

Senator Ralph Okerlund proposes the following substitute bill:

MODIFICATIONS TO RECORDING

REQUIREMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill modifies county and municipal provisions relating to the recording of subdivision plats.

Highlighted Provisions:

This bill:

- ▶ authorizes the county recorder to assign a different name to a subdivision on a plat if the name duplicates one already assigned to a subdivision on a recorded plat;
- ▶ requires landowners to sign and dedicate a plat;
- ▶ requires a surveyor making a plat to certify that the surveyor has provided a reference to the filing number of a record of survey map, rather than that the surveyor has completed a survey;
- ▶ requires the filing of a surveyor's affidavit by a surveyor who sets monuments during construction if that surveyor is not the same surveyor who made the plat;
- ▶ prohibits a person from submitting a subdivision plat for recording unless the plat has been dedicated by each owner;
- ▶ provides that the absence of a certificate of written approval does not prohibit the county recorder from recording the document;



- 26 ▶ clarifies a provision relating to common or community areas on a plat;
- 27 ▶ modifies the process applicable to the dedication of public places under a plat;
- 28 ▶ modifies provisions relating to vacating or changing a subdivision plat;
- 29 ▶ modifies provisions relating to a legislative body's vacating a subdivision, street,
- 30 alley, or easement and clarifies that the legislative body may vacate by recording an
- 31 ordinance describing what is being vacated;
- 32 ▶ adds provisions relating to amended plats, correcting plats, and the signing of a plat
- 33 by a management committee;
- 34 ▶ modifies provisions relating to the recording or filing of documents;
- 35 ▶ modifies a provision prohibiting the liability of a county recorder under certain
- 36 circumstances;
- 37 ▶ modifies a provision relating to the abstracting of instruments; and
- 38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

- 45 **10-9a-603**, as last amended by Laws of Utah 2008, Chapter 326
- 46 **10-9a-604**, as last amended by Laws of Utah 2006, Chapter 240
- 47 **10-9a-605**, as last amended by Laws of Utah 2006, Chapter 240
- 48 **10-9a-606**, as last amended by Laws of Utah 2007, Chapter 268
- 49 **10-9a-607**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 50 **10-9a-608**, as last amended by Laws of Utah 2006, Chapter 163
- 51 **10-9a-609**, as last amended by Laws of Utah 2007, Chapter 243
- 52 **10-9a-609.5**, as last amended by Laws of Utah 2007, Chapter 243
- 53 **17-21-6**, as last amended by Laws of Utah 2001, Chapter 241
- 54 **17-21-20**, as last amended by Laws of Utah 2007, Chapter 147
- 55 **17-27a-603**, as last amended by Laws of Utah 2008, Chapters 250 and 326
- 56 **17-27a-604**, as last amended by Laws of Utah 2006, Chapter 240

- 57 17-27a-605, as last amended by Laws of Utah 2006, Chapter 240
- 58 17-27a-606, as last amended by Laws of Utah 2007, Chapter 268
- 59 17-27a-607, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 60 17-27a-608, as last amended by Laws of Utah 2006, Chapter 163
- 61 17-27a-609, as last amended by Laws of Utah 2007, Chapter 243
- 62 17-27a-609.5, as last amended by Laws of Utah 2007, Chapter 243
- 63 38-9-1, as last amended by Laws of Utah 2008, Chapter 223
- 64 38-9-3, as repealed and reenacted by Laws of Utah 1997, Chapter 125
- 65 38-9-4, as last amended by Laws of Utah 2008, Chapter 223

66

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

68 Section 1. Section 10-9a-603 is amended to read:

69 **10-9a-603. Plat required when land is subdivided -- Approval of plat -- Owner**
70 **acknowledgment, surveyor certification, and underground utility facilities owner**
71 **approval of plat -- Recording plat.**

72 (1) (a) Unless exempt under Section 10-9a-605 or excluded from the definition of
73 subdivision under Subsection 10-9a-103(44), whenever any land is laid out and platted, the
74 owner of the land shall provide an accurate plat that describes or specifies:

75 [~~(a)~~] (i) a subdivision name [~~or designation of the subdivision~~] that is distinct from any
76 subdivision name on a plat [~~already~~] recorded in the county recorder's office;

77 [~~(b)~~] (ii) the boundaries, course, and dimensions of all of the parcels of ground divided,
78 by their boundaries, course, and extent, whether the owner proposes that any parcel of ground
79 is intended to be used as a street or for any other public use, and whether any such area is
80 reserved or proposed for dedication for a public purpose;

81 [~~(c)~~] (iii) the lot or unit reference, block or building reference, street or site address,
82 street name or coordinate address, acreage or square footage for all parcels, units, or lots, and
83 length and width of the blocks and lots intended for sale; and

84 [~~(d)~~] (iv) every existing right-of-way and easement grant of record for underground
85 facilities, as defined in Section 54-8a-2, and for other utility facilities.

86 (b) The county recorder may assign a different name to a subdivision on a plat
87 submitted for recording if necessary to make the plat comply with the requirement of

88 Subsection (1)(a)(i).

89 (2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's
90 ordinances and this part and has been approved by the culinary water authority and the sanitary
91 sewer authority, the municipality shall approve the plat.

92 (b) Municipalities are encouraged to receive a recommendation from the fire authority
93 before approving a plat.

94 (3) The municipality may withhold an otherwise valid plat approval until the owner of
95 the land provides the legislative body with a tax clearance indicating that all taxes, interest, and
96 penalties owing on the land have been paid.

