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

96 Section 1. Section **57-8-2** is amended to read:

97 **57-8-2. Applicability of chapter.**

98 (1) This [act] chapter shall be applicable only to property which the sole owner or all
99 the owners submit to the provisions of the [act] chapter by duly executing and recording a
100 declaration as provided in the [act] chapter.

101 (2) (a) This chapter does not apply to a common interest community, as defined in
102 Section 57-8a-103, created after May 3, 2004.

103 (b) The provisions of Chapter 8a, Uniform Common Interest Ownership Act, apply to a
104 common interest community, as defined in Section 57-8a-103, created after May 3, 2004.

105 Section 2. Section **57-8a-101** is enacted to read:

106 **CHAPTER 8a. UNIFORM COMMON INTEREST OWNERSHIP ACT**

107 **Part 1. General Provisions**

108 **57-8a-101. Title.**

109 This chapter is known as the "Uniform Common Interest Ownership Act."

110 Section 3. Section **57-8a-102** is enacted to read:

111 **57-8a-102. Applicability.**

112 Applicability of this chapter is governed by Part 2, Applicability.

113 Section 4. Section **57-8a-103** is enacted to read:

114 **57-8a-103. Definitions.**

115 As used in the declaration and bylaws of an association, unless specifically provided
116 otherwise or the context otherwise requires, and as used in this chapter:

117 (1) (a) "Affiliate of a declarant" means any person who controls, is controlled by, or is
118 under common control with a declarant.

119 (b) A person "controls" a declarant if the person:

120 (i) is a general partner, officer, director, or employer of the declarant;

121 (ii) directly or indirectly or acting in concert with one or more other persons, or through
122 one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies
123 representing more than 20% of the voting interest in the declarant;

124 (iii) controls in any manner the election of a majority of the directors of the declarant;

125 or

126 (iv) has contributed more than 20% of the capital of the declarant.

127 (c) A person "is controlled by" a declarant if the declarant:

128 (i) is a general partner, officer, director, or employer of the person;

129 (ii) directly or indirectly or acting in concert with one or more other persons, or through
130 one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies

131 representing more than 20% of the voting interest in the person;

132 (iii) controls in any manner the election of a majority of the directors of the person; or

133 (iv) has contributed more than 20% of the capital of the person.

134 (d) Control does not exist if the powers described in this Subsection (1) are held solely
135 as security for an obligation and are not exercised.

136 (2) "Allocated interests" means the following interests allocated to each unit:

137 (a) in a condominium, the undivided interest in the common elements, the common
138 expense liability, and votes in the association;

139 (b) in a cooperative, the common expense liability and the ownership interest and votes
140 in the association; and

141 (c) in a planned community, the common expense liability and votes in the association.

142 (3) "Association" or "unit owners' association" means the unit owners' association
143 organized under Section 57-8a-401.

144 (4) "Common elements" means:

145 (a) in the case of:

146 (i) a condominium or cooperative, all portions of the common interest community
147 other than the units; and

148 (ii) a planned community, any real estate within a planned community which is owned
149 or leased by the association, other than a unit; and

150 (b) in all common interest communities, any other interests in real estate for the benefit
151 of unit owners which are subject to the declaration.

152 (5) "Common expenses" means expenditures made by, or financial liabilities of, the
153 association, together with any allocations to reserves.

154 (6) "Common expense liability" means the liability for common expenses allocated to
155 each unit.

156 (7) (a) "Common interest community" means real estate with respect to which a
157 person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance
158 premiums, maintenance, or improvement of other real estate described in a declaration.

159 (b) "Ownership of a unit" does not include holding a leasehold interest of less than 20
160 years in a unit, including renewal options.

161 (8) "Condominium" means a common interest community in which portions of the real
162 estate are designated for separate ownership and the remainder of the real estate is designated
163 for common ownership solely by the owners of those portions. A common interest community
164 is not a condominium unless the undivided interests in the common elements are vested in the
165 unit owners.

166 (9) "Conversion building" means a building that at any time before creation of the
167 common interest community was occupied wholly or partially by persons other than purchasers
168 and persons who occupy with the consent of purchasers.

169 (10) "Cooperative" means a common interest community in which the real estate is
170 owned by an association, each of whose members is entitled by virtue of his ownership interest
171 in the association to exclusive possession of a unit.

172 (11) "Dealer" means a person in the business of selling units for his own account.

173 (12) "Declarant" means any person or group of persons acting in concert who:

174 (a) as part of a common promotional plan, offers to dispose of his or its interest in a
175 unit not previously disposed of; or

176 (b) reserves or succeeds to any special declarant right.

177 (13) "Declaration" means any instruments, however denominated, that create a
178 common interest community, including any amendments to those instruments.

179 (14) "Development rights" means any right or combination of rights reserved by a
180 declarant in the declaration to:

181 (a) add real estate to a common interest community;

182 (b) create units, common elements, or limited common elements within a common

183 interest community:

184 (c) subdivide units or convert units into common elements; or

185 (d) withdraw real estate from a common interest community.

186 (15) (a) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any
187 legal or equitable interest in a unit.

188 (b) "Dispose" or "disposition" does not include the transfer or release of a security
189 interest.

190 (16) "Executive board" means the body, regardless of name, designated in the
191 declaration to act on behalf of the association.

192 (17) "Identifying number" means a symbol or address that identifies only one unit in a
193 common interest community.

194 (18) "Leasehold common interest community" means a common interest community in
195 which all or a portion of the real estate is subject to a lease the expiration or termination of
196 which will terminate the common interest community or reduce its size.

197 (19) "Limited common element" means a portion of the common elements allocated by
198 the declaration or by operation of Subsections 57-8a-302(2) or (4) for the exclusive use of one
199 or more but fewer than all of the units.

200 (20) "Master association" means an organization described in Section 57-8a-320,
201 whether or not it is also an association described in Section 57-8a-401.

202 (21) "Offering" means any advertisement, inducement, solicitation, or attempt to
203 encourage any person to acquire any interest in a unit, other than as security for an obligation.
204 An advertisement in a newspaper or other periodical of general circulation, or in any broadcast
205 medium to the general public, of a common interest community not located in this state, is not
206 an offering if the advertisement states that an offering may be made only in compliance with
207 the law of the jurisdiction in which the common interest community is located.

208 (22) (a) "Person" means an individual, corporation, business trust, estate, trust,
209 partnership, association, joint venture, government, governmental subdivision or agency, or
210 other legal or commercial entity.

211 (b) In the case of a land trust, "person" means the beneficiary of the trust rather than the
212 trust or the trustee.

213 (23) "Planned community" means a common interest community that is not a

214 condominium or a cooperative. A condominium or cooperative may be part of a planned
215 community.

216 (24) "Proprietary lease" means an agreement with the association pursuant to which a
217 member is entitled to exclusive possession of a unit in a cooperative.

218 (25) "Purchaser" means a person, other than a declarant or a dealer, who by means of a
219 voluntary transfer acquires a legal or equitable interest in a unit other than:

220 (a) a leasehold interest (including renewal options) of less than 20 years; or

221 (b) as security for an obligation.

222 (26) (a) "Real estate" means any leasehold or other estate or interest in, over, or under
223 land, including structures, fixtures, and other improvements and interests that by custom,
224 usage, or law pass with a conveyance of land though not described in the contract of sale or
225 instrument of conveyance.

226 (b) "Real estate" includes parcels with or without upper or lower boundaries, and
227 spaces that may be filled with air or water.

228 (27) "Residential purposes" means use for dwelling or recreational purposes, or both.

229 (28) (a) "Security interest" means an interest in real estate or personal property, created
230 by contract or conveyance, which secures payment or performance of an obligation.

231 (b) "Security interest" includes a lien created by a mortgage, deed of trust, trust deed,
232 security deed, contract for deed, land sales contract, lease intended as security, assignment of
233 lease or rents intended as security, pledge of an ownership interest in an association, and any
234 other consensual lien or title retention contract intended as security for an obligation.

235 (29) "Special declarant rights" means rights reserved for the benefit of a declarant to:

236 (a) complete improvements indicated on plats and plans filed with the declaration
237 (Section 57-8a-309) or, in a cooperative, to complete improvements described in the public
238 offering statement;

239 (b) exercise any development right;

240 (c) maintain sales offices, management offices, signs advertising the common interest
241 community, and models;

242 (d) use easements through the common elements for the purpose of making
243 improvements within the common interest community or within real estate which may be
244 added to the common interest community;

245 (e) make the common interest community subject to a master association;
246 (f) merge or consolidate a common interest community with another common interest
247 community of the same form of ownership; or
248 (g) appoint or remove any officer of the association or any master association or any
249 executive board member during any period of declarant control.

250 (30) "Time share" means a right to occupy a unit or any of several units during five or
251 more separated time periods over a period of at least five years, including renewal options,
252 whether or not coupled with an estate or interest in a common interest community or a
253 specified portion thereof.

254 (31) "Unit" means a physical portion of the common interest community designated for
255 separate ownership or occupancy, the boundaries of which are described pursuant to
256 Subsection 57-8a-305(1)(e). If a unit in a cooperative is owned by a unit owner or is sold,
257 conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner,
258 the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred
259 is the right to possession of that unit under a proprietary lease, coupled with the allocated
260 interests of that unit, and the association's interest in that unit is not thereby affected.

261 (32) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a
262 unit in a leasehold common interest community whose lease expires simultaneously with any
263 lease the expiration or termination of which will remove the unit from the common interest
264 community, but does not include a person having an interest in a unit solely as security for an
265 obligation. In a condominium or planned community, the declarant is the owner of any unit
266 created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to
267 which allocated interests have been allocated until that unit has been conveyed to another
268 person.

269 Section 5. Section **57-8a-104** is enacted to read:

270 **57-8a-104. Variation by agreement.**

271 Except as expressly provided in this chapter, its provisions may not be varied by
272 agreement, and rights conferred by it may not be waived. Except as provided in Section
273 57-8a-207, a declarant may not act under a power of attorney, or use any other device, to evade
274 the limitations or prohibitions of this chapter or the declaration.

275 Section 6. Section **57-8a-105** is enacted to read:

276 **57-8a-105. Separate titles and taxation.**277 (1) In a cooperative, unless the declaration provides that a unit owner's interest in a unit
278 and its allocated interests is real estate for all purposes, that interest is personal property.279 (2) In a condominium or planned community:280 (a) if there is any unit owner other than a declarant, each unit that has been created,
281 together with its interest in the common elements, constitutes for all purposes a separate parcel
282 of real estate; and283 (b) if there is any unit owner other than a declarant, each unit must be separately taxed
284 and assessed, and no separate tax or assessment may be rendered against any common elements
285 for which a declarant has reserved no development rights.286 (3) Any portion of the common elements for which the declarant has reserved any
287 development right must be separately taxed and assessed against the declarant, and the
288 declarant alone is liable for payment of those taxes.289 (4) If there is no unit owner other than a declarant, the real estate comprising the
290 common interest community may be taxed and assessed in any manner provided by law.291 Section 7. Section **57-8a-106** is enacted to read:292 **57-8a-106. Applicability of local ordinances, regulations, and building codes.**293 (1) A building code may not impose any requirement upon any structure in a common
294 interest community which it would not impose upon a physically identical development under a
295 different form of ownership.296 (2) In condominiums and cooperatives, no zoning, subdivision, or other real estate use
297 law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership
298 or impose any requirement upon a condominium or cooperative which it would not impose
299 upon a physically identical development under a different form of ownership.300 (3) Except as provided in Subsections (1) and (2), the provisions of this chapter do not
301 invalidate or modify any provision of any building code, zoning, subdivision, or other real
302 estate use law, ordinance, rule, or regulation governing the use of real estate.303 Section 8. Section **57-8a-107** is enacted to read:304 **57-8a-107. Eminent domain.**305 (1) If a unit is acquired by eminent domain or part of a unit is acquired by eminent
306 domain leaving the unit owner with a remnant that may not practically or lawfully be used for

307 any purpose permitted by the declaration, the award must include compensation to the unit
308 owner for that unit and its allocated interests, whether or not any common elements are
309 acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests
310 are automatically reallocated to the remaining units in proportion to the respective allocated
311 interests of those units before the taking, and the association shall promptly prepare, execute,
312 and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit
313 remaining after part of a unit is taken under this Subsection (1) is thereafter a common element.

314 (2) Except as provided in Subsection (1), if part of a unit is acquired by eminent
315 domain, the award must compensate the unit owner for the reduction in value of the unit and its
316 interest in the common elements, whether or not any common elements are acquired. Upon
317 acquisition, unless the decree otherwise provides:

318 (a) that unit's allocated interests are reduced in proportion to the reduction in the size of
319 the unit, or on any other basis specified in the declaration; and

320 (b) the portion of the allocated interests divested from the partially acquired unit are
321 automatically reallocated to that unit and to the remaining units in proportion to the respective
322 allocated interests of those units before the taking, with the partially acquired unit participating
323 in the reallocation on the basis of its reduced allocated interests.

