

RECORDING OF DOCUMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas Hatch

AN ACT RELATING TO REAL ESTATE AND TO CITIES AND TOWNS; REQUIRING A MUNICIPALITY'S LEGISLATIVE BODY TO APPROVE AND TO RECORD A PLAT OR MAP FOR A NEWLY INCORPORATED CITY OR TOWN OR AN ORDINANCE APPROVING ANNEXATION OF AN UNINCORPORATED AREA ALLOWING THE RERECORDING OF DOCUMENTS UNDER SPECIFIED CIRCUMSTANCES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

10-2-121, as enacted by Chapter 389, Laws of Utah 1997

10-2-125, as enacted by Chapter 389, Laws of Utah 1997

10-2-408, as repealed and reenacted by Chapter 389, Laws of Utah 1997

57-3-2, as last amended by Chapter 88, Laws of Utah 1989

57-3-11, as last amended by Chapter 155, Laws of Utah 1988

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

Section 1. Section **10-2-121** is amended to read:

10-2-121. Division of municipal-type services revenues -- County may provide startup funds -- Filing of plat or map.

(1) The county in which an area incorporating under this part is located shall, until the date of the city's incorporation under Section 10-2-122, continue:

(a) to levy and collect ad valorem property tax and other revenues from or pertaining to the future city; and

(b) except as otherwise agreed by the county and the officers-elect of the city after the filing of the notice under Subsection 10-2-120(1), to provide the same services to the future city

1 as the county provided before the commencement of the incorporation proceedings.

2 (2) The legislative body of the county in which a newly incorporated city is located shall
3 share pro rata with the new city, based on the date of incorporation, the taxes and service charges
4 or fees levied and collected by the county under Section 17-34-3 during the year of the new city's
5 incorporation if and to the extent that the new city provides, by itself or by contract, the same
6 services for which the county levied and collected the taxes and service charges or fees.

7 (3) (a) The legislative body of a county in which an area incorporating under this part is
8 located may appropriate county funds to:

9 (i) before incorporation but after a notice under Subsection 10-2-120(1) is filed, the
10 officers-elect of the future city to pay startup expenses of the future city; or

11 (ii) after incorporation, the new city.

12 (b) Funds appropriated under Subsection (3)(a) may be distributed in the form of a grant,
13 a loan, or as an advance against future distributions under Subsection (2).

14 (4) Within 30 days of incorporation, the legislative body of the new city shall [~~file~~] record
15 with the recorder of the county in which the new city is located a plat or map, prepared by a
16 licensed surveyor[;] and approved by the legislative body, showing the boundaries of the new city.

17 Section 2. Section **10-2-125** is amended to read:

18 **10-2-125. Incorporation of a town.**

19 (1) A contiguous area of a county not within a municipality, with a population of at least
20 100 but not more than 800, may incorporate as a town as provided in this section.

21 (2) (a) The process to incorporate an area as a town is initiated by filing a petition with the
22 clerk of the county in which the area is located.

23 (b) Each petition under Subsection (2)(a) shall:

24 (i) be signed by the owners of private real property that:

25 (A) is located within the area proposed to be incorporated;

26 (B) covers a majority of the total private land area within the area; and

27 (C) is equal in value to at least 1/3 of the value of all private real property within the area;

28 and

29 (ii) state the legal description of the boundaries of the area proposed to be incorporated as
30 a town.

31 (c) A petition under this section may not describe an area that includes some or all of an

1 area proposed for annexation in an annexation petition under Section 10-2-403 that:

2 (i) was filed before the filing of the petition; and

3 (ii) is still pending on the date the petition is filed.

4 (3) Section 10-2-104 applies to a petition for incorporation as a town, except that the
5 notice under Subsection 10-2-104(1) shall be sent within seven calendar days of the filing of a
6 petition under Subsection (2).

7 (4) (a) A county legislative body may treat a petition filed under Subsection (2) as a
8 request for a feasibility study under Section 10-2-103 and process it as a request under that section
9 would be processed under this part to determine whether the feasibility study results meet the
10 requirements of Subsection 10-2-109(3).

11 (b) If the results of a feasibility study under Subsection (4)(a) do not meet the requirements
12 of Subsection 10-2-109(3), the county legislative body may not approve the incorporation petition.

13 (c) If the results of the feasibility study under Subsection (4)(a) meet the requirements of
14 Subsection 10-2-109(3), the county legislative body may approve the incorporation petition, if the
15 county legislative body determines that the incorporation is in the best interests of the citizens of
16 the county and the proposed town.

17 (5) Upon approval of a petition filed under Subsection (2), the legislative body of the
18 county in which the proposed town is located shall appoint a mayor and members of the town
19 council who shall hold office until the next regular municipal election and until their successors
20 are elected and qualified.

21 (6) (a) (i) Each mayor appointed under Subsection (5) shall, within seven days of
22 appointment, file articles of incorporation of the new town with the lieutenant governor.

23 (ii) The articles of incorporation shall meet the requirements of Subsection 10-2-119(2).