97 (4) (a) ~~[The]~~ Each owner of the land ~~[shall]~~ described on the plat shall sign, dedicate,
98 and acknowledge the plat [before an officer authorized by law to take the acknowledgment of
99 conveyances of real estate and shall obtain the signature of each individual designated by the
100 municipality].

101 (b) The surveyor making the plat shall certify that the surveyor:

102 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
103 Professional Land Surveyors Licensing Act;

104 (ii) has ~~[completed a]~~ provided a reference to the filing number of a record of survey
105 map of the existing property boundary described on the plat and filed in accordance with
106 Section 17-23-17 [and has verified all measurements; and];

107 (iii) has placed monuments as represented on the plat[-]; and

108 (iv) has indicated monuments to be set during construction.

109 (c) If a monument is set during construction by a surveyor other than the surveyor who
110 made the plat, the surveyor setting the monument shall record a surveyor's affidavit in the
111 office of the county in which the property is located indicating:

112 (i) that the surveyor setting the monument holds a license in accordance with Title 58,
113 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

114 (ii) that each monument is set in the location specified on the plat;

115 (iii) that the surveyor setting the monument has verified all measurements;

116 (iv) the location of each street and lot monument that varies from the monuments
117 specified on the plat; and

118 (v) the physical description of each monument set.

119 ~~(e)~~ (d) (i) As applicable, the owner or operator of the underground and utility
120 facilities shall approve the:

121 (A) boundary, course, dimensions, and intended use of the right-of-way and easement
122 grants of record;

123 (B) location of existing underground and utility facilities; and

124 (C) conditions or restrictions governing the location of the facilities within the
125 right-of-way, and easement grants of records, and utility facilities within the subdivision.

126 (ii) The approval of an owner or operator under Subsection (4)~~(e)~~(d)(i):

127 (A) indicates only that the plat approximates the location of the existing underground
128 and utility facilities but does not warrant or verify their precise location; and

129 (B) does not affect a right that the owner or operator has under:

130 (I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

131 (II) a recorded easement or right-of-way;

132 (III) the law applicable to prescriptive rights; or

133 (IV) any other provision of law.

134 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the
135 land shall, within the time period designated by ordinance, record the plat in the county
136 recorder's office in the county in which the lands platted and laid out are situated.

137 (b) An owner's failure to record a plat within the time period designated by ordinance
138 renders the plat voidable.

139 Section 2. Section **10-9a-604** is amended to read:

140 **10-9a-604. Subdivision plat approval procedure -- Effect of not complying.**

141 (1) (a) A person may not submit a subdivision plat to the county recorder's office for
142 recording unless:

143 (i) the plat has been dedicated by each owner of record;

144 ~~(i)~~ (ii) except as provided in Subsection (1)(b), a recommendation has been received
145 from the planning commission;

146 ~~(i)~~ (iii) the plat has been approved by:

147 (A) the land use authority of the municipality in which the land described in the plat is
148 located; and

149 (B) other officers that the municipality designates in its ordinance; and

150 [(iii)] (iv) all approvals are entered in writing on the plat by the designated officers.

151 (b) Subsection (1)(a) does not apply if the planning commission is the land use
152 authority.

153 (2) A subdivision plat recorded without the signatures required under this section is
154 void.

155 (3) A transfer of land pursuant to a void plat is voidable.

156 Section 3. Section **10-9a-605** is amended to read:

157 **10-9a-605. Exemptions from plat requirement.**

158 (1) Notwithstanding Sections 10-9a-603 and 10-9a-604, the land use authority may
159 approve a subdivision of ten lots or less without a plat, by certifying in writing that:

160 (a) the municipality has provided notice as required by ordinance; and

161 (b) the proposed subdivision:

162 (i) is not traversed by the mapped lines of a proposed street as shown in the general
163 plan and does not require the dedication of any land for street or other public purposes;

164 (ii) has been approved by the culinary water authority and the sanitary sewer authority;

165 (iii) is located in a zoned area; and

166 (iv) conforms to all applicable land use ordinances or has properly received a variance
167 from the requirements of an otherwise conflicting and applicable land use ordinance.

168 (2) (a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural
169 land is exempt from the plat requirements of Section 10-9a-603 if the lot or parcel:

170 (i) qualifies as land in agricultural use under Section 59-2-502;

171 (ii) meets the minimum size requirement of applicable land use ordinances; and

172 (iii) is not used and will not be used for any nonagricultural purpose.

173 (b) The boundaries of each lot or parcel exempted under Subsection (1) shall be
174 graphically illustrated on a record of survey map that, after receiving the same approvals as are
175 required for a plat under Section 10-9a-604, shall be recorded with the county recorder.

176 (c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural
177 purpose, the municipality may require the lot or parcel to comply with the requirements of
178 Section 10-9a-603.

179 (3) (a) Documents recorded in the county recorder's office that divide property by a
180 metes and bounds description do not create an approved subdivision allowed by this part unless

181 the land use authority's certificate of written approval required by Subsection (1) is attached to
182 the document.

183 (b) The absence of the certificate or written approval required by Subsection (1) does
184 not:

185 (i) prohibit the county recorder from recording a document; or

186 (ii) affect the validity of a recorded document.

187 (c) A document which does not meet the requirements of Subsection (1) may be
188 corrected by the recording of an affidavit to which the required certificate or written approval is
189 attached in accordance with Section 57-3-106.