324 (3) If part of the common elements is acquired by eminent domain, the portion of the
325 award attributable to the common elements taken must be paid to the association. Unless the
326 declaration provides otherwise, any portion of the award attributable to the acquisition of a
327 limited common element must be equally divided among the owners of the units to which that
328 limited common element was allocated at the time of acquisition.

329 (4) The court decree must be recorded in every county in which any portion of the
330 common interest community is located.

331 Section 9. Section **57-8a-108** is enacted to read:

332 **57-8a-108. Supplemental general principles of law applicable.**

333 The principles of law and equity, including the law of corporations and unincorporated
334 associations, the law of real property, and the law relative to capacity to contract, principal and
335 agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake,
336 receivership, substantial performance, or other validating or invalidating cause supplement the
337 provisions of this chapter, except to the extent inconsistent with this chapter.

338 Section 10. Section **57-8a-109** is enacted to read:

339 **57-8a-109. Construction against implicit repeal.**

340 This chapter being a general act intended as a unified coverage of its subject matter, no
341 part of it shall be construed to be impliedly repealed by subsequent legislation if that
342 construction can reasonably be avoided.

343 Section 11. Section **57-8a-110** is enacted to read:

344 **57-8a-110. Uniformity of application and construction.**

345 This chapter shall be applied and construed so as to effectuate its general purpose to
346 make uniform the law with respect to the subject of this chapter among states enacting it.

347 Section 12. Section **57-8a-111** is enacted to read:

348 **57-8a-111. Severability.**

349 If any provision of this chapter or the application thereof to any person or circumstances
350 is held invalid, the invalidity does not affect other provisions or applications of this chapter
351 which can be given effect without the invalid provisions or applications, and to this end the
352 provisions of this chapter are severable.

353 Section 13. Section **57-8a-112** is enacted to read:

354 **57-8a-112. Unconscionable agreement or term of contract.**

355 (1) The court, upon finding as a matter of law that a contract or contract clause was
356 unconscionable at the time the contract was made, may refuse to enforce the contract, enforce
357 the remainder of the contract without the unconscionable clause, or limit the application of any
358 unconscionable clause in order to avoid an unconscionable result.

359 (2) (a) Whenever it is claimed, or appears to the court, that a contract or any contract
360 clause is or may be unconscionable, the parties, in order to aid the court in making the
361 determination, must be afforded a reasonable opportunity to present evidence as to:

362 (i) the commercial setting of the negotiations;

363 (ii) whether a party has knowingly taken advantage of the inability of the other party
364 reasonably to protect his interests by reason of physical or mental infirmity, illiteracy, inability
365 to understand the language of the agreement, or similar factors;

366 (iii) the effect and purpose of the contract or clause; and

367 (iv) if a sale, any gross disparity, at the time of contracting, between the amount
368 charged for the property and the value of that property measured by the price at which similar

369 property was readily obtainable in similar transactions.

370 (b) A disparity between the contract price and the value of the property measured by
371 the price at which similar property was readily obtainable in similar transactions does not, of
372 itself, render the contract unconscionable.

373 Section 14. Section **57-8a-113** is enacted to read:

374 **57-8a-113. Obligation of good faith.**

375 Every contract or duty governed by this chapter imposes an obligation of good faith in
376 its performance or enforcement.

377 Section 15. Section **57-8a-114** is enacted to read:

378 **57-8a-114. Remedies to be liberally administered.**

379 (1) The remedies provided by this chapter shall be liberally administered to the end that
380 the aggrieved party is put in as good a position as if the other party had fully performed.
381 However, consequential, special, or punitive damages may not be awarded except as
382 specifically provided in this chapter or by other rule of law.

383 (2) Any right or obligation declared by this chapter is enforceable by judicial
384 proceeding.

385 Section 16. Section **57-8a-115** is enacted to read:

386 **57-8a-115. Adjustment of dollar amounts.**

387 (1) From time to time the dollar amount specified in Section 57-8a-203 must change,
388 as provided in Subsections (2) and (3), according to and to the extent of changes in the
389 Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All
390 Items 1967 = 100, compiled by the Bureau of Labor Statistics, United States Department of
391 Labor, (the "Index"). The Index for December, 1979, which was 230, is the Reference Base
392 Index.

393 (2) The dollar amount specified in Section 57-8a-203 and any amount stated in the
394 declaration pursuant to that section, must change on July 1 of each year if the percentage of
395 change, calculated to the nearest whole percentage point, between the Index at the end of the
396 preceding year and the Reference Base Index is 10% or more, but:

397 (a) the portion of the percentage change in the Index in excess of a multiple of 10%
398 must be disregarded and the dollar amount shall change only in multiples of 10% of the amount
399 appearing in this chapter on the date of enactment;

400 (b) the dollar amount must not change if the amount required by this section is that
401 currently in effect pursuant to this chapter as a result of earlier application of this section; and

402 (c) in no event may the dollar amount be reduced below the amount appearing in this
403 chapter on the date of enactment.

404 (3) If the Index is revised after December, 1979, the percentage of change pursuant to
405 this section must be calculated on the basis of the revised Index. If the revision of the Index
406 changes the Reference Base Index, a revised Reference Base Index must be determined by
407 multiplying the Reference Base Index then applicable by the rebasing factor furnished by the
408 Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section is
409 the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in
410 the purchasing power of the dollar for consumers.

411 Section 17. Section **57-8a-201** is enacted to read:

412 **Part 2. Applicability**

413 **57-8a-201. Applicability to new common interest communities.**

414 Except as provided in Sections 57-8a-202 and 57-8a-203, this chapter applies to all
415 common interest communities created within this state after May 3, 2004. The provisions of
416 Chapter 8, Condominium Ownership Act, do not apply to common interest communities
417 created after May 3, 2004. Amendments to this chapter apply to all common interest
418 communities created after May 3, 2004 or subjected to this chapter, regardless of when the
419 amendment is adopted in this state.

420 Section 18. Section **57-8a-202** is enacted to read:

421 **57-8a-202. Exception for small cooperatives.**

422 If a cooperative contains no more than 12 units and is not subject to any development
423 rights, it is subject only to Sections 57-8a-106 and 57-8a-107 of this chapter unless the
424 declaration provides that the entire chapter is applicable.

425 Section 19. Section **57-8a-203** is enacted to read:

426 **57-8a-203. Exception for small and limited expense liability planned communities.**

427 (1) A planned community that is not subject to any development right is subject only to
428 Sections 57-8a-105, 57-8a-106, and 57-8a-107 unless the declaration provides that this entire
429 chapter is applicable, if the planned community:

430 (a) contains no more than 12 units; or

431 (b) provides, in its declaration, that the annual average common expense liability of all
432 units restricted to residential purposes, exclusive of optional user fees and any insurance
433 premiums paid by the association, may not exceed \$300 as adjusted pursuant to Section
434 57-8a-115.

435 (2) The exemption provided in Subsection (1)(b) applies only if:

436 (a) the declarant reasonably believes in good faith that the maximum stated assessment
437 will be sufficient to pay the expenses of the planned community; and

438 (b) the declaration provides that the assessment may not be increased during the period
439 of declarant control without the consent of all unit owners.

440 Section 20. Section **57-8a-204** is enacted to read:

441 **57-8a-204. Application to preexisting common interest communities.**

442 Except as provided in Section 57-8a-205, Sections 57-8a-105, 57-8a-106, 57-8a-107,
443 57-8a-303, 57-8a-304, 57-8a-321, Subsections 57-8a-402(1)(a) through (f) and (k) through (p),
444 Sections 57-8a-411, 57-8a-416, and 57-8a-418, and Section 57-8a-103 to the extent necessary
445 in construing any of those sections, apply to all common interest communities created in this
446 state before May 3, 2004; but those sections apply only with respect to events and
447 circumstances occurring after May 3, 2004 and do not invalidate existing provisions of the
448 declaration, bylaws, or plats or plans of those common interest communities.

449 Section 21. Section **57-8a-205** is enacted to read:

450 **57-8a-205. Exception for small preexisting cooperatives and planned**
451 **communities.**

452 If a cooperative or planned community created within this state before May 3, 2004
453 contains no more than 12 units and is not subject to any development rights, it is subject only
454 to Sections 57-8a-105, 57-8a-106, and 57-8a-107 unless the declaration is amended in
455 conformity with applicable law and with the procedures and requirements of the declaration to
456 take advantage of the provisions of Section 57-8a-206, in which case all the sections
457 enumerated in Section 57-8a-204 apply to that cooperative or planned community.

458 Section 22. Section **57-8a-206** is enacted to read:

459 **57-8a-206. Amendments to governing instruments.**

460 (1) The declaration, bylaws, or plats and plans of any common interest community
461 created before May 3, 2004 may be amended to achieve any result permitted by this chapter,

462 regardless of what applicable law provided before this chapter was adopted.

463 (2) An amendment to the declaration, bylaws, or plats and plans authorized by this
464 section must be adopted in conformity with any procedures and requirements for amending the
465 instruments specified by those instruments or, if there are none, in conformity with the
466 amendment procedures of this chapter. If an amendment grants to any person any rights,
467 powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and
468 restrictions in this chapter also apply to that person.

469 Section 23. Section **57-8a-207** is enacted to read:

470 **57-8a-207. Applicability to nonresidential and mixed-use common interest**
471 **communities.**

472 (1) (a) As used in this section, "nonresidential common interest community" means a
473 common interest community in which all units are restricted exclusively to nonresidential
474 purposes.

475 (b) Except as provided in Subsection (5), this section applies only to nonresidential
476 common interest communities.

477 (2) A nonresidential common interest community is not subject to this chapter unless
478 the declaration otherwise provides.

479 (3) The declaration of a nonresidential common interest community may provide that
480 the entire chapter applies to the community or that only Sections 57-8a-105, 57-8a-106, and
481 57-8a-107 apply.

482 (4) If the entire chapter applies to a nonresidential common interest community, the
483 declaration may also require, subject to Section 57-8a-112, that:

484 (a) notwithstanding Section 57-8a-405, any management contract, employment
485 contract, lease of recreational or parking areas or facilities, and any other contract or lease
486 between the association and a declarant or an affiliate of a declarant continues in force after the
487 declarant turns over control of the association; and

488 (b) notwithstanding Section 57-8a-104, purchasers of units must execute proxies,
489 powers of attorney, or similar devices in favor of the declarant regarding particular matters
490 enumerated in those instruments.

491 (5) A common interest community that contains units restricted exclusively to
492 nonresidential purposes and other units that may be used for residential purposes is not subject

493 to this chapter unless the units that may be used for residential purposes would comprise a
494 common interest community in the absence of the nonresidential units or the declaration
495 provides that this chapter applies as provided in Subsection (3) or (4).

496 Section 24. Section **57-8a-208** is enacted to read:

497 **57-8a-208. Applicability to out-of-state common interest communities.**

498 This chapter does not apply to common interest communities or units located outside
499 this state.

500 Section 25. Section **57-8a-301** is enacted to read:

501 **Part 3. Creation, Alteration, and Termination of Common Interest Communities**

502 **57-8a-301. Creation of common interest communities.**

503 (1) A common interest community may be created pursuant to this chapter only by
504 recording a declaration executed in the same manner as a deed and, in a cooperative, by
505 conveying the real estate subject to that declaration to the association. The declaration must be
506 recorded in every county in which any portion of the common interest community is located
507 and must be indexed in the grantee's index in the name of the common interest community and
508 the association and in the grantor's index in the name of each person executing the declaration.

509 (2) In a condominium, a declaration, or an amendment to a declaration, adding units
510 may not be recorded unless all structural components and mechanical systems of all buildings
511 containing or comprising any units thereby created are substantially completed in accordance
512 with the plans, as evidenced by a recorded certificate of completion executed by an
513 independent engineer, surveyor, or architect.

514 Section 26. Section **57-8a-302** is enacted to read:

515 **57-8a-302. Unit boundaries.**

516 Except as provided by the declaration:

517 (1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring,
518 wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any
519 other materials constituting any part of the finished surfaces thereof are a part of the unit, and
520 all other portions of the walls, floors, or ceilings are a part of the common elements.

521 (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other
522 fixture lies partially within and partially outside the designated boundaries of a unit, any
523 portion thereof serving only that unit is a limited common element allocated solely to that unit.

524 and any portion thereof serving more than one unit or any portion of the common elements is a
525 part of the common elements.

526 (3) Subject to Subsection (2), all spaces, interior partitions, and other fixtures and
527 improvements within the boundaries of a unit are a part of the unit.

528 (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies,
529 patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but
530 located outside the unit's boundaries, are limited common elements allocated exclusively to
531 that unit.

532 Section 27. Section **57-8a-303** is enacted to read:

533 **57-8a-303. Construction and validity of declaration and bylaws.**

534 (1) All provisions of the declaration and bylaws are severable.

535 (2) The rule against perpetuities does not apply to defeat any provision of the
536 declaration, bylaws, rules, or regulations adopted pursuant to Subsection 57-8a-402(1)(a).

537 (3) In the event of a conflict between the provisions of the declaration and the bylaws,
538 the declaration prevails except to the extent the declaration is inconsistent with this chapter.

