

**Senator Stephen H. Urquhart** proposes the following substitute bill:

**RENTAL RESTRICTIONS ON CONDOMINIUMS**

**AND COMMON INTEREST COMMUNITIES**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill modifies the powers of an association of unit owners or association to create rental restrictions.

**Highlighted Provisions:**

This bill:

- ▶ modifies the powers an association of unit owners or association to:
  - create reasonable restrictions on the number and terms of rental units or lots;
  - include rental restrictions in the association of unit owners' recorded declaration or association's recorded governing documents;
  - include a hardship exemption in the rental restrictions;
  - include a grandfather clause for existing rental units or lots; and
  - create procedures to track the number of rental units or lots; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **57-8-10**, as last amended by Laws of Utah 2003, Chapter 265

29 ENACTS:

30 **57-8a-209**, Utah Code Annotated 1953

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

33 Section 1. Section **57-8-10** is amended to read:

34 **57-8-10. Contents of declaration.**

35 (1) Prior to the conveyance of any unit in a condominium project, a declaration shall be  
36 recorded that contains the covenants, conditions, and restrictions relating to the project that  
37 shall be enforceable equitable servitudes, where reasonable, and which shall run with the land.  
38 Unless otherwise provided, these servitudes may be enforced by any unit owner and his  
39 successors in interest.

40 (2) (a) For every condominium project:

41 (i) The declaration shall include a description of the land or interests in real property  
42 included within the project.

43 (ii) The declaration shall contain a description of any buildings, which states the  
44 number of storeys and basements, the number of units, the principal materials of which the  
45 building is or is to be constructed, and a description of all other significant improvements  
46 contained or to be contained in the project.

47 (iii) The declaration shall contain the unit number of each unit, the square footage of  
48 each unit, and any other description or information necessary to properly identify each unit.

49 (iv) The declaration shall describe the common areas and facilities of the project.

50 (v) The declaration shall describe any limited common areas and facilities and shall  
51 state to which units the use of the common areas and facilities is reserved.

52 (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or  
53 other apparatus intended to serve a single unit, but located outside the boundaries of the unit,  
54 shall constitute a limited common area and facility appertaining to that unit exclusively,  
55 whether or not the declaration makes such a provision.

56 (c) The condominium plat recorded with the declaration may provide or supplement

57 the information required under Subsections (2)(a) and (b).

58 (d) (i) The declaration shall include the percentage or fraction of undivided interest in  
59 the common areas and facilities appurtenant to each unit and its owner for all purposes,  
60 including voting, derived and allocated in accordance with Subsection 57-8-7(2).

61 (ii) If any use restrictions are to apply, the declaration shall state the purposes for which  
62 the units are intended and restricted as to use.

63 (iii) (A) The declaration shall include the name of a person to receive service of  
64 process on behalf of the project, in the cases provided by this chapter, together with the  
65 residence or place of business of that person.

66 (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall  
67 maintain a place of business within, this state.

68 (iv) The declaration shall describe the method by which it may be amended consistent  
69 with this chapter.

70 (v) Any further matters in connection with the property may be included in the  
71 declaration, which the person or persons executing the declaration may consider desirable  
72 consistent with this chapter.

73 (vi) The declaration shall contain a statement of intention that this chapter applies to  
74 the property.

75 (3) (a) If the condominium project contains any convertible land:

76 (i) The declaration shall contain a legal description by metes and bounds of each area  
77 of convertible land within the condominium project.

78 (ii) The declaration shall state the maximum number of units that may be created  
79 within each area of convertible land.

80 (iii) (A) The declaration shall state, with respect to each area of convertible land, the  
81 maximum percentage of the aggregate land and floor area of all units that may be created and  
82 the use of which will not or may not be restricted exclusively to residential purposes.

83 (B) The statements described in Subsection (3)(a)(iii)(A) need not be supplied if none  
84 of the units on other portions of the land within the project are restricted exclusively to  
85 residential use.

86 (iv) The declaration shall state the extent to which any structure erected on any  
87 convertible land will be compatible with structures on other portions of the land within the

88 condominium project in terms of quality of construction, the principal materials to be used, and  
89 architectural style.

90 (v) The declaration shall describe all other improvements that may be made on each  
91 area of convertible land within the condominium project.

92 (vi) The declaration shall state that any units created within each area of convertible  
93 land will be substantially identical to the units on other portions of the land within the project  
94 or it shall describe in detail what other type of units may be created.