190 Section 4. Section **10-9a-606** is amended to read:

191 **10-9a-606. Common or community area parcels on a plat -- No separate**
192 **ownership -- Ownership interest equally divided among other parcels on plat and**
193 **included in description of other parcels.**

194 (1) A parcel designated as common or community area on a plat recorded in
195 compliance with this part may not be separately owned or conveyed independent of the other
196 lots, units, or parcels created by the plat.

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

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

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

204 Section 5. Section **10-9a-607** is amended to read:

205 **10-9a-607. Dedication of streets and other public places.**

206 (1) [~~Plats, when made, acknowledged, and recorded~~] A plat that is signed, dedicated,
207 and acknowledged by each owner of record, and approved according to the procedures
208 specified in this part, [~~operate~~] operates, when recorded, as a dedication of all streets and other
209 public places, and [~~vest~~] vests the fee of those parcels of land in the municipality for the public
210 for the uses named or intended in [~~those plats~~] the plat.

211 (2) The dedication established by this section does not impose liability upon the

212 municipality for streets and other public places that are dedicated in this manner but are
213 unimproved.

214 Section 6. Section **10-9a-608** is amended to read:

215 **10-9a-608. Vacating or changing a subdivision plat.**

216 (1) (a) Subject to Section 10-9a-609.5, and provided that notice has been given
217 pursuant to local ordinance and Section 10-9a-208, the land use authority may, with or without
218 a petition, consider and resolve any proposed vacation[~~, alteration,~~] or amendment of a
219 subdivision plat, any portion of a subdivision plat, or any lot, street, or easement contained in a
220 subdivision plat.

221 (b) If a petition is filed, the land use authority shall hold a public hearing within 45
222 days after the petition is filed or, if applicable, within 45 days after receipt of the planning
223 commission's recommendation under Subsection (2), if:

224 (i) any owner within the plat notifies the municipality of [~~their~~] the owner's objection
225 in writing within ten days of mailed notification; or

226 (ii) [~~a public hearing is required because~~] all of the owners in the subdivision or the
227 portion of the subdivision described in the partition have not signed the revised plat.

228 (2) (a) (i) The planning commission shall consider and provide a recommendation for a
229 proposed vacation[~~, alteration,~~] or amendment under Subsection (1)(a) before the land use
230 authority takes final action.

231 (ii) The planning commission shall give its recommendation within 30 days after the
232 proposed vacation[~~, alteration,~~] or amendment is referred to it, or as that time period is
233 extended by agreement with the applicant.

234 (b) Subsection (2)(a) does not apply if the planning commission has been designated as
235 the land use authority.

236 (3) The public hearing requirement of Subsection (1)(b) does not apply and a land use
237 authority may consider at a public meeting an owner's petition to alter a subdivision plat if:

238 (a) the petition seeks to join two or more of the owner's contiguous, residential lots;
239 and

240 (b) notice has been given pursuant to local ordinance.

241 (4) Each request to vacate or [~~alter~~] amend a street or alley, contained in a petition to
242 vacate[~~, alter,~~] or amend a subdivision plat, is also subject to Section 10-9a-609.5.

243 (5) Any fee owner, as shown on the last county assessment rolls, of land within the
244 subdivision that has been laid out and platted as provided in this part may, in writing, petition
245 to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or
246 amended as provided in this section and Section 10-9a-609.5.

247 (6) Each petition to vacate~~[, alter,]~~ or amend an entire plat, a portion of a plat, or a
248 street or lot contained in a plat shall include:

249 (a) the name and address of all owners of record of the land contained in the entire plat
250 or on that portion of the plat described in the petition;

251 (b) the name and address of all owners of record of land adjacent to any street that is
252 proposed to be vacated~~[, altered,]~~ or amended; and

253 (c) the signature of each of these owners who consents to the petition.

254 (7) (a) The owners of record of adjacent parcels that are described by either a metes
255 and bounds description or a recorded plat may exchange title to portions of those parcels if the
256 exchange of title is approved by the land use authority in accordance with Subsection (7)(b).

257 (b) The land use authority shall approve an exchange of title under Subsection (7)(a) if
258 the exchange of title will not result in a violation of any land use ordinance.

259 (c) If an exchange of title is approved under Subsection (7)(b):

260 (i) a notice of approval shall be recorded in the office of the county recorder which:

261 (A) is executed by each owner included in the exchange and by the land use authority;

262 (B) contains an acknowledgment for each party executing the notice in accordance with
263 the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and

264 (C) recites the descriptions of both the original parcels and the parcels created by the
265 exchange of title; and

266 (ii) a conveyance of title reflecting the approved change shall be recorded in the office
267 of the county recorder.

268 (d) A notice of approval recorded under this Subsection (7);

269 (i) does not act as a conveyance of title to real property; and

270 (ii) is not required ~~[for the recording of]~~ in order to record a document ~~[purporting to~~
271 convey] conveying title to real property.

272 (8) (a) The name of a recorded subdivision may be changed by recording an amended
273 plat making that change, as provided in this section and subject to Subsection (8)(c).

- 274 (b) The surveyor preparing the amended plat shall certify that the surveyor:
275 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
276 Professional Land Surveyors Licensing Act;
277 (ii) has completed a survey of the property described on the plat in accordance with
278 Section 17-23-17 and has verified all measurements; and
279 (iii) has placed monuments as represented on the plat.
280 (c) An owner of land may not submit for recording an amended plat that gives the
281 subdivision described in the amended plat the same name as a subdivision in a plat already
282 recorded in the county recorder's office.
283 (d) Except as provided in Subsection (8)(a), the recording of a declaration or other
284 document that purports to change the name of a recorded plat is voidable.