539 (4) Title to a unit and common elements is not rendered unmarketable or otherwise
540 affected by reason of an insubstantial failure of the declaration to comply with this chapter.
541 Whether a substantial failure impairs marketability is not affected by this chapter.

542 Section 28. Section **57-8a-304** is enacted to read:

543 **57-8a-304. Description of units.**

544 A description of a unit which sets forth the name of the common interest community,
545 the recording data for the declaration, the county in which the common interest community is
546 located, and the identifying number of the unit, is a legally sufficient description of that unit
547 and all rights, obligations, and interests appurtenant to that unit which were created by the
548 declaration or bylaws.

549 Section 29. Section **57-8a-305** is enacted to read:

550 **57-8a-305. Contents of declaration.**

551 (1) The declaration must contain:

552 (a) the names of the common interest community and the association and a statement
553 that the common interest community is either a condominium, cooperative, or planned
554 community;

555 (b) the name of every county in which any part of the common interest community is
556 situated;

557 (c) a legally sufficient description of the real estate included in the common interest
558 community;

559 (d) a statement of the maximum number of units that the declarant reserves the right to
560 create;

561 (e) in a condominium or planned community, a description of the boundaries of each
562 unit created by the declaration, including the unit's identifying number or, in a cooperative, a
563 description, which may be by plats or plans, of each unit created by the declaration, including
564 the unit's identifying number, its size or number of rooms, and its location within a building if
565 it is within a building containing more than one unit;

566 (f) a description of any limited common elements, other than those specified in
567 Subsections 57-8a-302(2) and (4), as provided in Subsection 57-8a-309(2)(j) and, in a planned
568 community, any real estate that is or must become common elements;

569 (g) a description of any real estate, except real estate subject to development rights, that
570 may be allocated subsequently as limited common elements, other than limited common
571 elements specified in Subsections 57-8a-302(2) and (4), together with a statement that they
572 may be so allocated;

573 (h) a description of any development rights and other special declarant rights reserved
574 by the declarant, together with a legally sufficient description of the real estate to which each of
575 those rights applies, and a time limit within which each of those rights must be exercised;

576 (i) if any development right may be exercised with respect to different parcels of real
577 estate at different times, a statement to that effect together with:

578 (i) either a statement fixing the boundaries of those portions and regulating the order in
579 which those portions may be subjected to the exercise of each development right or a statement
580 that no assurances are made in those regards; and

581 (ii) a statement as to whether, if any development right is exercised in any portion of
582 the real estate subject to that development right, that development right must be exercised in all
583 or in any other portion of the remainder of that real estate;

584 (j) any other conditions or limitations under which the rights described in Subsection
585 (1)(h) may be exercised or will lapse;

586 (k) an allocation to each unit of the allocated interests in the manner described in
587 Section 57-8a-307;

588 (l) any restrictions:

589 (i) on alienation of the units, including any restrictions on leasing which exceed the
590 restrictions on leasing units which executive boards may impose pursuant to Subsection
591 57-8a-402(3)(b); and

592 (ii) on the amount for which a unit may be sold or on the amount that may be received
593 by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest
594 community, or on termination of the common interest community;

595 (m) the recording data for recorded easements and licenses appurtenant to or included
596 in the common interest community or to which any portion of the common interest community
597 is or may become subject by virtue of a reservation in the declaration; and

598 (n) all matters required by Sections 57-8a-306, 57-8a-307, 57-8a-308, 57-8a-309,
599 57-8a-315, and 57-8a-316 and Subsection 57-8a-403(4).

600 (2) The declaration may contain any other matters the declarant considers appropriate,
601 including any restrictions on the uses of a unit or the number or other qualifications of persons
602 who may occupy units.

603 Section 30. Section **57-8a-306** is enacted to read:

604 **57-8a-306. Leasehold common interest communities.**

605 (1) Any lease the expiration or termination of which may terminate the common
606 interest community or reduce its size, or a memorandum thereof, must be recorded. Every
607 lessor of those leases in a condominium or planned community shall sign the declaration. The
608 declaration must state:

609 (a) the recording data for the lease or a statement of where the complete lease may be
610 inspected;

611 (b) the date on which the lease is scheduled to expire;

612 (c) a legally sufficient description of the real estate subject to the lease;

613 (d) any right of the unit owners to redeem the reversion and the manner whereby those
614 rights may be exercised, or a statement that they do not have those rights;

615 (e) any right of the unit owners to remove any improvements within a reasonable time
616 after the expiration or termination of the lease, or a statement that they do not have those rights;

617 and

618 (f) any rights of the unit owners to renew the lease and the conditions of any renewal,
619 or a statement that they do not have those rights.

620 (2) After the declaration for a leasehold condominium or leasehold planned community
621 is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold
622 interest of a unit owner who makes timely payment of a unit owner's share of the rent and
623 otherwise complies with all covenants which, if violated, would entitle the lessor to terminate
624 the lease. A unit owner's leasehold interest in a condominium or planned community is not
625 affected by failure of any other person to pay rent or fulfill any other covenant.

626 (3) Acquisition of the leasehold interest of any unit owner by the owner of the
627 reversion or remainder does not merge the leasehold and fee simple interests unless the
628 leasehold interests of all unit owners subject to that reversion or remainder are acquired.

629 (4) If the expiration or termination of a lease decreases the number of units in a
630 common interest community, the allocated interests must be reallocated in accordance with
631 Subsection 57-8a-107(1) as if those units had been taken by eminent domain. Reallocations
632 must be confirmed by an amendment to the declaration prepared, executed, and recorded by the
633 association.

634 Section 31. Section **57-8a-307** is enacted to read:

635 **57-8a-307. Allocation of allocated interests.**

636 (1) The declaration must allocate to each unit:

637 (a) in a condominium, a fraction or percentage of undivided interests in the common
638 elements and in the common expenses of the association, and a portion of the votes in the
639 association;

640 (b) in a cooperative, an ownership interest in the association, a fraction or percentage
641 of the common expenses of the association, and a portion of the votes in the association; and

642 (c) in a planned community, a fraction or percentage of the common expenses of the
643 association, and a portion of the votes in the association.

644 (2) The declaration must state the formulas used to establish allocations of interests.
645 Those allocations may not discriminate in favor of units owned by the declarant or an affiliate
646 of the declarant.

647 (3) If units may be added to or withdrawn from the common interest community, the

648 declaration must state the formulas to be used to reallocate the allocated interests among all
649 units included in the common interest community after the addition or withdrawal.

650 (4) (a) The declaration may provide:

651 (i) that different allocations of votes shall be made to the units on particular matters
652 specified in the declaration;

653 (ii) for cumulative voting only for the purpose of electing members of the executive
654 board; and

655 (iii) for class voting on specified issues affecting the class if necessary to protect valid
656 interests of the class.

657 (b) A declarant may not utilize cumulative or class voting for the purpose of evading
658 any limitation imposed on declarants by this chapter nor may units constitute a class because
659 they are owned by a declarant.

660 (5) Except for minor variations due to rounding, the sum of the common expense
661 liabilities and, in a condominium, the sum of the undivided interests in the common elements
662 allocated at any time to all the units must each equal one if stated as a fraction or 100% if
663 stated as a percentage. In the event of discrepancy between an allocated interest and the result
664 derived from application of the pertinent formula, the allocated interest prevails.

665 (6) In a condominium, the common elements are not subject to partition, and any
666 purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of
667 an undivided interest in the common elements made without the unit to which that interest is
668 allocated is void.

669 (7) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other
670 voluntary or involuntary transfer of an ownership interest in the association made without the
671 possessory interest in the unit to which that interest is related is void.

672 Section 32. Section **57-8a-308** is enacted to read:

673 **57-8a-308. Limited common elements.**

674 (1) Except for the limited common elements described in Subsections 57-8a-302(2)
675 and (4), the declaration must specify to which unit or units each limited common element is
676 allocated. An allocation may not be altered without the consent of the unit owners whose units
677 are affected.

678 (2) Except as the declaration otherwise provides, a limited common element may be

679 reallocated by an amendment to the declaration executed by the unit owners between or among
680 whose units the reallocation is made. The persons executing the amendment shall provide a
681 copy thereof to the association, which shall record it. The amendment must be recorded in the
682 names of the parties and the common interest community.

683 (3) A common element not previously allocated as a limited common element may be
684 so allocated only pursuant to provisions in the declaration made in accordance with Subsection
685 57-8a-305(1)(g). The allocations must be made by amendments to the declaration.

686 Section 33. Section **57-8a-309** is enacted to read:

687 **57-8a-309. Plats and plans.**

688 (1) Plats and plans are a part of the declaration, and are required for all common
689 interest communities except cooperatives. Separate plats and plans are not required by this
690 chapter if all the information required by this section is contained in either a plat or plan. Each
691 plat and plan must be clear and legible and contain a certification that the plat or plan contains
692 all information required by this section.

693 (2) Each plat must show or project:

694 (a) the name and a survey or general schematic map of the entire common interest
695 community;

696 (b) the location and dimensions of all real estate not subject to development rights, or
697 subject only to the development right to withdraw, and the location and dimensions of all
698 existing improvements within that real estate;

699 (c) a legally sufficient description of any real estate subject to development rights,
700 labeled to identify the rights applicable to each parcel;

701 (d) the extent of any encroachments by or upon any portion of the common interest
702 community;

703 (e) to the extent feasible, a legally sufficient description of all easements serving or
704 burdening any portion of the common interest community;

705 (f) except as provided in Subsection (8), the approximate location and dimensions of
706 any vertical unit boundaries not shown or projected on plans recorded pursuant to Subsection
707 (4) and that unit's identifying number;

708 (g) except as provided in Subsection (8), the approximate location with reference to an
709 established datum of any horizontal unit boundaries not shown or projected on plans recorded

710 pursuant to Subsection (4) and that unit's identifying number;

711 (h) a legally sufficient description of any real estate in which the unit owners will own
712 only an estate for years, labeled as "leasehold real estate";

713 (i) the distance between noncontiguous parcels of real estate comprising the common
714 interest community;

715 (j) the approximate location and dimensions of any porches, decks, balconies, garages,
716 or patios allocated as limited common elements, and show or contain a narrative description of
717 any other limited common elements; and

718 (k) in the case of real estate not subject to development rights, all other matters
719 customarily shown on land surveys.

720 (3) A plat may also show the intended location and dimensions of any contemplated
721 improvement to be constructed anywhere within the common interest community. Any
722 contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT
723 BE BUILT".

724 (4) Except as provided in Subsection (8), to the extent not shown or projected on the
725 plats, plans of the units must show or project:

726 (a) the approximate location and dimensions of the vertical boundaries of each unit,
727 and that unit's identifying number;

728 (b) the approximate location of any horizontal unit boundaries, with reference to an
729 established datum, and that unit's identifying number; and

730 (c) the approximate location of any units in which the declarant has reserved the right
731 to create additional units or common elements, identified appropriately.

732 (5) Unless the declaration provides otherwise, the horizontal boundaries of part of a
733 unit located outside a building have the same elevation as the horizontal boundaries of the
734 inside part and need not be depicted on the plats and plans.

735 (6) Upon exercising any development right, the declarant shall record either new plats
736 and plans necessary to conform to the requirements of Subsections (1), (2), and (4), or new
737 certifications of plats and plans previously recorded if those plats and plans otherwise conform
738 to the requirements of those subsections.

739 (7) Any certification of a plat or plan required by this section or Subsection
740 57-8a-301(2) must be made by an independent surveyor, architect, or engineer.

741 (8) Plats and plans need not show the location and dimensions of the units' boundaries
742 or their limited common elements if:

743 (a) the plat shows the location and dimensions of all buildings containing or
744 comprising the units; and

745 (b) the declaration includes other information that shows or contains a narrative
746 description of the general layout of the units in those buildings and the limited common
747 elements allocated to those units.

748 Section 34. Section **57-8a-310** is enacted to read:

749 **57-8a-310. Exercise of development rights.**

750 (1) To exercise any development right reserved under Subsection 57-8a-305(1)(h), the
751 declarant shall prepare, execute, and record an amendment to the declaration and in a
752 condominium or planned community comply with Section 57-8a-309. The declarant is the unit
753 owner of any units thereby created. The amendment to the declaration must assign an
754 identifying number to each new unit created, and, except in the case of subdivision or
755 conversion of units described in Subsection (2), reallocate the allocated interests among all
756 units. The amendment must describe any common elements and any limited common elements
757 thereby created and, in the case of limited common elements, designate the unit to which each
758 is allocated to the extent required by Section 57-8a-308.

759 (2) Development rights may be reserved within any real estate added to the common
760 interest community if the amendment adding that real estate includes all matters required by
761 Section 57-8a-305 or 57-8a-306, as the case may be, and, in a condominium or planned
762 community, the plats and plans include all matters required by Section 57-8a-309. This
763 provision does not extend the time limit on the exercise of development rights imposed by the
764 declaration pursuant to Subsection 57-8a-305(1)(h).

