

COUNTY RECORDER AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions relating to county recorders and documents submitted to county recorders for recording.

Highlighted Provisions:

This bill:

- ▶ clarifies that a document relating to parcels designated as a community area is to be treated the same as a document relating to a parcel designated as a common area;
- ▶ eliminates a requirement that fidelity bonds be recorded;
- ▶ modifies procedures and requirements applicable to the recording of documents;
- ▶ modifies procedures applicable to a subdivision plat that includes a public utility easement;
- ▶ provides an affidavit form for the termination on an interest in real estate; and
- ▶ makes permissible rather than mandatory a county recorder's refusal to accept for recording a document that fails to comply with applicable requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-606, as renumbered and amended by Chapter 254, Laws of Utah 2005

17-16-11, as repealed and reenacted by Chapter 211, Laws of Utah 2003

- 30 17-21-12, as last amended by Chapter 85, Laws of Utah 1999
- 31 17-27a-606, as renumbered and amended by Chapter 254, Laws of Utah 2005
- 32 54-3-27, as enacted by Chapter 64, Laws of Utah 2004
- 33 57-1-5.1, as last amended by Chapter 38, Laws of Utah 2006
- 34 57-3-105, as last amended by Chapter 320, Laws of Utah 2000
- 35 57-3-106, as last amended by Chapters 241 and 370, Laws of Utah 2001
- 36 57-8-11, as enacted by Chapter 111, Laws of Utah 1963
- 37 57-8-14, as last amended by Chapter 265, Laws of Utah 2003
- 38 57-8-27, as last amended by Chapter 265, Laws of Utah 2003

39 REPEALS:

- 40 17-21-13, as last amended by Chapter 241, Laws of Utah 2001



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

43 Section 1. Section 10-9a-606 is amended to read:

44 **10-9a-606. Common or community area parcels on a plat -- No separate**
 45 **ownership -- Ownership interest equally divided among other parcels on plat and**
 46 **included in description of other parcels.**

47 (1) A parcel designated as common or community area on a plat recorded in
 48 compliance with this part may not be separately owned or conveyed independent of the other
 49 parcels created by the plat.

50 (2) The ownership interest in a parcel described in Subsection (1) shall:

51 (a) for purposes of assessment, be divided equally among all parcels created by the
 52 plat, unless a different division of interest for assessment purposes is indicated on the plat or an
 53 accompanying recorded document; and

54 (b) be considered to be included in the description of each instrument describing a
 55 parcel on the plat by its identifying plat number, even if the common or community area
 56 interest is not explicitly stated in the instrument.

57 Section 2. Section 17-16-11 is amended to read:

58 **17-16-11. Fidelity bonds and theft or crime insurance.**

59 (1) As used in this section, "county officials" means:

60 (a) the members of the county legislative body;

61 (b) the county executive;

62 (c) the county clerk;

63 (d) the county auditor;

64 (e) the county sheriff;

65 (f) the county attorney;

66 (g) in a county that is within a prosecution district, the district attorney;

67 (h) the county recorder;

68 (i) the county assessor;

69 (j) the county surveyor;

70 (k) each justice court judge and constable within the county;

71 (l) the county treasurer; and

72 (m) each deputy or assistant of those listed in Subsections (1)(a) through (l) for whom
73 the county legislative body determines a general fidelity bond or theft or crime insurance
74 should be acquired.

75 (2) (a) The legislative body of each county shall prescribe the amount of each general
76 fidelity bond or of theft or crime insurance to be acquired for county officials, except the
77 county treasurer, before the county officials, except the county treasurer, may discharge the
78 duties of their respective offices.

79 (b) The State Money Management Council created in Section 51-7-16 shall prescribe
80 the amount of a general fidelity bond or theft or crime insurance to be acquired for the county
81 treasurer before the county treasurer may discharge the duties of that office.

82 (c) A county legislative body may acquire a fidelity bond or theft or crime insurance on
83 all county officials as a group rather than individually.

84 (3) (a) The county legislative body shall approve the premium for each fidelity bond
85 before the bond may be filed [~~and recorded~~].

86 (b) The cost of each fidelity bond and theft or crime insurance policy shall be paid
87 from county funds.

88 (4) Each fidelity bond shall be [~~recorded in the office of the county recorder and a copy~~
89 ~~of it~~] filed and maintained in the office of the county clerk.

90 (5) (a) The district attorney of each multicounty prosecution district shall:

91 (i) execute a fidelity bond or acquire theft or crime insurance in the amount specified in
92 the interlocal agreement that created the prosecution district; and

93 (ii) [~~record~~] file each fidelity bond [~~with the county recorder and file a copy of it~~] with
94 the county clerk as specified in the interlocal agreement.