285 Section 7. Section **10-9a-609** is amended to read:

286 **10-9a-609. Land use authority consideration of petition to vacate or change a plat**
287 **-- Criteria for vacating or changing a plat -- Recording the vacation or change.**

288 (1) If the land use authority is satisfied that neither the public interest nor any person
289 will be materially injured by the proposed vacation[~~-, alteration,~~] or amendment, and that there
290 is good cause for the vacation[~~-, alteration,~~] or amendment, the land use authority may vacate,
291 alter, or amend the plat or any portion of the plat, subject to Section 10-9a-609.5.

292 (2) The land use authority may approve the vacation[~~-, alteration,~~] or amendment by
293 signing an amended plat showing the vacation[~~-, alteration,~~] or amendment.

294 (3) The land use authority shall ensure that the amended plat showing the vacation[~~-,~~
295 ~~alteration,~~] or amendment is recorded in the office of the county recorder in which the land is
296 located.

297 [~~(4) If an entire subdivision is vacated, the legislative body shall ensure that a~~
298 ~~legislative body resolution containing a legal description of the entire vacated subdivision is~~
299 ~~recorded in the county recorder's office.]~~

300 (4) A legislative body may vacate a subdivision or a portion of a subdivision by
301 recording in the county recorder's office an ordinance describing the subdivision or the portion
302 being vacated.

303 (5) An amended plat may not be submitted to the county recorder for recording unless
304 it is signed, acknowledged, and dedicated by each owner of record of the portion of the plat

305 that is amended.

306 (6) A management committee may sign and dedicate an amended plat as provided in
307 Title 57, Chapter 8, Condominium Ownership Act.

308 (7) A plat may be corrected as provided in Section 57-3-106.

309 Section 8. Section **10-9a-609.5** is amended to read:

310 **10-9a-609.5. Vacating or amending a street, alley, or easement.**

311 (1) (a) If a petition is submitted containing a request to vacate or [~~alter~~] amend any
312 portion of a street [~~or~~], alley [~~within a subdivision~~], or easement:

313 (i) the planning commission shall, after providing notice pursuant to local ordinance
314 and Section 10-9a-208, make a recommendation to the land use authority concerning the
315 request to vacate or [~~alter~~] amend; and

316 (ii) the land use authority shall hold a public hearing in accordance with Section
317 10-9a-208 and determine whether good cause exists for the vacation or [~~alteration~~] amendment.

318 (b) Subsection (1)(a)(i) does not apply if the planning commission has been designated
319 as a land use authority.

320 (2) If the land use authority vacates or [~~alters~~] amends any portion of a street [~~or~~], alley,
321 or easement, the land use authority shall ensure that the plat is recorded in the office of the
322 recorder of the county in which the land is located.

323 (3) A legislative body may vacate some or all of a street, alley, or easement by
324 recording in the county recorder's office an ordinance containing a legal description of the
325 vacated street, alley, or easement or the vacated portion of the street, alley, or easement, as the
326 case may be.

327 [~~(3)~~] (4) The action of the land use authority vacating or [~~narrowing~~] amending a street
328 [~~or~~], alley, or easement that has been dedicated to public use shall operate to the extent to
329 which it is vacated or [~~narrowed~~] amended, upon the effective date of the vacating plat, as a
330 revocation of the acceptance thereof, and the relinquishment of the city's fee therein, but the
331 right-of-way and easements therein, if any, of any lot owner and the franchise rights of any
332 public utility may not be impaired thereby.

333 Section 9. Section **17-21-6** is amended to read:

334 **17-21-6. General duties of recorder -- Records and indexes.**

335 (1) Each recorder shall:

336 (a) keep an entry record, in which the recorder shall, upon acceptance and recording of
337 any instrument, enter the instrument in the order of its [~~reception~~] recording, the names of the
338 parties to the instrument, its date, the hour, the day of the month and the year of recording, and
339 a brief description, and endorse upon each instrument a number corresponding with the number
340 of the entry;

341 (b) keep a grantors' index, in which the recorder shall index deeds and final judgments
342 or decrees partitioning or affecting the title to or possession of real property, which shall show
343 the entry number of the instrument, the name of each grantor in alphabetical order, the name of
344 the grantee, the date of the instrument, the time of recording, the kind of instrument, the book
345 and page, and a brief description;

346 (c) keep a grantees' index, in which the recorder shall index deeds and final judgments
347 or decrees partitioning or affecting the title to or possession of real property, which shall show
348 the entry number of the instrument, the name of each grantee in alphabetical order, the name of
349 the grantor, the date of the instrument, the time of recording, the kind of instrument, the book
350 and page, and a brief description;

351 (d) keep a mortgagors' index, in which the recorder shall enter all mortgages, deeds of
352 trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall
353 show the entry number of the instrument, the name of each mortgagor, debtor, or person
354 charged with the encumbrance in alphabetical order, the name of the mortgagee, lien holder,
355 creditor, or claimant, the date of the instrument, the time of recording, the instrument,
356 consideration, the book and page, and a brief description;

357 (e) keep a mortgagees' index, in which the recorder shall enter all mortgages, deeds of
358 trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall
359 show the entry number of the instrument, the name of each mortgagee, lien holder, creditor, or
360 claimant, in alphabetical order, the name of the mortgagor or person charged with the
361 encumbrance, the date of the instrument, the time of recording, the kind of instrument, the
362 consideration, the book and page, and a brief description;