765 (3) Whenever a declarant exercises a development right to subdivide or convert a unit
766 previously created into additional units, common elements, or both:

767 (a) if the declarant converts the unit entirely to common elements, the amendment to
768 the declaration must reallocate all the allocated interests of that unit among the other units as if
769 that unit had been taken by eminent domain; and

770 (b) if the declarant subdivides the unit into two or more units, whether or not any part
771 of the unit is converted into common elements, the amendment to the declaration must

772 reallocate all the allocated interests of the unit among the units created by the subdivision in
773 any reasonable manner prescribed by the declarant.

774 (4) If the declaration provides, pursuant to Subsection 57-8a-305(1)(h), that all or a
775 portion of the real estate is subject to a right of withdrawal:

776 (a) if all the real estate is subject to withdrawal, and the declaration does not describe
777 separate portions of real estate subject to that right, none of the real estate may be withdrawn
778 after a unit has been conveyed to a purchaser; and

779 (b) if any portion is subject to withdrawal, it may not be withdrawn after a unit in that
780 portion has been conveyed to a purchaser.

781 Section 35. Section **57-8a-311** is enacted to read:

782 **57-8a-311. Alteration of units.**

783 (1) Subject to the provisions of the declaration and other provisions of law, a unit
784 owner:

785 (a) may make any improvements or alterations to his unit that do not impair the
786 structural integrity or mechanical systems or lessen the support of any portion of the common
787 interest community;

788 (b) may not change the appearance of the common elements, or the exterior appearance
789 of a unit or any other portion of the common interest community, without permission of the
790 association; and

791 (c) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may
792 remove or alter any intervening partition or create apertures therein, even if the partition in
793 whole or in part is a common element, if those acts do not impair the structural integrity or
794 mechanical systems or lessen the support of any portion of the common interest community.

795 (2) Removal of partitions or creation of apertures under Subsection (1)(c) is not an
796 alteration of boundaries.

797 Section 36. Section **57-8a-312** is enacted to read:

798 **57-8a-312. Relocation of unit boundaries.**

799 (1) Subject to the provisions of the declaration and other provisions of law, the
800 boundaries between adjoining units may be relocated by an amendment to the declaration upon
801 application to the association by the owners of those units. If the owners of the adjoining units
802 have specified a reallocation between their units of their allocated interests, the application

803 must state the proposed reallocations. Unless the executive board determines, within 30 days,
804 that the reallocations are unreasonable, the association shall prepare an amendment that
805 identifies the units involved and states the reallocations. The amendment must be executed by
806 those unit owners, contain words of conveyance between them, and, on recordation, be indexed
807 in the name of the grantor and the grantee, and in the grantee's index in the name of the
808 association.

809 (2) Subject to the provisions of the declaration and other provisions of law, boundaries
810 between units and common elements may be relocated to incorporate common elements within
811 a unit by an amendment to the declaration upon application to the association by the owner of
812 the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the
813 amendment may be approved only if persons entitled to cast at least 67% of the votes in the
814 association, including 67% of the votes allocated to units not owned by the declarant, agree to
815 the action. The amendment may describe any fees or charges payable by the owner of the
816 affected unit in connection with the boundary relocation and the fees and charges are assets of
817 the association. The amendment must be executed by the unit owner of the unit whose
818 boundary is being relocated and by the association, contain words of conveyance between
819 them, and on recordation be indexed in the name of the unit owner and the association as
820 grantor or grantee, as appropriate.

821 (3) The association:

822 (a) in a condominium or planned community shall prepare and record plats or plans
823 necessary to show the altered boundaries of affected units, and their dimensions and identifying
824 numbers; and

825 (b) in a cooperative shall prepare and record amendments to the declaration, including
826 any plans, necessary to show or describe the altered boundaries of affected units, and their
827 dimensions and identifying numbers.

828 Section 37. Section **57-8a-313** is enacted to read:

829 **57-8a-313. Subdivision of units.**

830 (1) If the declaration expressly so permits, a unit may be subdivided into two or more
831 units. Subject to the provisions of the declaration and other provisions of law, upon application
832 of a unit owner to subdivide a unit, the association shall prepare, execute, and record an
833 amendment to the declaration, including in a condominium or planned community the plats and

834 plans, subdividing that unit.

835 (2) The amendment to the declaration must be executed by the owner of the unit to be
836 subdivided, assign an identifying number to each unit created, and reallocate the allocated
837 interests formerly allocated to the subdivided unit to the new units in any reasonable manner
838 prescribed by the owner of the subdivided unit.

839 Section 38. Section **57-8a-314** is enacted to read:

840 **57-8a-314. Easement for encroachments.**

841 To the extent that any unit or common element encroaches on any other unit or
842 common element, a valid easement for the encroachment exists. The easement does not relieve
843 a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other
844 person of liability for failure to adhere to any plats and plans or, in a cooperative, to any
845 representation in the public offering statement.

846 Section 39. Section **57-8a-315** is enacted to read:

847 **57-8a-315. Use for sales purposes.**

848 A declarant may maintain sales offices, management offices, and models in units or on
849 common elements in the common interest community only if the declaration so provides and
850 specifies the rights of a declarant with regard to the number, size, location, and relocation
851 thereof. In a cooperative or condominium, any sales office, management office, or model not
852 designated a unit by the declaration is a common element. If a declarant ceases to be a unit
853 owner, he ceases to have any rights with regard thereto unless it is removed promptly from the
854 common interest community in accordance with a right to remove reserved in the declaration.
855 Subject to any limitations in the declaration, a declarant may maintain signs on the common
856 elements advertising the common interest community. This section is subject to the provisions
857 of other state laws and to local ordinances.

858 Section 40. Section **57-8a-316** is enacted to read:

859 **57-8a-316. Easement rights.**

860 (1) Subject to the provisions of the declaration, a declarant has an easement through the
861 common elements as may be reasonably necessary for the purpose of discharging the
862 declarant's obligations or exercising special declarant rights, whether arising under this chapter
863 or reserved in the declaration.

864 (2) In a planned community, subject to the provisions of Subsection 57-8a-402(1)(f)

865 and Section 57-8a-412, the unit owners have an easement:

866 (a) in the common elements for purposes of access to their units; and

867 (b) to use the common elements and all real estate that must become common elements
868 for all other purposes.

869 Section 41. Section **57-8a-317** is enacted to read:

870 **57-8a-317. Amendment of declaration.**

871 (1) Except in cases of amendments that may be executed by a declarant under
872 Subsection 57-8a-309(6) or Section 57-8a-310, or by the association under Section 57-8a-107,
873 Subsection 57-8a-306(4), Subsection 57-8a-308(3), Subsection 57-8a-312(1), or Section
874 57-8a-313, or by certain unit owners under Subsection 57-8a-308(2), 57-8a-312(1),
875 57-8a-313(2), or 57-8a-318(2), and except as limited by Subsection (4), the declaration,
876 including any plats and plans, may be amended only by vote or agreement of unit owners of
877 units to which at least 67% of the votes in the association are allocated, or any larger majority
878 the declaration specifies. The declaration may specify a smaller number only if all of the units
879 are restricted exclusively to nonresidential use.

880 (2) No action to challenge the validity of an amendment adopted by the association
881 pursuant to this section may be brought more than one year after the amendment is recorded.

882 (3) Every amendment to the declaration must be recorded in every county in which any
883 portion of the common interest community is located and is effective only upon recordation.
884 An amendment, except an amendment pursuant to Subsection 57-8a-312(1), must be indexed
885 in the grantee's index in the name of the common interest community and the association and in
886 the grantor's index in the name of the parties executing the amendment.

887 (4) Except to the extent expressly permitted or required by other provisions of this
888 chapter, no amendment may create or increase special declarant rights, increase the number of
889 units, change the boundaries of any unit or the allocated interests of a unit, in the absence of
890 unanimous consent of the unit owners.

891 (5) Amendments to the declaration required by the chapter to be recorded by the
892 association must be prepared, executed, recorded, and certified on behalf of the association by
893 any officer of the association designated for that purpose or, in the absence of designation, by
894 the president of the association.

895 (6) By vote or agreement of unit owners of units to which at least 80% of the votes in

896 the association are allocated, or any larger percentage specified in the declaration, an
897 amendment to the declaration may prohibit or materially restrict the permitted uses of or
898 behavior in a unit or the number or other qualifications of persons who may occupy units. The
899 amendment must provide reasonable protection for a use or occupancy permitted at the time
900 the amendment was adopted.

901 (7) The time limits specified in the declaration pursuant to Subsection 57-8a-305(1)(h)
902 within which reserved development rights must be exercised may be extended, and additional
903 development rights may be created, if persons entitled to cast at least 80% of the votes in the
904 association, including 80% of the votes allocated to units not owned by the declarant, agree to
905 that action. The agreement is effective 30 days after an amendment to the declaration
906 reflecting the terms of the agreement is recorded unless all the persons holding the affected
907 special declarant rights, or security interests in those rights, record a written objection within
908 the 30-day period, in which case the amendment is void, or consent in writing at the time the
909 amendment is recorded, in which case the amendment is effective when recorded.

910 Section 42. Section **57-8a-318** is enacted to read:

911 **57-8a-318. Termination of common interest community.**

912 (1) Except in the case of a taking of all the units by eminent domain or in the case of
913 foreclosure against an entire cooperative of a security interest that has priority over the
914 declaration, a common interest community may be terminated only by agreement of unit
915 owners of units to which at least 80% of the votes in the association are allocated, or any larger
916 percentage the declaration specifies. The declaration may specify a smaller percentage only if
917 all of the units are restricted exclusively to nonresidential uses.

918 (2) An agreement to terminate must be evidenced by the execution of a termination
919 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of
920 unit owners. The termination agreement must specify a date after which the agreement will be
921 void unless it is recorded before that date. A termination agreement and all ratifications thereof
922 must be recorded in every county in which a portion of the common interest community is
923 situated and is effective only upon recordation.

924 (3) In the case of a condominium or planned community containing only units having
925 horizontal boundaries described in the declaration, a termination agreement may provide that
926 all of the common elements and units of the common interest community must be sold

927 following termination. If, pursuant to the agreement, any real estate in the common interest
928 community is to be sold following termination, the termination agreement must set forth the
929 minimum terms of the sale.

930 (4) In the case of a condominium or planned community containing any units not
931 having horizontal boundaries described in the declaration, a termination agreement may
932 provide for sale of the common elements, but it may not require that the units be sold following
933 termination, unless the declaration as originally recorded provided otherwise or all the unit
934 owners consent to the sale.

935 (5) The association, on behalf of the unit owners, may contract for the sale of real
936 estate in a common interest community, but the contract is not binding on the unit owners until
937 approved pursuant to Subsections (1) and (2). If any real estate is to be sold following
938 termination, title to that real estate, upon termination, vests in the association as trustee for the
939 holders of all interests in the units. Thereafter, the association has all powers necessary and
940 appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof
941 distributed, the association continues in existence with all powers it had before termination.
942 Proceeds of the sale must be distributed to unit owners and lien holders as their interests may
943 appear, in accordance with Subsections (8), (9), and (10). Unless otherwise specified in the
944 termination agreement, as long as the association holds title to the real estate, each unit owner
945 and the unit owner's successors in interest have an exclusive right to occupancy of the portion
946 of the real estate that formerly constituted the unit. During the period of that occupancy, each
947 unit owner and the unit owner's successors in interest remain liable for all assessments and
948 other obligations imposed on unit owners by this chapter or the declaration.

949 (6) In a condominium or planned community, if the real estate constituting the
950 common interest community is not to be sold following termination, title to the common
951 elements and, in a common interest community containing only units having horizontal
952 boundaries described in the declaration, title to all the real estate in the common interest
953 community, vests in the unit owners upon termination as tenants in common in proportion to
954 their respective interests as provided in Subsection (10), and liens on the units shift
955 accordingly. While the tenancy in common exists, each unit owner and the unit owner's
956 successors in interest have an exclusive right to occupancy of the portion of the real estate that
957 formerly constituted the unit.

958 (7) Following termination of the common interest community, the proceeds of any sale
959 of real estate, together with the assets of the association, are held by the association as trustee
960 for unit owners and holders of liens on the units as their interests may appear.

961 (8) Following termination of a condominium or planned community, creditors of the
962 association holding liens on the units, which were recorded before termination, may enforce
963 those liens in the same manner as any lien holder. All other creditors of the association are to
964 be treated as if they had perfected liens on the units immediately before termination.

965 (9) (a) In a cooperative, the declaration may provide that all creditors of the association
966 have priority over any interests of unit owners and creditors of unit owners. In that event,
967 following termination, creditors of the association holding liens on the cooperative which were
968 recorded before termination may enforce their liens in the same manner as any lien holder, and
969 any other creditor of the association is to be treated as if he had perfected a lien against the
970 cooperative immediately before termination. Unless the declaration provides that all creditors
971 of the association have that priority:

972 (i) the lien of each creditor of the association which was perfected against the
973 association before termination becomes, upon termination, a lien against each unit owner's
974 interest in the unit as of the date the lien was perfected;

975 (ii) any other creditor of the association is to be treated upon termination as if the
976 creditor had perfected a lien against each unit owner's interest immediately before termination;

977 (iii) the amount of the lien of an association's creditor described in Subsections (9)(a)(i)
978 and (b) against each of the unit owners' interest must be proportionate to the ratio which each
979 unit's common expense liability bears to the common expense liability of all of the units;

980 (iv) the lien of each creditor of each unit owner which was perfected before termination
981 continues as a lien against that unit owner's unit as of the date the lien was perfected; and

982 (v) the assets of the association must be distributed to all unit owners and all lien
983 holders as their interests may appear in the order described above.