95 (b) The cost of each fidelity bond or theft or crime insurance policy under Subsection
96 (5)(a) shall be paid as specified in the interlocal agreement that created the prosecution district.

97 Section 3. Section **17-21-12** is amended to read:

98 **17-21-12. Recording procedures -- Endorsements of entry number required on**
99 **documents.**

100 [~~When any instrument authorized by law to be recorded~~] (1) If a document is accepted
101 by the recorder's office for recording, the recorder shall:

102 [~~(1)~~] (a) endorse upon [it its proper] the first page of the document an entry number[;]
103 and the time when [it] the document was received, noting the year, month, day, hour, and
104 minute of its reception, and the amount of fees for recording it; and

105 [~~(2)~~] (b) record the [instrument] document during office hours in the order it was
106 accepted[; together with the acknowledgments, proofs, and certificates written upon or attached
107 to it, with the plats, surveys, schedules and other papers annexed to it].

108 (2) Each county recorder shall place an entry number or a book and page reference on
109 each page of a document that the recorder accepts for recording only if the original document
110 or a copy of the document is kept as a public record under Section 17-21-3.

111 (3) (a) A county recorder may, but is not required to, endorse each document that the
112 recorder accepts for recording with a book and page reference.

113 (b) If a county recorder elects not to endorse a document with a book and page

114 reference, the book and page reference may be omitted:

115 (i) in each index required by statute; and

116 (ii) on each document presented for recording that is required to recite recording data.

117 (4) Subject to Section 17-21-3, the county recorder shall return the document to the

118 person that the recorder considers appropriate.

119 Section 4. Section **17-27a-606** is amended to read:

120 **17-27a-606. Common or community area parcels on a plat -- No separate**

121 **ownership -- Ownership interest equally divided among other parcels on plat and**

122 **included in description of other parcels.**

123 (1) A parcel designated as common or community area on a plat recorded in
124 compliance with this part may not be separately owned or conveyed independent of the other
125 parcels created by the plat.

126 (2) The ownership interest in a parcel described in Subsection (1) shall:

127 (a) for purposes of assessment, be divided equally among all parcels created by the
128 plat, unless a different division of interest for assessment purposes is indicated on the plat or an
129 accompanying recorded document; and

130 (b) be considered to be included in the description of each instrument describing a
131 parcel on the plat by its identifying plat number, even if the common or community area
132 interest is not explicitly stated in the instrument.

133 Section 5. Section **54-3-27** is amended to read:

134 **54-3-27. Public utility easement.**

135 (1) As used in this section, "public utility easement" means the area on a recorded plat
136 map or other recorded document that is dedicated to the use and installation of public utility
137 facilities.

138 (2) (a) A public utility easement provides a public utility with:

139 (i) the right to install, maintain, operate, repair, remove, replace, or relocate public
140 utility facilities; and

141 (ii) the rights of ingress and egress within the public utility easement for public utility

142 employees, contractors, and agents.

143 (b) Notwithstanding Subsection (3), a public utility shall restore or repair, at the
144 expense of the public utility, any fence, grass, soil, shrubbery, bushes, flowers, other low level
145 vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or
146 displaced from the exercise of the easement rights described in Subsection (2)(a).

147 (3) Except as provided in Subsection (2)(b), if a property owner places improvements
148 to land that interfere with the easement rights described in Subsection (2)(a), the property
149 owner shall bear the risk of loss or damage to those improvements resulting from the exercise
150 of the easement rights described in Subsection (2)(a).

151 (4) (a) Except as provided in Subsection (4)(b), a public utility easement is
152 nonexclusive and may be used by more than one public utility.

153 (b) Notwithstanding Subsection (4)(a), a public utility may not:

154 (i) interfere with any facility of another public utility within the public utility easement;

155 or

156 (ii) infringe on the legally required distances of separation between public utility
157 facilities required by federal, state, or local law.

158 (5) A subdivision plat that includes a public utility easement may not be ~~[recorded]~~
159 approved by a county or municipality unless the subdivider has provided the ~~[municipality or]~~
160 county ~~[with]~~ or municipality proof that the subdivider has, as a courtesy, previously notified
161 each public utility ~~[as identified by the municipality or county as holding an interest in the~~
162 public utility easement has, as a courtesy, been notified at least 14 calendar days prior to
163 recording] that is anticipated to provide service to the subdivision.

164 Section 6. Section **57-1-5.1** is amended to read:

165 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

166 (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional
167 interest in real estate may be terminated by an affidavit that:

168 (a) meets the requirements of Subsection (2) [which shall be]; and

169 (b) is recorded in the office of the recorder of the county in which the affected property

170 is located.