363 (f) keep a tract index, which shall show by description every instrument recorded, the
364 date and the kind of instrument, the time of recording, and the book and page and entry
365 number;

366 (g) keep an index of recorded maps, plats, and subdivisions;

367 (h) keep an index of powers of attorney showing the date and time of recording, the
368 book, the page, and the entry number;

369 (i) keep a miscellaneous index, in which the recorder shall enter all instruments of a
370 miscellaneous character not otherwise provided for in this section, showing the date of
371 recording, the book, the page, the entry number, the kind of instrument, from, to, and the
372 parties;

373 (j) keep an index of judgments showing the judgment debtors, the judgment creditors,
374 the amount of judgment, the date and time of recording, the satisfaction, and the book, the
375 page, and the entry number; and

376 (k) keep a general recording index in which the recorder shall index all executions and
377 writs of attachment, and any other instruments not required by law to be spread upon the
378 records, and in separate columns the recorder shall enter the names of the plaintiffs in the
379 execution and the names of the defendants in the execution.

380 (2) The recorder shall alphabetically arrange the indexes required by this section and
381 keep a reverse index.

382 (3) The tract index required by Subsection (1)(f) shall be kept so that it shows a true
383 chain of title to each tract or parcel, together with their encumbrances, according to the records
384 of the office.

385 (4) Nothing in this section prevents the recorder from using a single name index if that
386 index includes all of the indexes required by this section.

387 Section 10. Section **17-21-20** is amended to read:

388 **17-21-20. Recording required -- Recorder may impose requirements on**
389 **documents to be recorded -- Prerequisites -- Additional fee for noncomplying documents**
390 **-- Recorder may require tax serial number -- Exceptions.**

391 (1) Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required
392 by law to be ~~filed~~ recorded in the office of the county recorder shall be recorded unless
393 otherwise provided.

394 (2) Each document executed on or after July 1, 2007 that is submitted for recording to
395 a county recorder's office shall:

396 (a) unless otherwise provided by law, be an original or certified copy of the document;

397 (b) be in English or be accompanied by an accurate English translation of the

398 document;

399 (c) contain a brief title, heading, or caption on the first page stating the nature of the
400 document;

401 (d) contain the legal description of the property that is the subject of the document;

402 (e) comply with the requirements of Section 17-21-25 and Subsections 57-3-105(1)
403 and (2);

404 (f) be notarized with the notary stamp with the seal legible; and

405 (g) have original signatures.

406 (3) (a) Beginning September 1, 2007, a county recorder may require that each paper,
407 notice, and instrument submitted for recording in the county recorder's office:

408 (i) be on white paper that is 8-1/2 inches by 11 inches in size;

409 (ii) have a margin of one inch on the left and right sides and at the bottom of each
410 page;

411 (iii) have a space of 2-1/2 inches down and 4-1/2 inches across the upper right corner
412 of the first page and a margin of one inch at the top of each succeeding page;

413 (iv) not be on sheets of paper that are continuously bound together at the side, top, or
414 bottom;

415 (v) not contain printed material on more than one side of each page;

416 (vi) be printed in black ink and not have text smaller than seven lines of text per
417 vertical inch; and

418 (vii) be sufficiently legible to make certified copies.

419 (b) A county recorder who intends to establish requirements under Subsection (3)(a)
420 shall first:

421 (i) provide formal notice of the requirements; and

422 (ii) establish and publish an effective date for the requirements that is at least three
423 months after the formal notice under Subsection (3)(b)(i).

424 (c) If a county recorder establishes requirements under this Subsection (3), the county
425 recorder may charge and collect from persons who submit a document for recording that does
426 not comply with the requirements, in addition to any other fee that the county recorder is
427 authorized to charge and collect, a fee that:

428 (i) is calculated to recover the additional cost of handling and recording noncomplying

429 documents; and

430 (ii) may not exceed \$2 per page.

431 (4) (a) To facilitate the abstracting of an instrument, a county recorder may require that
432 the applicable tax serial number of each parcel [~~affected by~~] described in the instrument
433 [~~appear on each~~] be noted on the instrument before it may be accepted for recording.

434 (b) If a county recorder requires the applicable tax serial number to be on an instrument
435 before it may be recorded:

436 (i) the county recorder shall post a notice of that requirement in a conspicuous place at
437 the recorder's office;

438 (ii) the tax serial number may not be considered to be part of the legal description and
439 may be indicated on the margin of the instrument; and

440 (iii) an error in the tax serial number does not affect the validity of the instrument or
441 effectiveness of the recording.

442 (5) Subsections (2), (3), and (4) do not apply to:

443 (a) a map;

444 (b) a certificate or affidavit of death;

445 (c) a military discharge;

446 (d) a document regarding taxes that is issued by the Internal Revenue Service of the
447 United States Department of the Treasury;

448 (e) a document submitted for recording that has been filed with a court and conforms to
449 the formatting requirements established by the court; or

450 (f) a document submitted for recording that is in a form required by law.