984 (b) Creditors of the association are not entitled to payment from any unit owner in
985 excess of the amount of the creditor's lien against that unit owner's interest.

986 (10) The respective interests of unit owners referred to in Subsections (5) through (9)
987 are as follows:

988 (a) Except as provided in Subsection (10)(b), the respective interests of unit owners are

989 the fair market values of their units, allocated interests, and any limited common elements
990 immediately before the termination, as determined by one or more independent appraisers
991 selected by the association. The decision of the independent appraisers must be distributed to
992 the unit owners and becomes final unless disapproved within 30 days after distribution by unit
993 owners of units to which 25% of the votes in the association are allocated. The proportion of
994 any unit owner's interest to that of all unit owners is determined by dividing the fair market
995 value of that unit owner's unit and its allocated interests by the total fair market values of all the
996 units and their allocated interests.

997 (b) If any unit or any limited common element is destroyed to the extent that an
998 appraisal of the fair market value thereof before destruction cannot be made, the interests of all
999 unit owners are:

1000 (i) in a condominium, their respective common element interests immediately before
1001 the termination;

1002 (ii) in a cooperative, their respective ownership interests immediately before the
1003 termination; and

1004 (iii) in a planned community, their respective common expense liabilities immediately
1005 before the termination.

1006 (11) In a condominium or planned community, except as provided in Subsection (12),
1007 foreclosure or enforcement of a lien or encumbrance against the entire common interest
1008 community does not terminate, of itself, the common interest community, and foreclosure or
1009 enforcement of a lien or encumbrance against a portion of the common interest community,
1010 other than withdrawable real estate, does not withdraw that portion from the common interest
1011 community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real
1012 estate, or against common elements that have been subjected to a security interest by the
1013 association under Section 57-8a-412, does not withdraw, of itself, that real estate from the
1014 common interest community, but the person taking title thereto may require from the
1015 association, upon request, an amendment excluding the real estate from the common interest
1016 community.

1017 (12) In a condominium or planned community, if a lien or encumbrance against a
1018 portion of the real estate comprising the common interest community has priority over the
1019 declaration and the lien or encumbrance has not been partially released, the parties foreclosing

1020 the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate
1021 subject to that lien or encumbrance from the common interest community.

1022 Section 43. Section **57-8a-319** is enacted to read:

1023 **57-8a-319. Rights of secured lenders.**

1024 (1) The declaration may require that all or a specified number or percentage of the
1025 lenders who hold security interests encumbering the units or who have extended credit to the
1026 association approve specified actions of the unit owners or the association as a condition to the
1027 effectiveness of those actions, but no requirement for approval may operate to:

1028 (a) deny or delegate control over the general administrative affairs of the association by
1029 the unit owners or the executive board;

1030 (b) prevent the association or the executive board from commencing, intervening in, or
1031 settling any litigation or proceeding; or

1032 (c) prevent any insurance trustee or the association from receiving and distributing any
1033 insurance proceeds except pursuant to Section 57-8a-413.

1034 (2) A lender who has extended credit to an association secured by an assignment of
1035 income or an encumbrance on the common elements may enforce its security agreement in
1036 accordance with its terms, subject to the requirements of this chapter and other law.
1037 Requirements that the association must deposit its periodic common charges before default
1038 with the lender to which the association's income has been assigned, or increase its common
1039 charges at the lender's direction by amounts reasonably necessary to amortize the loan in
1040 accordance with its terms, do not violate the prohibitions on lender approval contained in
1041 Subsection (1).

1042 Section 44. Section **57-8a-320** is enacted to read:

1043 **57-8a-320. Master associations.**

1044 (1) If the declaration provides that any of the powers described in Section 57-8a-402
1045 are to be exercised by or may be delegated to a profit or nonprofit corporation or
1046 unincorporated association that exercises those or other powers on behalf of one or more
1047 common interest communities or for the benefit of the unit owners of one or more common
1048 interest communities, all provisions of this chapter applicable to unit owners' associations
1049 apply to any such corporation or unincorporated association, except as modified by this section.

1050 (2) Unless it is acting in the capacity of an association described in Section 57-8a-401,

1051 a master association may exercise the powers set forth in Subsection 57-8a-402(1)(b) only to
1052 the extent expressly permitted in the declarations of common interest communities which are
1053 part of the master association or expressly described in the delegations of power from those
1054 common interest communities to the master association.

1055 (3) If the declaration of any common interest community provides that the executive
1056 board may delegate certain powers to a master association, the members of the executive board
1057 have no liability for the acts or omissions of the master association with respect to those
1058 powers following delegation.

1059 (4) The rights and responsibilities of unit owners with respect to the unit owners'
1060 association set forth in Sections 57-8a-403, 57-8a-408, 57-8a-409, 57-8a-410, and 57-8a-412
1061 apply in the conduct of the affairs of a master association only to persons who elect the board
1062 of a master association, whether or not those persons are otherwise unit owners within the
1063 meaning of this chapter.

1064 (5) Even if a master association is also an association described in Section 57-8a-401,
1065 the certificate of incorporation or other instrument creating the master association and the
1066 declaration of each common interest community, the powers of which are assigned by the
1067 declaration or delegated to the master association, may provide that the executive board of the
1068 master association must be elected after the period of declarant control in any of the following
1069 ways:

1070 (a) All unit owners of all common interest communities subject to the master
1071 association may elect all members of the master association's executive board.

1072 (b) All members of the executive boards of all common interest communities subject to
1073 the master association may elect all members of the master association's executive board.

1074 (c) All unit owners of each common interest community subject to the master
1075 association may elect specified members of the master association's executive board.

1076 (d) All members of the executive board of each common interest community subject to
1077 the master association may elect specified members of the master association's executive board.

1078 Section 45. Section **57-8a-321** is enacted to read:

1079 **57-8a-321. Merger or consolidation of common interest communities.**

1080 (1) Any two or more common interest communities of the same form of ownership, by
1081 agreement of the unit owners as provided in Subsection (2), may be merged or consolidated

1082 into a single common interest community. In the event of a merger or consolidation, unless the
1083 agreement otherwise provides, the resultant common interest community is the legal successor,
1084 for all purposes, of all of the preexisting common interest communities, and the operations and
1085 activities of all associations of the preexisting common interest communities are merged or
1086 consolidated into a single association that holds all powers, rights, obligations, assets, and
1087 liabilities of all preexisting associations.

1088 (2) An agreement of two or more common interest communities to merge or
1089 consolidate pursuant to Subsection (1) must be evidenced by an agreement prepared, executed,
1090 recorded, and certified by the president of the association of each of the preexisting common
1091 interest communities following approval by owners of units to which are allocated the
1092 percentage of votes in each common interest community required to terminate that common
1093 interest community. The agreement must be recorded in every county in which a portion of the
1094 common interest community is located and is not effective until recorded.

1095 (3) Every merger or consolidation agreement must provide for the reallocation of the
1096 allocated interests in the new association among the units of the resultant common interest
1097 community either:

1098 (a) by stating the reallocations or the formulas upon which they are based; or

1099 (b) by stating the percentage of overall allocated interests of the new common interest
1100 community which are allocated to all of the units comprising each of the preexisting common
1101 interest communities, and providing that the portion of the percentages allocated to each unit
1102 formerly comprising a part of the preexisting common interest community must be equal to the
1103 percentages of allocated interests allocated to that unit by the declaration of the preexisting
1104 common interest community.

1105 Section 46. Section **57-8a-322** is enacted to read:

1106 **57-8a-322. Addition of unspecified real estate.**

1107 In a planned community, if the right is originally reserved in the declaration, the
1108 declarant in addition to any other development right, may amend the declaration at any time
1109 during as many years as are specified in the declaration for adding additional real estate to the
1110 planned community without describing the location of that real estate in the original
1111 declaration; but, the amount of real estate added to the planned community pursuant to this
1112 section may not exceed 10% of the real estate described in Subsection 57-8a-305(1)(c) and the

1113 declarant may not in any event increase the number of units in the planned community beyond
1114 the number stated in the original declaration pursuant to Subsection 57-8a-305(1)(e).

1115 Section 47. Section **57-8a-323** is enacted to read:

1116 **57-8a-323. Master planned communities.**

1117 (1) The declaration for a common interest community may state that it is a master
1118 planned community if the declarant has reserved the development right to create at least 500
1119 units that may be used for residential purposes, and at the time of the reservation that declarant
1120 owns or controls more than 500 acres on which the units may be built.

1121 (2) If the requirements of Subsection (1) are satisfied, the declaration for the master
1122 planned community need not state a maximum number of units and need not contain any of the
1123 information required by Subsections 57-8a-305(1)(c) through (n) until the declaration is
1124 amended under Subsection (3).

1125 (3) When each unit in a master planned community is conveyed to a purchaser, the
1126 declaration must contain:

1127 (a) a sufficient legal description of the unit and all portions of the master planned
1128 community in which any other units have been conveyed to a purchaser; and

1129 (b) all the information required by Subsections 57-8a-305(1)(c) through (n) with
1130 respect to that real estate.

1131 (4) The only real estate in a master planned community which is subject to this chapter
1132 is units that have been declared or which are being offered for sale and any other real estate
1133 described pursuant to Subsection (3). Other real estate that is or may become part of the master
1134 planned community is only subject to other law and to any other restrictions and limitations
1135 that appear of record.

1136 (5) Limitations in this chapter on the addition of unspecified real estate do not apply to
1137 a master planned community.

1138 (6) The period of declarant control of the association for a master planned community
1139 terminates in accordance with any conditions specified in the declaration or otherwise at the
1140 time the declarant, in a recorded instrument and after giving written notice to all the unit
1141 owners, voluntarily surrenders all rights to control the activities of the association.

1142 Section 48. Section **57-8a-401** is enacted to read:

1143 **Part 4. Management of the Common Interest Community**

1144 **57-8a-401. Organization of unit owners' association.**

1145 A unit owners' association must be organized no later than the date the first unit in the
1146 common interest community is conveyed. The membership of the association at all times
1147 consists exclusively of all unit owners or, following termination of the common interest
1148 community, of all former unit owners entitled to distributions of proceeds under Section
1149 57-8a-318 or their heirs, successors, or assigns. The association must be organized as a profit
1150 or nonprofit corporation, trust, partnership, or as an unincorporated association.

1151 Section 49. Section **57-8a-402** is enacted to read:

1152 **57-8a-402. Powers of unit owners' association.**

1153 (1) Except as provided in Subsection (2), and subject to the provisions of the
1154 declaration, the association, even if unincorporated, may:

1155 (a) adopt and amend bylaws and rules and regulations;

1156 (b) adopt and amend budgets for revenues, expenditures, and reserves and collect
1157 assessments for common expenses from unit owners;

1158 (c) hire and discharge managing agents and other employees, agents, and independent
1159 contractors;

1160 (d) institute, defend, or intervene in litigation or administrative proceedings in its own
1161 name on behalf of itself or two or more unit owners on matters affecting the common interest
1162 community;

1163 (e) make contracts and incur liabilities;

1164 (f) regulate the use, maintenance, repair, replacement, and modification of common
1165 elements;

1166 (g) cause additional improvements to be made as a part of the common elements;

1167 (h) acquire, hold, encumber, and convey in its own name any right, title, or interest to
1168 real estate or personal property, but:

1169 (i) common elements in a condominium or planned community may be conveyed or
1170 subjected to a security interest only pursuant to Section 57-8a-412; and

1171 (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be
1172 subjected to a security interest, only pursuant to Section 57-8a-412;

1173 (i) grant easements, leases, licenses, and concessions through or over the common
1174 elements;

1175 (j) impose and receive any payments, fees, or charges for the use, rental, or operation of
1176 the common elements, other than limited common elements described in Subsection
1177 57-8a-302(2) and (4), and for services provided to unit owners;

1178 (k) impose charges for late payment of assessments and, after notice and an opportunity
1179 to be heard, levy reasonable fines for violations of the declaration, bylaws, rules, and
1180 regulations of the association;

1181 (l) impose reasonable charges for the preparation and recordation of amendments to the
1182 declaration, resale certificate, or statements of unpaid assessments;

1183 (m) provide for the indemnification of its officers and executive board and maintain
1184 directors' and officers' liability insurance;

1185 (n) assign its right to future income, including the right to receive common expense
1186 assessments, but only to the extent the declaration expressly so provides;

1187 (o) exercise any other powers conferred by the declaration or bylaws;

1188 (p) exercise all other powers that may be exercised in this state by legal entities of the
1189 same type as the association;

1190 (q) exercise any other powers necessary and proper for the governance and operation of
1191 the association; and

1192 (r) by regulation, require that disputes between the executive board and unit owners or
1193 between two or more unit owners regarding the common interest community must be submitted
1194 to nonbinding alternative dispute resolution in the manner described in the regulation as a
1195 prerequisite to commencement of a judicial proceeding.