171 (2) Each affidavit required by Subsection (1) shall:

172 (a) cite the interest which is being terminated;

173 (b) contain a legal description of the real property that is affected;

174 (c) reference the entry number and the book and page of the instrument creating the
175 interest to be terminated; and

176 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the
177 death certificate or other document witnessing the death.

178 (3) The affidavit required by Subsection (1) may be in substantially the following form:

179 "Affidavit

180 State of Utah _____)

181 _____) ss

182 County of _____)

183 I, (name of affiant), being of legal age and being first duly sworn, depose and state as
184 follows:

185 (The name of the deceased person), the decedent in the attached certificate of death or
186 other document witnessing death is the same person as (the name of the deceased person)
187 named as a party in the document dated (date of document) as entry _____ in book _____,
188 page _____ in the records of the (name of county) County Recorder.

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

192 Dated this _____ day of _____,

193 _____
194 (Signature of affiant)

195 Subscribed to and sworn before me this _____ day of _____,

196 _____.

197 _____

198 Notary public"

199 Section 7. Section **57-3-105** is amended to read:

200 **57-3-105. Legal description of real property and names and addresses required in**
201 **documents.**

202 (1) Except as otherwise provided by statute, a person may not present a document for
203 recording unless it complies with the requirements of this section.

204 ~~[(1)]~~ (2) A document executed after July 1, 1983, is entitled to be recorded in the office
205 of ~~[any county]~~ the recorder of the county in which the property described in the document is
206 located only if the document contains a legal description of the real property affected.

207 ~~[(2)]~~ (3) (a) A document ~~[affecting]~~ conveying title to real property presented for
208 recording after July 1, 1981, is entitled to be recorded in the office of ~~[any county]~~ the recorder
209 of the county in which the property described in the document is located only if the document
210 contains the names and mailing addresses of the grantees in addition to the legal description
211 required under Subsection ~~[(1)]~~ (2).

212 (b) The address of the management committee may be used as the mailing address of a
213 grantee as required in Subsection ~~[(2)]~~ (3)(a) if the interest conveyed is a timeshare interest as
214 defined by Section 57-19-2.

215 ~~[(3)-Each]~~ (4) A county recorder ~~[shall]~~ may refuse to accept a document for recording
216 if ~~[it]~~ the document does not conform to the requirements ~~[under]~~ of this section.

217 ~~[(4)]~~ (5) Notwithstanding Subsections ~~[(1);~~ (2), ~~[and]~~ (3), and (4), a master form, as
218 defined in Section 57-3-201, that does not meet the requirements of Subsections ~~[(1) and]~~ (2)
219 and (3) is entitled to be recorded in the office of ~~[any county]~~ the recorder of the county in
220 which the property described in the master form is located if it complies with Part 2, Master
221 Mortgage and Trust Deeds.

222 Section 8. Section **57-3-106** is amended to read:

223 **57-3-106. Original documents required -- Captions -- Legibility.**

224 (1) (a) Unless otherwise provided, documents presented for recording in the office of
225 the county recorder shall:

- 226 (i) be originals; [~~and~~]
227 (ii) contain a brief caption on the first page of the document stating the nature of the
228 document[-]; and
229 (iii) contain a legal description of the property as required under Section 57-3-105.
230 (b) If a document is a master form, as defined in Section 57-3-201, the caption required
231 by Subsection (1)(a)(ii) shall state that the document is a master form.
232 (2) A court judgment or an abstract of a court judgment presented for recording in the
233 office of the county recorder in compliance with Section 78-22-1 shall:
234 (a) be an original or certified copy; and
235 (b) include the information identifying the judgment debtor as referred to in Subsection
236 78-22-1.5(4) either:
237 (i) in the judgment or abstract of judgment; or
238 (ii) as a separate information statement of the judgment creditor as referred to in
239 Subsection 78-22-1.5(5).
240 (3) Judgments, abstracts of judgments, and separate information statements of the
241 judgment creditor do not require an acknowledgment or a legal description to be recorded.
242 (4) A foreign judgment or an abstract of a foreign judgment recorded in the office of a
243 county recorder shall include the affidavit as required in Section 78-22a-3.
244 (5) Any document recorded in the office of the county recorder to release or assign a
245 judgment lien shall include:
246 (a) the name of any judgment creditor, debtor, assignor, or assignee;
247 (b) the date of recording; and
248 (c) the entry number of the instrument creating the judgment lien.
249 (6) Documents presented for recording shall also be sufficiently legible for the recorder
250 to make certified copies.
251 (7) (a) A document which is of record in the office of the appropriate county recorder
252 in compliance with this chapter may not be recorded again in that same county recorder's office
253 unless the original document has been reexecuted by all parties who executed the document.