451 Section 11. Section **17-27a-603** is amended to read:

452 **17-27a-603. Plat required when land is subdivided -- Approval of plat --**

453 **Recording plat.**

454 (1) (a) Unless exempt under Section 17-27a-605 or excluded from the definition of
455 subdivision under Subsection 17-27a-103(48), whenever any land is laid out and platted, the
456 owner of the land shall provide an accurate plat that describes or specifies:

457 [~~(a)~~] (i) a subdivision name [~~or designation of the subdivision~~] that is distinct from any
458 subdivision name on a plat [~~already~~] recorded in the county recorder's office;

459 [~~(b)~~] (ii) the boundaries, course, and dimensions of all of the parcels of ground divided,

460 by their boundaries, course, and extent, whether the owner proposes that any parcel of ground
461 is intended to be used as a street or for any other public use, and whether any such area is
462 reserved or proposed for dedication for a public purpose;

463 ~~[(c)]~~ (iii) the lot or unit reference, block or building reference, street or site address,
464 street name or coordinate address, acreage or square footage for all parcels, units, or lots, and
465 length and width of the blocks and lots intended for sale; and

466 ~~[(d)]~~ (iv) every existing right-of-way and easement grant of record for underground
467 facilities, as defined in Section 54-8a-2, and for other utility facilities.

468 (b) The county recorder may assign a different name to a subdivision on a plat
469 submitted for recording if necessary to make the plat comply with the requirement of
470 Subsection (1)(a)(i).

471 (2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's
472 ordinances and this part and has been approved by the culinary water authority and the sanitary
473 sewer authority, the county shall approve the plat.

474 (b) Counties are encouraged to receive a recommendation from the fire authority before
475 approving a plat.

476 (3) The county may withhold an otherwise valid plat approval until the owner of the
477 land provides the legislative body with a tax clearance indicating that all taxes, interest, and
478 penalties owing on the land have been paid.

479 (4) (a) ~~[(The)]~~ Each owner of the land ~~[shall]~~ described on the plat shall sign, dedicate,
480 and acknowledge the plat [before an officer authorized by law to take the acknowledgment of
481 conveyances of real estate and shall obtain the signature of each individual designated by the
482 county].

483 (b) The surveyor making the plat shall certify that the surveyor:

484 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
485 Professional Land Surveyors Licensing Act;

486 (ii) has ~~[completed a]~~ provided a reference to the filing number of a record of survey
487 map of the existing property boundary described on the plat and filed in accordance with
488 Section 17-23-17 [and has verified all measurements; and];

489 (iii) has placed monuments as represented on the plat[-]; and

490 (iv) has indicated monuments to be set during construction.

491 (c) If a monument is set during construction by a surveyor other than the surveyor who
492 made the plat, the surveyor setting the monument shall record a surveyor's affidavit in the
493 office of the county in which the property is located indicating:

494 (i) that the surveyor setting the monument holds a license in accordance with Title 58,
495 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

496 (ii) that each monument is set in the location specified on the plat;

497 (iii) that the surveyor setting the monument has verified all measurements;

498 (iv) the location of each street and lot monument that varies from the monuments
499 specified on the plat; and

500 (v) the physical description of each monument set.

501 ~~(c)~~ (d) (i) As applicable, the owner or operator of the underground and utility
502 facilities shall approve the:

503 (A) boundary, course, dimensions, and intended use of the right-of-way and easement
504 grants of record;

505 (B) location of existing underground and utility facilities; and

506 (C) conditions or restrictions governing the location of the facilities within the
507 right-of-way, and easement grants of records, and utility facilities within the subdivision.

508 (ii) The approval of an owner or operator under Subsection (4)~~(c)~~(d)(i):

509 (A) indicates only that the plat approximates the location of the existing underground
510 and utility facilities but does not warrant or verify their precise location; and

511 (B) does not affect a right that the owner or operator has under:

512 (I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

513 (II) a recorded easement or right-of-way;

514 (III) the law applicable to prescriptive rights; or

515 (IV) any other provision of law.

516 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the
517 land shall, within the time period designated by ordinance, record the plat in the county
518 recorder's office in the county in which the lands platted and laid out are situated.

519 (b) An owner's failure to record a plat within the time period designated by ordinance
520 renders the plat voidable.

521 Section 12. Section **17-27a-604** is amended to read:

522 **17-27a-604. Subdivision plat approval procedure -- Effect of not complying.**

523 (1) (a) A person may not submit a subdivision plat to the county recorder's office for
524 recording unless:

525 (i) the plat has been dedicated by each owner of record;

526 [~~(ii)~~] (ii) except as provided in Subsection (1)(b), a recommendation has been received
527 from the planning commission;

528 [~~(iii)~~] (iii) the plat has been approved by:

529 (A) the land use authority of the county in whose unincorporated area the land
530 described in the plat is located; and

531 (B) other officers that the county designates in its ordinance; and

532 [~~(iv)~~] (iv) all approvals are entered in writing on the plat by designated officers.

533 (b) Subsection (1)(a) does not apply if the planning commission is the land use
534 authority.

535 (2) A plat recorded without the signatures required under this section is void.

536 (3) A transfer of land pursuant to a void plat is voidable.

537 Section 13. Section **17-27a-605** is amended to read:

538 **17-27a-605. Exemptions from plat requirement.**

539 (1) Notwithstanding Sections 17-27a-603 and 17-27a-604, the land use authority may
540 approve the subdivision of unincorporated land into ten lots or less without a plat, by certifying
541 in writing that:

542 (a) the county has provided notice as required by ordinance; and

543 (b) the proposed subdivision:

544 (i) is not traversed by the mapped lines of a proposed street as shown in the general
545 plan and does not require the dedication of any land for street or other public purposes;

546 (ii) has been approved by the culinary water authority and the sanitary sewer authority;

547 (iii) is located in a zoned area; and

548 (iv) conforms to all applicable land use ordinances or has properly received a variance
549 from the requirements of an otherwise conflicting and applicable land use ordinance.

