled to all the consideration that the purchaser gave under the rescinded agreement.
- (3) In an action to enforce a purchaser's right of rescission under Subsection (1), the court shall award costs and reasonable attorney fees to the prevailing party.

Enacted by Chapter 381, 2016 General Session