95 (vii) The declaration shall describe the declarant's reserved right, if any, to create  
96 limited common areas and facilities within any convertible land in terms of the types, sizes, and  
97 maximum number of the limited common areas within each convertible land.

98 (b) The condominium plat recorded with the declaration may provide or supplement  
99 the information required under Subsection (3)(a).

100 (4) If the condominium is an expandable condominium project:

101 (a) (i) (A) The declaration shall contain an explicit reservation of an option to expand  
102 the project.

103 (B) The declaration shall include a statement of any limitations on the option to  
104 expand, including a statement as to whether the consent of any unit owners shall be required  
105 and, a statement as to the method by which consent shall be ascertained, or a statement that  
106 there are no such limitations.

107 (ii) The declaration shall include a time limit, not exceeding seven years from the date  
108 of the recording of the declaration, upon which the option to expand the condominium project  
109 shall expire, together with a statement of any circumstances which will terminate the option  
110 prior to expiration of the specified time limits.

111 (iii) The declaration shall contain a legal description by metes and bounds of all land  
112 that may be added to the condominium project, which is known as additional land.

113 (iv) The declaration shall state:

114 (A) if any of the additional land is added to the condominium project, whether all of it  
115 or any particular portion of it must be added;

116 (B) any limitations as to what portions may be added; or

117 (C) a statement that there are no such limitations.

118 (v) The declaration shall include a statement as to whether portions of the additional

119 land may be added to the condominium project at different times, together with any limitations  
120 fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds  
121 of these lands and regulating the order in which they may be added to the condominium  
122 project.

123 (vi) The declaration shall include a statement of any limitations as to the locations of  
124 any improvements that may be made on any portions of the additional land added to the  
125 condominium project, or a statement that no assurances are made in that regard.

126 (vii) The declaration shall state the maximum number of units that may be created on  
127 the additional land. If portions of the additional land may be added to the condominium project  
128 and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the  
129 declaration shall also state the maximum number of units that may be created on each portion  
130 added to the condominium project. If portions of the additional land may be added to the  
131 condominium project and the boundaries of those portions are not fixed in accordance with  
132 Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per  
133 acre that may be created on any portion added to the condominium project.

134 (viii) With respect to the additional land and to any portion of it that may be added to  
135 the condominium project, the declaration shall state the maximum percentage of the aggregate  
136 land and floor area of all units that may be created on it, the use of which will not or may not  
137 be restricted exclusively to residential purposes. However, these statements need not be  
138 supplied if none of the units on the land originally within the project are restricted exclusively  
139 to residential use.

140 (ix) The declaration shall state the extent to which any structures erected on any  
141 portion of the additional land added to the condominium project will be compatible with  
142 structures on the land originally within the project in terms of quality of construction, the  
143 principal materials to be used, and architectural style. The declaration may also state that no  
144 assurances are made in those regards.

145 (x) The declaration shall describe all other improvements that will be made on any  
146 portion of the additional land added to the condominium project, or it shall contain a statement  
147 of any limitations as to what other improvements may be made on it. The declaration may also  
148 state that no assurances are made in that regard.

149 (xi) The declaration shall contain a statement that any units created on any portion of

150 the additional land added to the condominium project will be substantially identical to the units  
151 on the land originally within the project, or a statement of any limitations as to what types of  
152 units may be created on it. The declaration may also contain a statement that no assurances are  
153 made in that regard.

154 (xii) The declaration shall describe the declarant's reserved right, if any, to create  
155 limited common areas and facilities within any portion of the additional land added to the  
156 condominium project, in terms of the types, sizes, and maximum number of limited common  
157 areas within each portion. The declaration may also state that no assurances are made in those  
158 regards.

159 (b) The condominium plat recorded with the declaration may provide or supplement  
160 the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through  
161 (a)(xii).

162 (5) If the condominium project is a contractible condominium:

163 (a) (i) The declaration shall contain an explicit reservation of an option to contract the  
164 condominium project.

165 (ii) The declaration shall contain a statement of any limitations on the option to  
166 contract, including a statement as to whether the consent of any unit owners shall be required,  
167 and if so, a statement as to the method by which this consent shall be ascertained. The  
168 declaration may also contain a statement that there are no such limitations.

169 (iii) The declaration shall state the time limit, not exceeding seven years from the  
170 recording of the declaration, upon which the option to contract the condominium project shall  
171 expire, together with a statement of any circumstances which will terminate this option prior to  
172 expiration of the specified time limit.