1196 (2) The declaration may not impose limitations on the power of the association to deal
1197 with the declarant which are more restrictive than the limitations imposed on the power of the
1198 association to deal with other persons.

1199 (3) (a) Unless otherwise permitted by the declaration or this chapter, an association
1200 may adopt rules and regulations that affect the use of or behavior in units that may be used for
1201 residential purposes only to:

1202 (i) prevent any use of a unit which violates the declaration;

1203 (ii) regulate any behavior in or occupancy of a unit which violates the declaration or
1204 adversely affects the use and enjoyment of other units or the common elements by other unit
1205 owners; or

1206 (iii) restrict the leasing of residential units to the extent those rules are reasonably
1207 designed to meet underwriting requirements of institutional lenders who regularly lend money
1208 secured by first mortgages on units in common interest communities or regularly purchase
1209 those mortgages.

1210 (b) Otherwise, the association may not regulate any use of or behavior in units.

1211 (4) If a tenant of a unit owner violates the declaration, bylaws, or rules and regulations
1212 of the association, in addition to exercising any of its powers against the unit owner, the
1213 association may:

1214 (a) exercise directly against the tenant the powers described in Subsection (1)(k);

1215 (b) after giving notice to the tenant and the unit owner and an opportunity to be heard,
1216 levy reasonable fines against the tenant for the violation; and

1217 (c) enforce any other rights against the tenant for the violation which the unit owner as
1218 landlord could lawfully have exercised under the lease or which the association could lawfully
1219 have exercised directly against the unit owner, or both.

1220 (5) The rights granted under Subsection (4)(c) may only be exercised if the tenant or
1221 unit owner fails to cure the violation within ten days after the association notifies the tenant and
1222 unit owner of that violation.

1223 (6) Unless a lease otherwise provides, this section does not:

1224 (a) affect rights that the unit owner has to enforce the lease or that the association has
1225 under other law; or

1226 (b) permit the association to enforce a lease to which it is not a party in the absence of
1227 a violation of the declaration, bylaws, or rules and regulations.

1228 Section 50. Section **57-8a-403** is enacted to read:

1229 **57-8a-403. Executive board members and officers.**

1230 (1) Except as provided in the declaration, the bylaws, Subsection (2), or other
1231 provisions of this chapter, the executive board may act in all instances on behalf of the
1232 association. In the performance of their duties, officers and members of the executive board
1233 appointed by the declarant shall exercise the degree of care and loyalty required of a trustee.
1234 Officers and members of the executive board not appointed by the declarant shall exercise the
1235 degree of care and loyalty required of an officer or director of a corporation organized under
1236 Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

1237 (2) The executive board may not act on behalf of the association to amend the
1238 declaration, to terminate the common interest community, or to elect members of the executive
1239 board or determine the qualifications, powers and duties, or terms of office of executive board
1240 members, but the executive board may fill vacancies in its membership for the unexpired
1241 portion of any term.

1242 (3) Within 30 days after adoption of any proposed budget for the common interest
1243 community, the executive board shall provide a summary of the budget to all the unit owners,
1244 and shall set a date for a meeting of the unit owners to consider ratification of the budget not
1245 less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a
1246 majority of all unit owners or any larger vote specified in the declaration reject the budget, the
1247 budget is ratified, whether or not a quorum is present. In the event the proposed budget is
1248 rejected, the periodic budget last ratified by the unit owners must be continued until such time
1249 as the unit owners ratify a subsequent budget proposed by the executive board.

1250 (4) (a) Subject to Subsection (5), the declaration may provide for a period of declarant
1251 control of the association, during which a declarant, or persons designated by him, may appoint
1252 and remove the officers and members of the executive board. Regardless of the period
1253 provided in the declaration, and except as provided in Subsection 57-8a-323(6), a period of
1254 declarant control terminates no later than the earlier of:

1255 (i) 60 days after conveyance of 75% of the units that may be created to unit owners
1256 other than a declarant;

1257 (ii) two years after all declarants have ceased to offer units for sale in the ordinary
1258 course of business;

1259 (iii) two years after any right to add new units was last exercised; or

1260 (iv) the day the declarant, after giving written notice to unit owners, records an
1261 instrument voluntarily surrendering all rights to control activities of the association.

1262 (b) A declarant may voluntarily surrender the right to appoint and remove officers and
1263 members of the executive board before termination of that period, but in that event the
1264 declarant may require, for the duration of the period of declarant control, that specified actions
1265 of the association or executive board, as described in a recorded instrument executed by the
1266 declarant, be approved by the declarant before they become effective.

1267 (5) Not later than 60 days after conveyance of 25% of the units that may be created to

1268 unit owners other than a declarant, at least one member and not less than 25% of the members
1269 of the executive board must be elected by unit owners other than the declarant. Not later than
1270 60 days after conveyance of 50% of the units that may be created to unit owners other than a
1271 declarant, not less than 33-1/3% of the members of the executive board must be elected by unit
1272 owners other than the declarant.

1273 (6) Except as otherwise provided in Subsection 57-8a-320(5), not later than the
1274 termination of any period of declarant control, the unit owners shall elect an executive board of
1275 at least three members, at least a majority of whom must be unit owners. The executive board
1276 shall elect the officers. The executive board members and officers shall take office upon
1277 election.

1278 (7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit
1279 owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the
1280 unit owners at which a quorum is present, may remove any member of the executive board
1281 with or without cause, other than a member appointed by the declarant.

1282 Section 51. Section **57-8a-404** is enacted to read:

1283 **57-8a-404. Transfer of special declarant rights.**

1284 (1) A special declarant right created or reserved under this chapter may be transferred
1285 only by an instrument evidencing the transfer recorded in every county in which any portion of
1286 the common interest community is located. The instrument is not effective unless executed by
1287 the transferee.

1288 (2) Upon transfer of any special declarant right, the liability of a transferor declarant is
1289 as follows:

1290 (a) A transferor is not relieved of any obligation or liability arising before the transfer
1291 and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity
1292 does not deprive any unit owner of standing to maintain an action to enforce any obligation of
1293 the transferor.

1294 (b) If a successor to any special declarant right is an affiliate of a declarant, the
1295 transferor is jointly and severally liable with the successor for any obligations or liabilities of
1296 the successor relating to the common interest community.

1297 (c) If a transferor retains any special declarant rights, but transfers other special
1298 declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for

1299 any obligations or liabilities imposed on a declarant by this chapter or by the declaration
1300 relating to the retained special declarant rights and arising after the transfer.

1301 (d) A transferor has no liability for any act or omission or any breach of a contractual
1302 or warranty obligation arising from the exercise of a special declarant right by a successor
1303 declarant who is not an affiliate of the transferor.

1304 (3) Unless otherwise provided in a mortgage instrument, deed of trust, or other
1305 agreement creating a security interest, in case of foreclosure of a security interest, sale by a
1306 trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under
1307 Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate
1308 in a common interest community subject to development rights, a person acquiring title to all
1309 the property being foreclosed or sold, but only upon his request, succeeds to all special
1310 declarant rights related to that property held by that declarant, or only to any rights reserved in
1311 the declaration pursuant to Section 57-8a-315 and held by that declarant to maintain models,
1312 sales offices, and signs. The judgment or instrument conveying title must provide for transfer
1313 of only the special declarant rights requested.

1314 (4) Upon foreclosure of a security interest, sale by a trustee under an agreement
1315 creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or
1316 receivership proceedings, of all interests in a common interest community owned by a
1317 declarant:

1318 (a) the declarant ceases to have any special declarant rights; and

1319 (b) the period of declarant control terminates unless the judgment or instrument
1320 conveying title provides for transfer of all special declarant rights held by that declarant to a
1321 successor declarant.

1322 (5) The liabilities and obligations of a person who succeeds to special declarant rights
1323 are as follows:

1324 (a) A successor to any special declarant right who is an affiliate of a declarant is
1325 subject to all obligations and liabilities imposed on the transferor by this chapter or by the
1326 declaration.

1327 (b) A successor to any special declarant right, other than a successor described in
1328 Subsection (5)(c) or (d) or a successor who is an affiliate of a declarant, is subject to the
1329 obligations and liabilities imposed by this chapter or the declaration:

- 1330 (i) on a declarant which relate to the successor's exercise or nonexercise of special
1331 declarant rights; or
- 1332 (ii) on his transferor, other than:
- 1333 (A) misrepresentations by any previous declarant;
- 1334 (B) warranty obligations on improvements made by any previous declarant, or made
1335 before the common interest community was created;
- 1336 (C) breach of any fiduciary obligation by any previous declarant or his appointees to
1337 the executive board; or
- 1338 (D) any liability or obligation imposed on the transferor as a result of the transferor's
1339 acts or omissions after the transfer.
- 1340 (c) A successor to only a right reserved in the declaration to maintain models, sales
1341 offices, and signs, may not exercise any other special declarant right, and is not subject to any
1342 liability or obligation as a declarant, except the obligation to provide a public offering
1343 statement and any liability arising as a result thereof.
- 1344 (d) A successor to all special declarant rights held by a transferor who succeeded to
1345 those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a
1346 judgment or instrument conveying title under Subsection (3), may declare in a recorded
1347 instrument the intention to hold those rights solely for transfer to another person. Thereafter,
1348 until transferring all special declarant rights to any person acquiring title to any unit or real
1349 estate subject to development rights owned by the successor, or until recording an instrument
1350 permitting exercise of all those rights, that successor may not exercise any of those rights other
1351 than any right held by his transferor to control the executive board in accordance with
1352 Subsection 57-8a-403(4) for the duration of any period of declarant control, and any attempted
1353 exercise of those rights is void. So long as a successor declarant may not exercise special
1354 declarant rights under this Subsection (5)(d), the successor declarant is not subject to any
1355 liability or obligation as a declarant other than liability for his acts and omissions under
1356 Subsection 57-8a-403(4).
- 1357 (6) Nothing in this section subjects any successor to a special declarant right to any
1358 claims against or other obligations of a transferor declarant, other than claims and obligations
1359 arising under this chapter or the declaration.
- 1360 Section 52. Section **57-8a-405** is enacted to read:

1361 **57-8a-405. Termination of contracts and leases of declarant.**1362 (1) Except as provided in Section 57-8a-207, if entered into before the executive board
1363 elected by the unit owners pursuant to Subsection 57-8a-403(6) takes office:1364 (a) any management contract, employment contract, or lease of recreational or parking
1365 areas or facilities;1366 (b) any other contract or lease between the association and a declarant or an affiliate of
1367 a declarant; or1368 (c) any contract or lease that is not bona fide or was unconscionable to the unit owners
1369 at the time entered into under the circumstances then prevailing, may be terminated without
1370 penalty by the association at any time after the executive board elected by the unit owners
1371 pursuant to Subsection 57-8a-403(6) takes office upon not less than 90 days' notice to the other
1372 party.1373 (2) This section does not apply to:1374 (a) any lease the termination of which would terminate the common interest
1375 community or reduce its size, unless the real estate subject to that lease was included in the
1376 common interest community for the purpose of avoiding the right of the association to
1377 terminate a lease under this section; or1378 (b) a proprietary lease.1379 Section 53. Section **57-8a-406** is enacted to read:1380 **57-8a-406. Bylaws.**1381 (1) The bylaws of the association must provide:1382 (a) the number of members of the executive board and the titles of the officers of the
1383 association;1384 (b) election by the executive board of a president, treasurer, secretary, and any other
1385 officers of the association the bylaws specify;1386 (c) the qualifications, powers and duties, terms of office, and manner of electing and
1387 removing executive board members and offices and filling vacancies;1388 (d) which, if any, of its powers the executive board or officers may delegate to other
1389 persons or to a managing agent;1390 (e) which of its officers may prepare, execute, certify, and record amendments to the
1391 declaration on behalf of the association; and

1392 (f) a method for amending the bylaws.

1393 (2) Subject to the provisions of the declaration, the bylaws may provide for any other
1394 matters the association deems necessary and appropriate.

1395 Section 54. Section **57-8a-407** is enacted to read:

1396 **57-8a-407. Upkeep of common interest community.**

1397 (1) Except to the extent provided by the declaration, Subsection (2), or Subsection
1398 57-8a-413(8), the association is responsible for maintenance, repair, and replacement of the
1399 common elements, and each unit owner is responsible for maintenance, repair, and replacement
1400 of his unit. Each unit owner shall afford to the association and the other unit owners, and to
1401 their agents or employees, access through his unit reasonably necessary for those purposes. If
1402 damage is inflicted on the common elements or on any unit through which access is taken, the
1403 unit owner responsible for the damage, or the association if it is responsible, is liable for the
1404 prompt repair thereof.

1405 (2) In addition to the liability that a declarant as a unit owner has under this chapter, the
1406 declarant alone is liable for all expenses in connection with real estate subject to development
1407 rights. No other unit owner and no other portion of the common interest community is subject
1408 to a claim for payment of those expenses. Unless the declaration provides otherwise, any
1409 income or proceeds from real estate subject to development rights inures to the declarant.

1410 (3) In a planned community, if all development rights have expired with respect to any
1411 real estate, the declarant remains liable for all expenses of that real estate unless, upon
1412 expiration, the declaration provides that the real estate becomes common elements or units.

1413 Section 55. Section **57-8a-408** is enacted to read:

1414 **57-8a-408. Meetings.**

1415 A meeting of the association must be held at least once each year. Special meetings of
1416 the association may be called by the president, a majority of the executive board, or by unit
1417 owners having 20%, or any lower percentage specified in the bylaws, of the votes in the
1418 association. Not less than ten nor more than 60 days in advance of any meeting, the secretary
1419 or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid
1420 by United States mail to the mailing address of each unit or to any other mailing address
1421 designated in writing by the unit owner. The notice of any meeting must state the time and
1422 place of the meeting and the items on the agenda, including the general nature of any proposed

1423 amendment to the declaration or bylaws, any budget changes, and any proposal to remove an
1424 officer or member of the executive board.

1425 Section 56. Section **57-8a-409** is enacted to read:

1426 **57-8a-409. Quorums.**

1427 (1) Unless the bylaws provide otherwise, a quorum is present throughout any meeting
1428 of the association if persons entitled to cast 20% of the votes that may be cast for election of
1429 the executive board are present in person or by proxy at the beginning of the meeting.

1430 (2) Unless the bylaws specify a larger percentage, a quorum is deemed present
1431 throughout any meeting of the executive board if persons entitled to cast 50% of the votes on
1432 that board are present at the beginning of the meeting.

1433 Section 57. Section **57-8a-410** is enacted to read:

1434 **57-8a-410. Voting -- Proxies.**

1435 (1) If only one of several owners of a unit is present at a meeting of the association,
1436 that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners
1437 are present, the votes allocated to that unit may be cast only in accordance with the agreement
1438 of a majority in interest of the owners, unless the declaration expressly provides otherwise.
1439 There is majority agreement if any one of the owners casts the votes allocated to that unit
1440 without protest being made promptly to the person presiding over the meeting by any of the
1441 other owners of the unit.

1442 (2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit
1443 owner. If a unit is owned by more than one person, each owner of the unit may vote or register
1444 protest to the casting of votes by the other owners of the unit through a duly executed proxy. A
1445 unit owner may revoke a proxy given pursuant to this section only by actual notice of
1446 revocation to the person presiding over a meeting of the association. A proxy is void if it is not
1447 dated or purports to be revocable without notice. A proxy terminates one year after its date,
1448 unless it specifies a shorter term.

1449 (3) (a) If the declaration requires that votes on specified matters affecting the common
1450 interest community be cast by lessees rather than unit owners of leased units:

1451 (i) the provisions of Subsections (1) and (2) apply to lessees as if they were unit
1452 owners;

1453 (ii) unit owners who have leased their units to other persons may not cast votes on

1454 those specified matters; and

1455 (iii) lessees are entitled to notice of meetings, access to records, and other rights
1456 respecting those matters as if they were unit owners.

1457 (b) Unit owners must also be given notice, in the manner provided in Section
1458 57-8a-408, of all meetings at which lessees are entitled to vote.

1459 (4) No votes allocated to a unit owned by the association may be cast.

1460 Section 58. Section **57-8a-411** is enacted to read:

1461 **57-8a-411. Tort and contract liability - tolling of limitation period.**

1462 (1) A unit owner is not liable, solely by reason of being a unit owner, for an injury or
1463 damage arising out of the condition or use of the common elements. Neither the association
1464 nor any unit owner except the declarant is liable for that declarant's torts in connection with any
1465 part of the common interest community which that declarant has the responsibility to maintain.

1466 (2) (a) An action alleging a wrong done by the association, including an action arising
1467 out of the condition or use of the common elements, may be maintained only against the
1468 association and not against any unit owner. If the wrong occurred during any period of
1469 declarant control and the association gives the declarant reasonable notice of and an
1470 opportunity to defend against the action, the declarant who then controlled the association is
1471 liable to the association or to any unit owner for:

1472 (i) all tort losses not covered by insurance suffered by the association or that unit
1473 owner; and

1474 (ii) all costs that the association would not have incurred but for a breach of contract or
1475 other wrongful act or omission.

1476 (b) Whenever the declarant is liable to the association under this section, the declarant
1477 is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the
1478 association.

1479 (3) Any statute of limitation affecting the association's right of action against a
1480 declarant under this chapter is tolled until the period of declarant control terminates. A unit
1481 owner is not precluded from maintaining an action contemplated by this section because he is a
1482 unit owner or a member or officer of the association. Liens resulting from judgments against
1483 the association are governed by Section 57-8a-417.

1484 Section 59. Section **57-8a-412** is enacted to read:

1485 **57-8a-412. Conveyance or encumbrance of common elements.**

1486 (1) In a condominium or planned community, portions of the common elements may
1487 be conveyed or subjected to a security interest by the association if persons entitled to cast at
1488 least 80% of the votes in the association, including 80% of the votes allocated to units not
1489 owned by a declarant, or any larger percentage the declaration specifies, agree to that action;
1490 but all owners of units to which any limited common element is allocated must agree in order
1491 to convey that limited common element or subject it to a security interest. The declaration may
1492 specify a smaller percentage only if all of the units are restricted exclusively to nonresidential
1493 uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited
1494 common elements must be distributed equitably among the owners of units to which the
1495 limited common elements were allocated.

1496 (2) Part of a cooperative may be conveyed and all or part of a cooperative may be
1497 subjected to a security interest by the association if persons entitled to cast at least 80% of the
1498 votes in the association, including 80% of the votes allocated to units not owned by a declarant,
1499 or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of
1500 the units or limited common elements are to be conveyed or subjected to a security interest,
1501 then all unit owners of those units, or the units to which those limited common elements are
1502 allocated, must agree in order to convey those units or limited common elements or subject
1503 them to a security interest. The declaration may specify a smaller percentage only if all of the
1504 units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the
1505 association. Any purported conveyance or other voluntary transfer of an entire cooperative,
1506 unless made pursuant to Section 57-8a-318, is void.

1507 (3) An agreement to convey common elements in a condominium or planned
1508 community, or to subject them to a security interest, or in a cooperative, an agreement to
1509 convey any part of a cooperative or subject it to a security interest, must be evidenced by the
1510 execution of an agreement, or ratifications thereof, in the same manner as a deed, by the
1511 requisite number of unit owners. The agreement must specify a date after which the agreement
1512 will be void unless recorded before that date. The agreement and all ratifications thereof must
1513 be recorded in every county in which a portion of the common interest community is situated,
1514 and is effective only upon recordation.

1515 (4) The association, on behalf of the unit owners, may contract to convey an interest in

1516 a common interest community pursuant to Subsection (1), but the contract is not enforceable
1517 against the association until approved pursuant to Subsections (1), (2), and (3). Thereafter, the
1518 association has all powers necessary and appropriate to effect the conveyance or encumbrance,
1519 including the power to execute deeds or other instruments.

1520 (5) Unless made pursuant to this section, any purported conveyance, encumbrance,
1521 judicial sale, or other voluntary transfer of common elements or of any other part of a
1522 cooperative is void.

1523 (6) A conveyance or encumbrance of common elements or of a cooperative pursuant to
1524 this section does not deprive any unit of its rights of access and support.

1525 (7) Unless the declaration otherwise provides, if the holders of first security interests
1526 on 80% of the units that are subject to security interests on the day the unit owners' agreement
1527 under Subsection (3) is recorded consent in writing:

1528 (a) a conveyance of common elements pursuant to this section terminates both the
1529 undivided interests in those common elements allocated to the units and the security interests in
1530 those undivided interests held by all persons holding security interests in the units; and

1531 (b) an encumbrance of common elements pursuant to this section has priority over all
1532 preexisting encumbrances on the undivided interests in those common elements held by all
1533 persons holding security interests in the units.

1534 (8) The consents by holders of first security interests on units described in Subsection
1535 (7), or a certificate of the secretary affirming that those consents have been received by the
1536 association, may be recorded at any time before the date on which the agreement under
1537 Subsection (3) becomes void. Consents or certificates so recorded are valid from the date they
1538 are recorded for purposes of calculating the percentage of consenting first security interest
1539 holders, regardless of later sales or encumbrances on those units. Even if the required
1540 percentage of first security interest holders so consent, a conveyance or encumbrance of
1541 common elements does not affect interests having priority over the declaration, or created by
1542 the association after the declaration was recorded.

1543 (9) In a cooperative, the association may acquire, hold, encumber, or convey a
1544 proprietary lease without complying with this section.

1545 Section 60. Section **57-8a-413** is enacted to read:

1546 **57-8a-413. Insurance.**

1547 (1) Commencing not later than the time of the first conveyance of a unit to a person
1548 other than a declarant, the association shall maintain, to the extent reasonably available:

1549 (a) property insurance on the common elements and, in a planned community, also on
1550 property that must become common elements, insuring against all risks of direct physical loss
1551 commonly insured against or, in the case of a conversion building, against fire and extended
1552 coverage perils; the total amount of insurance after application of any deductibles must be not
1553 less than 80% of the actual cash value of the insured property at the time the insurance is
1554 purchased and at each renewal date, exclusive of land, excavations, foundations, and other
1555 items normally excluded from property policies; and

1556 (b) liability insurance, including medical payments insurance, in an amount determined
1557 by the executive board but not less than any amount specified in the declaration, covering all
1558 occurrences commonly insured against for death, bodily injury, and property damage arising
1559 out of or in connection with the use, ownership, or maintenance of the common elements and,
1560 in cooperatives, also of all units.

1561 (2) In the case of a building that is part of a cooperative or that contains units having
1562 horizontal boundaries described in the declaration, the insurance maintained under Subsection
1563 (1)(a), to the extent reasonably available, must include the units, but need not include
1564 improvements and betterments installed by unit owners.

1565 (3) If the insurance described in Subsections (1) and (2) is not reasonably available, the
1566 association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by
1567 United States mail to all unit owners. The declaration may require the association to carry any
1568 other insurance, and the association in any event may carry any other insurance it considers
1569 appropriate to protect the association or the unit owners.

1570 (4) Insurance policies carried pursuant to Subsections (1) and (2) must provide that:

1571 (a) each unit owner is an insured person under the policy with respect to liability
1572 arising out of his interest in the common elements or membership in the association;

1573 (b) the insurer waives its right to subrogation under the policy against any unit owner
1574 or member of his household;

1575 (c) no act or omission by any unit owner, unless acting within the scope of his authority
1576 on behalf of the association, will void the policy or be a condition to recovery under the policy;
1577 and

1578 (d) if, at the time of a loss under the policy, there is other insurance in the name of a
1579 unit owner covering the same risk covered by the policy, the association's policy provides
1580 primary insurance.

1581 (5) Any loss covered by the property policy under Subsections (1)(a) and (2) must be
1582 adjusted with the association, but the insurance proceeds for that loss are payable to any
1583 insurance trustee designated for that purpose, or otherwise to the association, and not to any
1584 holder of a security interest. The insurance trustee or the association shall hold any insurance
1585 proceeds in trust for the association, unit owners, and lien holders as their interests may appear.
1586 Subject to the provisions of Subsection (8), the proceeds must be disbursed first for the repair
1587 or restoration of the damaged property, and the association, unit owners, and lien holders are
1588 not entitled to receive payment of any portion of the proceeds unless there is a surplus of
1589 proceeds after the property has been completely repaired or restored, or the common interest
1590 community is terminated.

1591 (6) An insurance policy issued to the association does not prevent a unit owner from
1592 obtaining insurance for his own benefit.

1593 (7) An insurer that has issued an insurance policy under this section shall issue
1594 certificates or memoranda of insurance to the association and, upon written request, to any unit
1595 owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse
1596 to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been
1597 mailed to the association, each unit owner and each holder of a security interest to whom a
1598 certificate or memorandum of insurance has been issued at their respective last-known
1599 addresses.

1600 (8) (a) Any portion of the common interest community for which insurance is required
1601 under this section which is damaged or destroyed must be repaired or replaced promptly by the
1602 association unless:

1603 (i) the common interest community is terminated, in which case Section 57-8a-318
1604 applies;

1605 (ii) repair or replacement would be illegal under any state or local statute or ordinance
1606 governing health or safety; or

1607 (iii) 80% of the unit owners, including every owner of a unit or assigned limited
1608 common element that will not be rebuilt, vote not to rebuild.