254 Unless exempt by statute, original documents which are reexecuted must also contain the
255 appropriate acknowledgment, proof of execution, jurat or other notarial certification for all
256 parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public
257 Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording
258 shall contain a brief statement explaining the reason for rerecording.

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

261 (c) This Subsection (7) applies only to documents executed after July 1, 1998.

262 (8) Minor typographical or clerical errors in a document of record may be corrected by
263 the recording of an affidavit or other appropriate instrument.

264 Section 9. Section **57-8-11** is amended to read:

265 **57-8-11. Contents of deeds of units.**

266 [~~Deeds~~] A deed of units [~~shall~~] may include [~~the following particulars~~]:

267 (1) [~~A~~] a description of the land as provided in Section 57-8-10, including the book and
268 page or entry number and date of recording of the declaration[-];

269 (2) [~~The~~] the unit number of the unit and any other data necessary for its proper
270 identification[-];

271 (3) [~~The~~] percentage of undivided interest appertaining to the unit in the common or
272 community areas and facilities[-]; and

273 (4) [~~Any~~] any further particulars [~~which~~] that the grantor and grantee [~~may deem~~]
274 consider desirable to set forth consistent with the declaration and this [~~act~~] chapter.

275 Section 10. Section **57-8-14** is amended to read:

276 **57-8-14. Legal description of units.**

277 [~~Every~~] (1) A deed, lease, mortgage, or other instrument may legally describe a unit by
278 its identifying number or symbol as designated in the declaration or as shown on the
279 condominium plat[~~, and every such~~].

280 (2) Each description under Subsection (1) shall be [~~deemed~~] considered:

281 (a) to be good and sufficient for all purposes[-]; and [~~shall be deemed~~]

282 (b) to convey, transfer, encumber or otherwise affect the unit owner's corresponding
283 percentage of ownership in the common or community areas and facilities even though the
284 [~~same~~] percentage of ownership is not expressly mentioned or described.

285 Section 11. Section **57-8-27** is amended to read:

286 **57-8-27. Separate taxation.**

287 (1) Each unit and its percentage of undivided interest in the common or community
288 areas and facilities shall be considered to be a parcel and shall be subject to separate
289 assessment and taxation by each assessing unit and special district for all types of taxes
290 authorized by law, including ad valorem levies and special assessments. Neither the building
291 or buildings, the property, nor any of the common areas and facilities may be considered a
292 parcel.

293 (2) In the event any of the interests in real property made subject to this chapter by the
294 declaration are leasehold interests, if the lease creating these interests is of record in the office
295 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
296 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
297 situated on or within the real property covered by the lease, and if the lease provides that the
298 lessee shall pay all taxes and assessments imposed by governmental authority, then until ten
299 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever
300 first occurs, all taxes and assessments on the real property covered by the lease shall be levied
301 against the owner of the lessee's interest. If the owner of the reversion under the lease has
302 executed the declaration and condominium plat, until ten years prior to the date that the
303 leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and
304 assessments on the real property covered by the lease shall be separately levied against the unit
305 owners having an interest in the lease, with each unit owner for taxation purposes being
306 considered the owner of a parcel consisting of his undivided condominium interest in the fee of
307 the real property affected by the lease.

308 (3) No forfeiture or sale of the improvements or the property as a whole for delinquent
309 real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an

310 individual unit if the real estate taxes or duly levied share of the assessments and charges on the
311 individual unit are currently paid.

312 (4) Any exemption from taxes that may exist on real property or the ownership of the
313 property may not be denied by virtue of the submission of the property to this chapter.

314 (5) Timeshare interests and timeshare estates, as defined in Subsection 57-19-2(17),
315 may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The
316 value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be
317 determined by valuing the real property interest associated with the timeshare interest or
318 timeshare estate, exclusive of the value of any intangible property and rights associated with
319 the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate,
320 including the fees and costs associated with the sale of timeshare interests and timeshare estates
321 that exceed those fees and costs normally incurred in the sale of other similar properties, the
322 fees and costs associated with the operation, ownership, and use of timeshare interests and
323 timeshare estates, vacation exchange rights, vacation conveniences and services, club
324 memberships, and any other intangible rights and benefits available to a timeshare unit owner.
325 Nothing in this section shall be construed as requiring the assessment of any real property
326 interest associated with a timeshare interest or timeshare estate at less than its fair market
327 value. Notice of assessment, delinquency, sale, or any other purpose required by law is
328 considered sufficient for all purposes if the notice is given to the management committee.

329 Section 12. **Repealer.**

330 This bill repeals:

331 Section **17-21-13, Endorsement of book and page -- Return of instrument.**