173 (b) (i) The declaration shall include a legal description by metes and bounds of all land  
174 that may be withdrawn from the condominium project, which is known as withdrawable land.

175 (ii) The declaration shall include a statement as to whether portions of the  
176 withdrawable land may be withdrawn from the condominium project at different times,  
177 together with any limitations fixing the boundaries of those portions by legal descriptions  
178 setting forth the metes and bounds and regulating the order in which they may be withdrawn  
179 from the condominium project.

180 (iii) The declaration shall include a legal description by metes and bounds of all of the

181 land within the condominium project to which the option to contract the project does not  
182 extend.

183 (c) The condominium plat recorded with the declaration may provide or supplement  
184 the information required under Subsection (5)(b).

185 (6) (a) If the condominium project is a leasehold condominium, then with respect to  
186 any ground lease or other leases the expiration or termination of which will or may terminate or  
187 contract the condominium project:

188 (i) The declaration shall include recording information enabling the location of each  
189 lease in the official records of the county recorder.

190 (ii) The declaration shall include the date upon which each lease is due to expire.

191 (iii) The declaration shall state whether any land or improvements will be owned by the  
192 unit owners in fee simple. If there is to be fee simple ownership, the declaration shall include:

193 (A) a description of the land or improvements, including without limitation, a legal  
194 description by metes and bounds of the land; or

195 (B) a statement of any rights the unit owners have to remove these improvements  
196 within a reasonable time after the expiration or termination of the lease or leases involved, or a  
197 statement that they shall have no such rights.

198 (iv) The declaration shall include a statement of the rights the unit owners have to  
199 extend or renew any of the leases or to redeem or purchase any of the reversions, or a statement  
200 that they have no such rights.

201 (b) After the recording of the declaration, no lessor who executed the declaration, and  
202 no successor in interest to this lessor, has any right or power to terminate any part of the  
203 leasehold interest of any unit owner who:

204 (i) makes timely payment of his share of the rent to the persons designated in the  
205 declaration for the receipt of the rent; and

206 (ii) otherwise complies with all covenants which would entitle the lessor to terminate  
207 the lease if they were violated.

208 (7) (a) If the condominium project contains time period units, the declaration shall also  
209 contain the location of each condominium unit in the calendar year. This information shall be  
210 set out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7(2), if the  
211 exhibit or schedule accompanies the declaration.

212 (b) The declaration shall also put timeshare owners on notice that tax notices will be  
213 sent to the management committee, not each timeshare owner.

214 (c) The time period units created with respect to any given physical unit shall be such  
215 that the aggregate of the durations involved constitute a full calendar year.

216 (8) (a) The declaration, bylaws, and condominium plat shall be duly executed and  
217 acknowledged by all of the owners and any lessees of the land which is made subject to this  
218 chapter.

219 (b) As used in Subsection (8)(a), "owners and lessees" does not include, in their  
220 respective capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other  
221 lien holder, any person having an equitable interest under any contract for the sale or lease of a  
222 condominium unit, or any lessee whose leasehold interest does not extend to any portion of the  
223 common areas and facilities.

224 (9) (a) (i) Subject to Subsections (9)(b), (e), and (f), an association of unit owners may:  
225 (A) create restrictions on the number and term of rentals in a condominium project; or  
226 (B) prohibit rentals in the condominium project.

227 (ii) An association of unit owners that creates a rental restriction or prohibition in  
228 accordance with Subsection (9)(a)(i) shall create the rental restriction or prohibition in a  
229 declaration or by amending the declaration.

230 (b) If an association of unit owners imposes restrictions on the number and term of  
231 rentals, the restrictions shall include:

232 (i) a provision that requires a condominium project to exempt from the rental  
233 restrictions the following unit owner and the unit owner's unit:

234 (A) a unit owner in the military for the period of the unit owner's deployment;

235 (B) a unit occupied by a unit owner's parent, child, or sibling;

236 (C) a unit owner whose employer has relocated the unit owner; or

237 (D) a unit owned by a trust or other entity created for estate planning purposes if the  
238 trust or other estate planning entity was created for the estate of a current resident of the unit;

239 (ii) a provision allowing a unit owner who has a rental in the condominium project  
240 before the time the rental restriction described in Subsection (9)(a)(i) is recorded with the  
241 county recorder of the county in which the condominium project is located to continue renting  
242 until the unit owner transfers or occupies the unit; and

243 (iii) a requirement that the association of unit owners create, by rule or resolution,  
 244 procedures to:

245 (A) determine and track the number of rentals and units in the condominium project  
 246 subject to the provisions described in Subsections (9)(b)(i) and (ii); and

247 (B) ensure consistent administration and enforcement of the rental restrictions.