24 (b) Within ten days of receipt of the articles of incorporation, the lieutenant governor shall:

25 (i) certify the articles of incorporation;

26 (ii) return a copy of the articles of incorporation to the appointed mayor; and

27 (iii) send a copy of the articles of incorporation to the recorder of the county in which the
28 town is located.

29 (7) A town is incorporated upon the lieutenant governor's certification of the articles of
30 incorporation.

31 (8) Within 30 days of incorporation, the legislative body of the new town shall [file] record

1 with the recorder of the county in which the new town is located a plat or map, prepared by a
2 licensed surveyor and approved by the legislative body, showing the boundaries of the town.

3 Section 3. Section **10-2-408** is amended to read:

4 **10-2-408. Denial of or granting the annexation petition -- Filing of plat or map.**

5 (1) After receipt of the commission's decision on a protest under Subsection 10-2-416(2),
6 a municipal legislative body may:

7 (a) deny the annexation petition; or

8 (b) if the commission approves the annexation, grant the annexation petition and, by
9 ordinance and consistent with the commission's decision, annex the area that is the subject of the
10 annexation petition.

11 (2) Within 30 days after enacting an ordinance annexing an unincorporated area, the
12 municipal legislative body shall [~~file~~] record with the recorder of the county in which the area is
13 located a certified copy of the ordinance approving the annexation together with a plat or map,
14 prepared by a licensed surveyor and approved by the legislative body, showing the new boundaries
15 of the municipality.

16 Section 4. Section **57-3-2** is amended to read:

17 **57-3-2. Record imparts notice -- Change in interest rate -- Validity of document --**
18 **Notice of unnamed interests -- Conveyance by grantee.**

19 (1) Each document executed, acknowledged, and certified, in the manner prescribed by
20 this title, each original document or certified copy of a document complying with Section 57-4a-3,
21 whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4,
22 and each financing statement complying with Section 70A-9-402, whether or not acknowledged
23 shall, from the time of [~~filing~~] recording with the appropriate county recorder, impart notice to all
24 persons of their contents.

25 (2) If a recorded document was given as security, a change in the interest rate in
26 accordance with the terms of an agreement pertaining to the underlying secured obligation does
27 not affect the notice or alter the priority of the document provided under Subsection (1).

28 (3) This section does not affect the validity of a document with respect to the parties to the
29 document and all other persons who have notice of the document.

30 (4) The fact that a recorded document recites only a nominal consideration, names the
31 grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the

1 terms of the trust does not charge any third person with notice of any interest of the grantor or of
2 the interest of any other person not named in the document.

3 (5) The grantee in a recorded document may convey the interest granted to him free and
4 clear of all claims not disclosed in the document in which he appears as grantee or in any other
5 document recorded in accordance with this title that sets forth the names of the beneficiaries,
6 specifies the interest claimed, and describes the real property subject to the interest.

7 Section 5. Section 57-3-11 is amended to read:

8 **57-3-11. Original documents required -- Captions -- Legibility -- Rerecording of**
9 **documents -- Corrections or amendments to recorded documents.**

10 (1) Unless otherwise provided, documents presented for recording in the office of the
11 county recorder shall be originals and shall contain a brief caption stating the nature of the
12 document. Documents presented for recording shall also be sufficiently legible for the recorder
13 to make certified copies.

14 (2) (a) A document which is of record in the office of the appropriate county recorder in
15 compliance with this chapter, may not be recorded again in that same county recorder's office
16 unless the original document has been reexecuted by all parties who executed the document.
17 Unless exempt by statute, original documents which are reexecuted must also contain the
18 appropriate acknowledgment, proof of execution, jurat or other notarial certification for all parties
19 who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act,
20 and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording shall contain
21 a brief statement explaining the reason for rerecording.

22 (b) A county recorder may refuse to accept a document for rerecording if that document
23 does not conform to the requirements of this section.

24 (c) Subsection (2) of this section applies only to documents executed after July 1, 1998.

24a ~~h [h(d) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2)(a), A RECORDED~~
24b ~~DOCUMENT WHICH IS SUBMITTED TO A COUNTY RECORDER'S OFFICE FOR RERECORDING MAY BE~~
24c ~~ACCEPTED FOR RERECORDING WITHOUT REEXECUTION BY THE PARTIES IF, IN THE DISCRETION~~
24d ~~OF THE COUNTY RECORDER, THE CHANGES MADE TO THE ORIGINAL RECORDED DOCUMENT ARE~~
24e ~~MADE ONLY FOR THE PURPOSE OF CORRECTING TYPOGRAPHICAL OR CLERICAL ERRORS IN THE~~
24f ~~ORIGINAL RECORDED DOCUMENT.~~ h] h

25 (3) Documents of record in the office of a county recorder h , CONTAINING MINOR
25a TYPOGRAPHICAL OR CLERICAL ERRORS, h may be augmented, amended,
26 or corrected by the recording of an h AFFIDAVIT OR OTHER h appropriate instrument.

Legislative Review Note
as of 12-29-97 3:24 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel