

1 **CONDOMINIUM OWNERSHIP ACT**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Michael G. Waddoups**

6 House Sponsor: Gage Froerer

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses the organization of an association of unit owners in a condominium
11 project into a nonprofit corporation or other entity.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ allows an association of unit owners to organize as a nonprofit corporation or other
16 entity;
- 17 ▶ addresses the priority of any conflicting governing provisions in Title 57, Chapter 8,
18 Condominium Ownership Act, Title 16, Chapter 6a, Utah Revised Nonprofit
19 Corporation Act, other law, and other documents, bylaws, and rules;
- 20 ▶ addresses the application of provisions concerning organization as a nonprofit
21 corporation to a previously organized entity; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 57-8-3, as last amended by Laws of Utah 2003, Chapter 265

30 ENACTS:

31 57-8-40, Utah Code Annotated 1953



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

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

35 **57-8-3. Definitions.**

36 As used in this chapter:

37 (1) "Assessment" means any charge imposed by the association, including common
38 expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or
39 this chapter.

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

41 (a) acting as a group in accordance with the declaration and bylaws[-]; or

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

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

45 (4) "Common areas and facilities" unless otherwise provided in the declaration or
46 lawful amendments to the declaration means:

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

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

51 (c) the basements, yards, gardens, parking areas, and storage spaces;

52 (d) the premises for lodging of janitors or persons in charge of the property;

53 (e) installations of central services such as power, light, gas, hot and cold water,
54 heating, refrigeration, air conditioning, and incinerating;

55 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
56 apparatus and installations existing for common use;

57 (g) such community and commercial facilities as may be provided for in the
58 declaration; and

59 (h) all other parts of the property necessary or convenient to its existence, maintenance,
60 and safety, or normally in common use.

61 (5) "Common expenses" means:

62 (a) all sums lawfully assessed against the unit owners;

63 (b) expenses of administration, maintenance, repair, or replacement of the common
64 areas and facilities;

65 (c) expenses agreed upon as common expenses by the association of unit owners; and

66 (d) expenses declared common expenses by this chapter, or by the declaration or the
67 bylaws.

68 (6) "Common profits," unless otherwise provided in the declaration or lawful
69 amendments to the declaration, means the balance of all income, rents, profits, and revenues
70 from the common areas and facilities remaining after the deduction of the common expenses.

71 (7) "Condominium" means the ownership of a single unit in a multiunit project
72 together with an undivided interest in common in the common areas and facilities of the
73 property.

74 (8) "Condominium plat" means a plat or plats of survey of land and units prepared in
75 accordance with Section 57-8-13.

76 (9) "Condominium project" means a real estate condominium project; a plan or project
77 whereby two or more units, whether contained in existing or proposed apartments, commercial
78 or industrial buildings or structures, or otherwise, are separately offered or proposed to be
79 offered for sale. Condominium project also means the property when the context so requires.

80 (10) "Condominium unit" means a unit together with the undivided interest in the
81 common areas and facilities appertaining to that unit. Any reference in this chapter to a
82 condominium unit includes both a physical unit together with its appurtenant undivided interest
83 in the common areas and facilities and a time period unit together with its appurtenant
84 undivided interest, unless the reference is specifically limited to a time period unit.

85 (11) "Contractible condominium" means a condominium project from which one or
86 more portions of the land within the project may be withdrawn in accordance with provisions
87 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
88 termination of one or more leases, then the condominium project is not a contractible
89 condominium within the meaning of this chapter.

90 (12) "Convertible land" means a building site which is a portion of the common areas
91 and facilities, described by metes and bounds, within which additional units or limited common
92 areas and facilities may be created in accordance with this chapter.

93 (13) "Convertible space" means a portion of the structure within the condominium
94 project, which portion may be converted into one or more units or common areas and facilities,
95 including limited common areas and facilities in accordance with this chapter.

96 (14) "Declarant" means all persons who execute the declaration or on whose behalf the
97 declaration is executed. From the time of the recordation of any amendment to the declaration
98 expanding an expandable condominium, all persons who execute that amendment or on whose
99 behalf that amendment is executed shall also come within this definition. Any successors of
100 the persons referred to in this subsection who come to stand in the same relation to the
101 condominium project as their predecessors also come within this definition.

102 (15) "Declaration" means the instrument by which the property is submitted to the
103 provisions of this act, as it from time to time may be lawfully amended.

104 (16) "Expandable condominium" means a condominium project to which additional
105 land or an interest in it may be added in accordance with the declaration and this chapter.

106 (17) "Leasehold condominium" means a condominium project in all or any portion of
107 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
108 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
109 condominium project including leased land, or an interest in the land, upon which no units are
110 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

111 (18) "Limited common areas and facilities" means those common areas and facilities
112 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
113 other units.

114 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the
115 declaration or lawful amendments to the declaration, means the owners of more than 50% in
116 the aggregate in interest of the undivided ownership of the common areas and facilities.

117 (20) "Management committee" means the committee as provided in the declaration
118 charged with and having the responsibility and authority to make and to enforce all of the
119 reasonable rules covering the operation and maintenance of the property.

120 (21) "Par value" means a number of dollars or points assigned to each unit by the

121 declaration. Substantially identical units shall be assigned the same par value, but units located
122 at substantially different heights above the ground, or having substantially different views, or
123 having substantially different amenities or other characteristics that might result in differences
124 in market value, may be considered substantially identical within the meaning of this
125 subsection. If par value is stated in terms of dollars, that statement may not be considered to
126 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
127 fair market transaction at a different figure may affect the par value of any unit, or any
128 undivided interest in the common areas and facilities, voting rights in the unit owners'
129 association, liability for common expenses, or right to common profits, assigned on the basis
130 thereof.

131 (22) "Person" means an individual, corporation, partnership, association, trustee, or
132 other legal entity.

133 (23) "Property" means the land, whether leasehold or in fee simple, the building, if any,
134 all improvements and structures thereon, all easements, rights, and appurtenances belonging
135 thereto, and all articles of personal property intended for use in connection therewith.

136 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
137 57, Chapter 3, Recording of Documents.

138 (25) "Size" means the number of cubic feet, or the number of square feet of ground or
139 floor space, within each unit as computed by reference to the record of survey map and rounded
140 off to a whole number. Certain spaces within the units including attic, basement, or garage
141 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the
142 same basis of calculation is employed for all units in the condominium project and if that basis
143 is described in the declaration.

144 (26) "Time period unit" means an annually recurring part or parts of a year specified in
145 the declaration as a period for which a unit is separately owned and includes a timeshare estate
146 as defined in Subsection 57-19-2(17).

147 (27) "Unit" means either a separate physical part of the property intended for any type
148 of independent use, including one or more rooms or spaces located in one or more floors or
149 part or parts of floors in a building or a time period unit, as the context may require. A
150 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
151 proposed condominium unit under an expandable condominium project, not constructed, is a

152 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

153 (28) "Unit number" means the number, letter, or combination of numbers and letters
154 designating the unit in the declaration and in the record of survey map.

155 (29) "Unit owner" means the person or persons owning a unit in fee simple and an
156 undivided interest in the fee simple estate of the common areas and facilities in the percentage
157 specified and established in the declaration or, in the case of a leasehold condominium project,
158 the person or persons whose leasehold interest or interests in the condominium unit extend for
159 the entire balance of the unexpired term or terms.

160 Section 2. Section **57-8-40** is enacted to read:

161 **57-8-40. Organization of an association of unit owners under other law -- Priority**
162 **-- Reorganization.**

163 (1) As used in this section, "organizational documents" means the documents related to
164 the formation or operation of a legal entity formed by the management committee or the
165 declarant.

166 (2) If permitted, required, or acknowledged by the declaration, the management
167 committee may organize an association of unit owners into a nonprofit corporation in
168 accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or other entity
169 organized under other law.

170 (3) Organizational documents for a nonprofit corporation or other entity formed in
171 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
172 obligations found in the declaration and any of the association's bylaws recorded at the time of
173 the formation of a nonprofit corporation or other entity under Subsection (2).

174 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
175 organizational documents of an entity formed in accordance with Subsection (2) may include
176 any additional indemnification and liability limitation provision for the management committee
177 members and officers of the association that is permitted by the chapter under which the
178 association is organized for board members, directors, and officers, or similar persons in a
179 position of control.

180 (5) In the event of a conflict between this chapter's provisions, a statute under which
181 the association of unit owners is organized, documents concerning the organization of the
182 association of unit owners as a nonprofit corporation or other entity, the declaration, the

183 bylaws, and association rules, the following order prevails:

184 (a) this chapter controls over a conflicting provision found in any of the sources listed
185 in Subsections (5)(b) through (f);

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

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

193 (d) the declaration controls over a conflicting provision in any of the sources listed in
194 Subsections (5)(e) or (f);

195 (e) the bylaws control over a conflicting provision in association rules; and

196 (f) the association rules yield to a conflicting provision in any of the sources listed in
197 Subsection (5)(a) through (e).

198 (6) Immediately upon the legal formation of an entity in compliance with this section,
199 the association and unit owners are subject to any right, obligation, procedure, and remedy
200 applicable to that entity.

201 (7) (a) A form "articles of incorporation" or similar organizational document attached
202 to a declaration may be modified by the management committee for filing or re-filing if the
203 modified version is otherwise consistent with this section's provisions.

204 (b) An organizational document attached to a declaration that is filed and concerns the
205 organization of an entity may be amended in accordance with its own terms or any applicable
206 law, notwithstanding the fact that the organizational document might be recorded.

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

209 (8) This section applies to the reorganization of an association of unit owners
210 previously organized if the entity's status is terminated or dissolved without the possibility of
211 reinstatement.

212 (9) (a) This section applies to all condominium projects, whether established before or
213 after May 5, 2008.

214 (b) This section does not validate or invalidate the organization of an association that
215 occurred before May 5, 2008, whether or not the association was otherwise in compliance with
216 this section.

Legislative Review Note
as of 2-21-08 10:40 AM

Office of Legislative Research and General Counsel

S.B. 288 - Condominium Ownership Act Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