248 (c) For purposes of Subsection (9)(b)(ii), a transfer occurs when one or more of the  
 249 following occur:

250 (i) the conveyance, sale, or other transfer of a unit by deed;

251 (ii) the granting of a life estate in the unit; or

252 (iii) if the unit is owned by a limited liability company, corporation, partnership, or  
 253 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,  
 254 membership interests, or partnership interests in a 12-month period.

255 (d) This section does not limit or affect residency age requirements for an association  
 256 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.  
 257 3607.

258 (e) A declaration recorded prior to the first unit transferred from the initial declarant,  
 259 including a developer, may:

260 (i) (A) restrict rental units; and

261 (B) prohibit exceptions to Subsection (9)(e)(i)(A); and

262 (ii) (A) prohibit rental units; and

263 (B) prohibit exceptions to Subsection (9)(e)(ii)(A).

264 (f) This section does not apply to:

265 (i) a condominium project containing a time period unit as defined in Section ~~§~~ → [57-8-1]

265a 57-8-3 ←~~§~~ :

266 (ii) any other form of timeshare interest as defined in Section 57-19-2; or

267 (iii) a condominium project in which the initial declaration is recorded before May 12,  
 268 2009.

269 Section 2. Section **57-8a-209** is enacted to read:

270 **57-8a-209. Rental Restrictions.**

271 (1) (a) Subject to Subsections (1)(b), (5), and (6), an association may:

272 (i) create restrictions on the number and term of rentals in an association; or

273 (ii) prohibit rentals in the association.

274 (b) An association that creates a rental restriction or prohibition in accordance with  
275 Subsection (1)(a)(i) shall create the rental restriction or prohibition in a recorded declaration of  
276 covenants, conditions, and restrictions, or by amending the recorded declaration of covenants,  
277 conditions, and restrictions.

278 (2) If an association imposes restrictions on the number and term of rentals, the  
279 restrictions shall include:

280 (a) a provision that requires the association to exempt from the rental restrictions the  
281 following lot owner and the lot owner's lot:

282 (i) a lot owner in the military for the period of the lot owner's deployment;

283 (ii) a lot occupied by a lot owner's parent, child, or sibling;

284 (iii) a lot owner whose employer has relocated the lot owner; or

285 (iv) a lot owned by a trust or other entity created for estate planning purposes if the  
286 trust or other estate planning entity was created for the estate of a current resident of the lot;

287 (b) a provision allowing a lot owner who has a rental in the association before the time  
288 the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the  
289 county in which the association is located to continue renting until the lot owner transfers or  
290 occupies the lot; and

291 (c) a requirement that the association create, by rule or resolution, procedures to:

292 (i) determine and track the number of rentals and lots in the association subject to the  
293 provisions described in Subsections (2)(a) and (b); and

294 (ii) ensure consistent administration and enforcement of the rental restrictions.

295 (3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the  
296 following occur:

297 (a) the conveyance, sale, or other transfer of a lot by deed;

298 (b) the granting of a life estate in the lot; or

299 (c) if the lot is owned by a limited liability company, corporation, partnership, or other  
300 business entity, the sale or transfer of more than 75% of the business entity's share, stock,  
301 membership interests, or partnership interests in a 12-month period.

302 (4) This section does not limit or affect residency age requirements for an association  
303 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.  
304 3607.

305           (5) The declaration of covenants, conditions, and restrictions recorded prior to the first  
306 lot transferred from the initial declarant, including a developer, may:

307           (a) (i) restrict rental lots; and

308           (ii) prohibit exceptions to Subsection (5)(a)(i); and

309           (b) (i) prohibit rental lots; and

310           (ii) prohibit exceptions to Subsection (5)(b)(i).

311           (6) This section does not apply to:

312           (a) an association containing a time period unit as defined in Section ~~§~~→ [57-8-1] 57-8-3 ←~~§~~ ;

313           (b) any other form of timeshare interest as defined in Section 57-19-2; or

314           (c) an association in which the initial declaration of covenants, conditions, and

315 restrictions is recorded before May 12, 2009.

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**Fiscal Note****H.B. 243 2nd Sub. (Gray) - Rental Restrictions on Condominiums and  
Common Interest Communities**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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