1609 **(b) The cost of repair or replacement in excess of insurance proceeds and reserves is a**
1610 **common expense. If the entire common interest community is not repaired or replaced:**

1611 **(i) the insurance proceeds attributable to the damaged common elements must be used**
1612 **to restore the damaged area to a condition compatible with the remainder of the common**
1613 **interest community; and**

1614 **(ii) except to the extent that other persons will be distributees:**

1615 **(A) the insurance proceeds attributable to units and limited common elements that are**
1616 **not rebuilt must be distributed to the owners of those units and the owners of the units to which**
1617 **those limited common elements were allocated, or to lien holders, as their interests may appear:**
1618 **and**

1619 **(B) the remainder of the proceeds must be distributed to all the unit owners or lien**
1620 **holders, as their interests may appear, as follows:**

1621 **(I) in a condominium, in proportion to the common element interests of all the units;**
1622 **and**

1623 **(II) in a cooperative or planned community, in proportion to the common expense**
1624 **liabilities of all the units.**

1625 **(c) If the unit owners vote not to rebuild any unit, that unit's allocated interests are**
1626 **automatically reallocated upon the vote as if the unit had been condemned under Subsection**
1627 **57-8a-107(1), and the association promptly shall prepare, execute, and record an amendment to**
1628 **the declaration reflecting the reallocations.**

1629 **(9) The provisions of this section may be varied or waived in the case of a common**
1630 **interest community all of whose units are restricted to nonresidential use.**

1631 Section 61. Section **57-8a-414** is enacted to read:

1632 **57-8a-414. Surplus funds.**

1633 **Unless otherwise provided in the declaration, any surplus funds of the association**
1634 **remaining after payment of or provision for common expenses and any prepayment of reserves**
1635 **must be paid to the unit owners in proportion to their common expense liabilities or credited to**
1636 **them to reduce their future common expense assessments.**

1637 Section 62. Section **57-8a-415** is enacted to read:

1638 **57-8a-415. Assessment for common expense.**

1639 **(1) Until the association makes a common expense assessment, the declarant shall pay**

1640 all common expenses. After an assessment has been made by the association, assessments
1641 must be made at least annually, based on a budget adopted at least annually by the association.

1642 (2) Except for assessments under Subsections (3), (4), and (5), all common expenses
1643 must be assessed against all the units in accordance with the allocations set forth in the
1644 declaration pursuant to Subsections 57-8a-307(1) and (2). Any past due common expense
1645 assessment or installment thereof bears interest at the rate established by the association not
1646 exceeding 18% per year.

1647 (3) To the extent required by the declaration:

1648 (a) any common expense associated with the maintenance, repair, or replacement of a
1649 limited common element must be assessed against the units to which that limited common
1650 element is assigned, equally, or in any other proportion the declaration provides;

1651 (b) any common expense or portion thereof benefiting fewer than all of the units must
1652 be assessed exclusively against the units benefitted; and

1653 (c) the costs of insurance must be assessed in proportion to risk and the costs of
1654 utilities must be assessed in proportion to usage.

1655 (4) Assessments to pay a judgment against the association may be made only against
1656 the units in the common interest community at the time the judgment was entered, in
1657 proportion to their common expense liabilities.

1658 (5) If any common expense is caused by the misconduct of any unit owner, the
1659 association may assess that expense exclusively against his unit.

1660 (6) If common expense liabilities are reallocated, common expense assessments and
1661 any installment thereof not yet due must be recalculated in accordance with the reallocated
1662 common expense liabilities.

1663 Section 63. Section **57-8a-416** is enacted to read:

1664 **57-8a-416. Lien for assessments.**

1665 (1) The association has a statutory lien on a unit for any assessment levied against that
1666 unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees,
1667 charges, late charges, fines, and interest charged pursuant to Subsections 57-8a-402(1)(j)
1668 through (l) are enforceable as assessments under this section. If an assessment is payable in
1669 installments, the lien is for the full amount of the assessment from the time the first installment
1670 thereof becomes due.

1671 (2) (a) A lien under this section is prior to all other liens and encumbrances on a unit
1672 except:

1673 (i) liens and encumbrances recorded before the recordation of the declaration and, in a
1674 cooperative, liens and encumbrances which the association creates, assumes, or takes subject
1675 to;

1676 (ii) a first security interest on the unit recorded before the date on which the assessment
1677 sought to be enforced became delinquent, or, in a cooperative, the first security interest
1678 encumbering only the unit owner's interest and perfected before the date on which the
1679 assessment sought to be enforced became delinquent; and

1680 (iii) liens for real estate taxes and other governmental assessments or charges against
1681 the unit or cooperative.

1682 (b) The lien is also prior to all security interests described in Subsection (2)(a)(ii) to the
1683 extent of the common expense assessments based on the periodic budget adopted by the
1684 association pursuant to Subsection 57-8a-415(1) which would have become due in the absence
1685 of acceleration during the six months immediately preceding institution of an action to enforce
1686 the lien. This Subsection (2) does not affect the priority of mechanics' or materialmen's liens,
1687 or the priority of liens for other assessments made by the association.

1688 (3) Unless the declaration otherwise provides, if two or more associations have liens
1689 for assessments created at any time on the same property, those liens have equal priority.

1690 (4) Recording of the declaration constitutes record notice and perfection of the lien.
1691 No further recordation of any claim of lien for assessment under this section is required.

1692 (5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
1693 are instituted within three years after the full amount of the assessments becomes due.

1694 (6) This section does not prohibit actions to recover sums for which Subsection (1)
1695 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

1696 (7) A judgment or decree in any action brought under this section must include costs
1697 and reasonable attorney's fees for the prevailing party.

1698 (8) The association upon written request shall furnish to a unit owner a statement
1699 setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is
1700 real estate, the statement must be in recordable form. The statement must be furnished within
1701 ten business days after receipt of the request and is binding on the association, the executive

1702 board, and every unit owner.

1703 (9) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may
1704 be evicted in the same manner as provided by law in the case of an unlawful holdover by a
1705 commercial tenant, and the lien may be foreclosed as provided by this section.

1706 (10) The association's lien may be foreclosed as provided in this Subsection (10):

1707 (a) in a condominium or planned community, the association's lien must be foreclosed
1708 in like manner as a mortgage on real estate;

1709 (b) in a cooperative whose unit owners' interests in the units are real estate, the
1710 association's lien must be foreclosed in like manner as a mortgage on real estate; or

1711 (c) in a cooperative whose unit owners' interests in the units are personal property, the
1712 association's lien must be foreclosed in like manner as a security interest under Title 70A,
1713 Chapter 9a, Uniform Commercial Code - Secured Transactions.

1714 (11) In a cooperative, if the unit owner's interest in a unit is real estate:

1715 (a) The association, upon nonpayment of assessments and compliance with this
1716 Subsection (11), may sell that unit at a public sale or by private negotiation, and at any time
1717 and place. Every aspect of the sale, including the method, advertising, time, place, and terms
1718 must be reasonable. The association shall give to the unit owner and any lessees of the unit
1719 owner reasonable written notice of the time and place of any public sale or, if a private sale is
1720 intended, of the intention of entering into a contract to sell and of the time after which a private
1721 disposition may be made. The same notice must also be sent to any other person who has a
1722 recorded interest in the unit which would be cut off by the sale, but only if the recorded interest
1723 was on record seven weeks before the date specified in the notice as the date of any public sale
1724 or seven weeks before the date specified in the notice as the date after which a private sale may
1725 be made. The notices required by this Subsection (11) may be sent to any address reasonable
1726 in the circumstances. Sale may not be held until five weeks after the sending of the notice.
1727 The association may buy at any public sale and, if the sale is conducted by a fiduciary or other
1728 person not related to the association, at a private sale.

1729 (b) Unless otherwise agreed, the debtor is liable for any deficiency in a foreclosure
1730 sale.

1731 (c) The proceeds of a foreclosure sale must be applied in the following order:

1732 (i) the reasonable expenses of sale;

1733 (ii) the reasonable expenses of securing possession before sale; holding, maintaining,
1734 and preparing the unit for sale, including payment of taxes and other governmental charges,
1735 premiums on hazard and liability insurance, and, to the extent provided for by agreement
1736 between the association and the unit owner, reasonable attorney's fees and other legal expenses
1737 incurred by the association;

1738 (iii) satisfaction of the association's lien;

1739 (iv) satisfaction in the order of priority of any subordinate claim of record; and

1740 (v) remittance of any excess to the unit owner.

1741 (d) A good faith purchaser for value acquires the unit free of the association's debt that
1742 gave rise to the lien under which the foreclosure sale occurred and any subordinate interest,
1743 even though the association or other person conducting the sale failed to comply with the
1744 requirements of this section. The person conducting the sale shall execute a conveyance to the
1745 purchaser sufficient to convey the unit and stating that it is executed by him after a foreclosure
1746 of the association's lien by power of sale and that he was empowered to make the sale.

1747 Signature and title or authority of the person signing the conveyance as grantor and a recital of
1748 the facts of nonpayment of the assessment and of the giving of the notices required by this
1749 Subsection (11) are sufficient proof of the facts recited and of his authority to sign. Further
1750 proof of authority is not required even though the association is named as grantee in the
1751 conveyance.

1752 (e) At any time before the association has disposed of a unit in a cooperative or entered
1753 into a contract for its disposition under the power of sale, the unit owners or the holder of any
1754 subordinate security interest may cure the unit owner's default and prevent sale or other
1755 disposition by tendering the performance due under the security agreement, including any
1756 amounts due because of exercise of a right to accelerate, plus the reasonable expenses of
1757 proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of
1758 the creditor.

1759 (12) In an action by an association to collect assessments or to foreclose a lien for
1760 unpaid assessments, the court may appoint a receiver to collect all sums alleged to be due and
1761 owing to a unit owner before commencement or during pendency of the action. The
1762 receivership is governed by any state law generally applicable to receiverships. The court may
1763 order the receiver to pay any sums held by the receiver to the association during pendency of

1764 the action to the extent of the association's common expense assessments based on a periodic
1765 budget adopted by the association pursuant to Section 57-8a-415.

1766 Section 64. Section **57-8a-417** is enacted to read:

1767 **57-8a-417. Other liens.**

1768 (1) In a condominium or planned community:

1769 (a) Except as provided in Subsection (1)(b), a judgment for money against the
1770 association if recorded is not a lien on the common elements, but is a lien in favor of the
1771 judgment lien holder against all of the units in the common interest community at the time the
1772 judgment was entered. No other property of a unit owner is subject to the claims of creditors of
1773 the association.

1774 (b) If the association has granted a security interest in the common elements to a
1775 creditor of the association pursuant to Section 57-8a-412, the holder of that security interest
1776 shall exercise its right against the common elements before its judgment lien on any unit may
1777 be enforced.

1778 (c) Whether perfected before or after the creation of the common interest community,
1779 if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to
1780 work performed or materials supplied before creation of the common interest community),
1781 becomes effective against two or more units, the unit owner of an affected unit may pay to the
1782 lien holder the amount of the lien attributable to his unit, and the lien holder, upon receipt of
1783 payment, promptly shall deliver a release of the lien covering that unit. The amount of the
1784 payment must be proportionate to the ratio which that unit owner's common expense liability
1785 bears to the common expense liabilities of all unit owners whose units are subject to the lien.
1786 After payment, the association may not assess or have a lien against that unit owner's unit for
1787 any portion of the common expenses incurred in connection with that lien.

1788 (d) A judgment against the association must be indexed in the name of the common
1789 interest community and the association and, when so indexed, is notice of the lien against the
1790 units.

1791 (2) In a cooperative:

1792 (a) If the association receives notice of an impending foreclosure on all or any portion
1793 of the association's real estate, the association shall promptly transmit a copy of that notice to
1794 each unit owner of a unit located within the real estate to be foreclosed. Failure of the

1795 association to transmit the notice does not affect the validity of the foreclosure.

1796 (b) Whether or not a unit owner's unit is subject to the claims of the association's

1797 creditors, no other property of a unit owner is subject to those claims.

1798 Section 65. Section **57-8a-418** is enacted to read:

1799 **57-8a-418. Association records.**

1800 The association shall keep financial records sufficiently detailed to enable the
1801 association to comply with Subsection 57-8a-416(8). All financial and other records must be
1802 made reasonably available for examination by any unit owner and his authorized agents.

1803 Section 66. Section **57-8a-419** is enacted to read:

1804 **57-8a-419. Association as trustee.**

1805 With respect to a third person dealing with the association in the association's capacity
1806 as a trustee, the existence of trust powers and their proper exercise by the association may be
1807 assumed without inquiry. A third person is not bound to inquire whether the association has
1808 power to act as trustee or is properly exercising trust powers. A third person, without actual
1809 knowledge that the association is exceeding or improperly exercising its powers, is fully
1810 protected in dealing with the association as if it possessed and properly exercised the powers it
1811 purports to exercise. A third person is not bound to assure the proper application of trust assets
1812 paid or delivered to the association in its capacity as trustee.

Legislative Review Note

as of 1-14-04 1:22 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0099

Common Interest Ownership Act

02-Feb-04

10:26 AM

State Impact

No fiscal impact.

Individual and Business Impact

Individual and business impacts will vary according to individual circumstances.

Office of the Legislative Fiscal Analyst