550 (2) (a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural
551 land is exempt from the plat requirements of Section 17-27a-603 if the lot or parcel:

552 (i) qualifies as land in agricultural use under Section 59-2-502;

553 (ii) meets the minimum size requirement of applicable land use ordinances; and
554 (iii) is not used and will not be used for any nonagricultural purpose.

555 (b) The boundaries of each lot or parcel exempted under Subsection (1) shall be
556 graphically illustrated on a record of survey map that, after receiving the same approvals as are
557 required for a plat under Section 17-27a-604, shall be recorded with the county recorder.

558 (c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural
559 purpose, the county may require the lot or parcel to comply with the requirements of Section
560 17-27a-603.

561 (3) (a) Documents recorded in the county recorder's office that divide property by a
562 metes and bounds description do not create an approved subdivision allowed by this part unless
563 the land use authority's certificate of written approval required by Subsection (1)(a)(ii) is
564 attached to the document.

565 (b) The absence of the certificate or written approval required by Subsection (1) does
566 not:

567 (i) prohibit the county recorder from recording a document; or

568 (ii) affect the validity of a recorded document.

569 (c) A document which does not meet the requirements of Subsection (1) may be
570 corrected by the recording of an affidavit to which the required certificate or written approval is
571 attached in accordance with Section 57-3-106.

572 Section 14. Section **17-27a-606** is amended to read:

573 **17-27a-606. Common or community area parcels on a plat -- No separate**
574 **ownership -- Ownership interest equally divided among other parcels on plat and**
575 **included in description of other parcels.**

576 (1) A parcel designated as common or community area on a plat recorded in
577 compliance with this part may not be separately owned or conveyed independent of the other
578 lots, units, or parcels created by the plat.

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

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

583 (b) be considered to be included in the description of each instrument describing a

584 parcel on the plat by its identifying plat number, even if the common or community area
585 interest is not explicitly stated in the instrument.

586 Section 15. Section **17-27a-607** is amended to read:

587 **17-27a-607. Dedication of streets and other public places.**

588 (1) [~~Plats, when made, acknowledged, and recorded~~] A plat that is signed, dedicated,
589 and acknowledged by each owner of record, and approved according to the procedures
590 specified in this part, [~~operate~~] operates, when recorded, as a dedication of all streets and other
591 public places, and [~~vest~~] vests the fee of those parcels of land in the county for the public for
592 the uses named or intended in [~~those plats~~] the plat.

593 (2) The dedication established by this section does not impose liability upon the county
594 for streets and other public places that are dedicated in this manner but are unimproved.

595 Section 16. Section **17-27a-608** is amended to read:

596 **17-27a-608. Vacating or changing a subdivision plat.**

597 (1) (a) Subject to Section 17-27a-609.5, and provided that notice has been given
598 pursuant to local ordinance and Section 17-27a-208, the land use authority may, with or
599 without a petition, consider and resolve any proposed vacation[~~, alteration,~~] or amendment of a
600 subdivision plat, any portion of a subdivision plat, or any lot, street, or easement contained in a
601 subdivision plat.

602 (b) If a petition is filed, the land use authority shall hold a public hearing within 45
603 days after the petition is filed or, if applicable, within 45 days after receipt of the planning
604 commission's recommendation under Subsection (2), if:

605 (i) any owner within the plat notifies the county of [~~their~~] the owner's objection in
606 writing within ten days of mailed notification; or

607 (ii) [~~a public hearing is required because~~] all of the owners in the subdivision or the
608 portion of the subdivision described in the partition have not signed the revised plat.

609 (2) (a) (i) The planning commission shall consider and provide a recommendation for a
610 proposed vacation[~~, alteration,~~] or amendment under Subsection (1)(a) before the land use
611 authority takes final action.

612 (ii) The planning commission shall give its recommendation within 30 days after the
613 proposed vacation[~~, alteration,~~] or amendment is referred to it, or as that time period is
614 extended by agreement with the applicant.

615 (b) Subsection (2)(a) does not apply if the planning commission has been designated as
616 the land use authority.

617 (3) The public hearing requirement of Subsection (1)(b) does not apply and a land use
618 authority may consider at a public meeting an owner's petition to alter a subdivision plat if:

619 (a) the petition seeks to join two or more of the owner's contiguous, residential lots;
620 and

621 (b) notice has been given pursuant to local ordinance.

622 (4) Each request to vacate or [~~alter~~] amend a street or alley, contained in a petition to
623 vacate[~~, alter,~~] or amend a subdivision plat, is also subject to Section 17-27a-609.5.

624 (5) Any fee owner, as shown on the last county assessment rolls, of land within the
625 subdivision that has been laid out and platted as provided in this part may, in writing, petition
626 to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or
627 amended as provided in this section and Section 17-27a-609.5.

628 (6) Each petition to vacate[~~, alter,~~] or amend an entire plat, a portion of a plat, or a
629 street or lot contained in a plat shall include:

630 (a) the name and address of all owners of record of the land contained in the entire plat
631 or on that portion of the plat described in the petition;

632 (b) the name and address of all owners of record of land adjacent to any street that is
633 proposed to be vacated[~~, altered,~~] or amended; and

634 (c) the signature of each of these owners who consents to the petition.

635 (7) (a) The owners of record of adjacent parcels that are described by either a metes
636 and bounds description or a recorded plat may exchange title to portions of those parcels if the
637 exchange of title is approved by the land use authority in accordance with Subsection (7)(b).

638 (b) The land use authority shall approve an exchange of title under Subsection (7)(a) if
639 the exchange of title will not result in a violation of any land use ordinance.

640 (c) If an exchange of title is approved under Subsection (7)(b):

641 (i) a notice of approval shall be recorded in the office of the county recorder which:

642 (A) is executed by each owner included in the exchange and by the land use authority;

643 (B) contains an acknowledgment for each party executing the notice in accordance with
644 the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and

645 (C) recites the descriptions of both the original parcels and the parcels created by the

646 exchange of title; and

647 (ii) a conveyance of title reflecting the approved change shall be recorded in the office
648 of the county recorder.

649 (d) A notice of approval recorded under this Subsection (7);

650 (i) does not act as a conveyance of title to real property; and

651 (ii) is not required [~~for the recording of~~] in order to record a document [~~purporting to~~
652 ~~convey~~] conveying title to real property.

653 (8) (a) The name of a recorded subdivision may be changed by recording an amended
654 plat making that change, as provided in this section and subject to Subsection (8)(c).

655 (b) The surveyor preparing the amended plat shall certify that the surveyor:

656 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and
657 Land Surveyors Licensing Act;

658 (ii) has completed a survey of the property described on the plat in accordance with
659 Section 17-23-17 and has verified all measurements; and

660 (iii) has placed monuments as represented on the plat.

661 (c) An owner of land may not submit for recording an amended plat that gives the
662 subdivision described in the amended plat the same name as a subdivision in a plat already
663 recorded in the county recorder's office.

664 (d) Except as provided in Subsection (8)(a), the recording of a declaration or other
665 document that purports to change the name of a recorded plat is voidable.

666 Section 17. Section **17-27a-609** is amended to read:

667 **17-27a-609. Land use authority consideration of petition to vacate or change a**
668 **plat -- Criteria for vacating or changing a plat -- Recording the vacation or change.**

669 (1) If the land use authority is satisfied that neither the public interest nor any person
670 will be materially injured by the proposed vacation[~~,-alteration,-~~] or amendment, and that there
671 is good cause for the vacation[~~,-alteration,-~~] or amendment, the land use authority may vacate[~~,-~~
672 ~~alter,-~~] or amend the plat or any portion of the plat, subject to Section 17-27a-609.5.

673 (2) The land use authority may approve the vacation[~~,-alteration,-~~] or amendment by
674 signing an amended plat showing the vacation[~~,-alteration,-~~] or amendment.

675 (3) The land use authority shall ensure that the amended plat showing the vacation[~~,-~~
676 ~~alteration,-~~] or amendment is recorded in the office of the county recorder in which the land is

677 located.

678 ~~[(4) If an entire subdivision is vacated, the legislative body shall ensure that a~~
679 ~~legislative body resolution containing a legal description of the entire vacated subdivision is~~
680 ~~recorded in the county recorder's office.]~~

681 (4) A legislative body may vacate a subdivision or a portion of a subdivision by
682 recording in the county recorder's office an ordinance describing the subdivision or the portion
683 being vacated.

684 (5) An amended plat may not be submitted to the county recorder for recording unless
685 it is signed, acknowledged, and dedicated by each owner of record of the portion of the plat
686 that is amended.

687 (6) A management committee may sign and dedicate an amended plat as provided in
688 Title 57, Chapter 8, Condominium Ownership Act.

689 (7) A plat may be corrected as provided in Section 57-3-106.

690 Section 18. Section **17-27a-609.5** is amended to read:

691 **17-27a-609.5. Vacating or amending a street, alley, or easement.**

692 (1) (a) If a petition is submitted containing a request to vacate or ~~[alter]~~ amend any
693 portion of a street ~~[or]~~, alley ~~[within a subdivision]~~, or easement:

694 (i) the planning commission shall, after providing notice pursuant to local ordinance
695 and Section 17-27a-208, make a recommendation to the land use authority concerning the
696 request to vacate or ~~[alter]~~ amend; and

697 (ii) the land use authority shall hold a public hearing in accordance with Section
698 17-27a-208 and determine whether good cause exists for the vacation or ~~[alteration]~~
699 amendment.

700 (b) Subsection (1)(a)(i) does not apply if the planning commission has been designated
701 as a land use authority.

702 (2) If the land use authority vacates or ~~[alters]~~ amends any portion of a street ~~[or]~~, alley,
703 or easement, the land use authority shall ensure that the plat is recorded in the office of the
704 recorder of the county in which the land is located.

705 (3) A legislative body may vacate some or all of a street, alley, or easement by
706 recording in the county recorder's office an ordinance containing a legal description of the
707 vacated street, alley, or easement or the vacated portion of the street, alley, or easement, as the

708 case may be.

709 ~~[(3)]~~ (4) The action of the land use authority vacating or [~~narrowing~~] amending a street
710 [~~or~~], alley, or easement that has been dedicated to public use shall operate to the extent to
711 which it is vacated or [~~narrowed~~] amended, upon the effective date of the vacating plat, as a
712 revocation of the acceptance thereof, and the relinquishment of the county's fee therein, but the
713 right-of-way and easements therein, if any, of any lot owner and the franchise rights of any
714 public utility may not be impaired thereby.

715 Section 19. Section **38-9-1** is amended to read:

716 **38-9-1. Definitions.**

717 As used in this chapter:

718 (1) "Interest holder" means a person who holds or possesses a present, lawful property
719 interest in certain real property, including an owner, title holder, mortgagee, trustee, or
720 beneficial owner.

721 (2) "Lien claimant" means a person claiming an interest in real property who offers a
722 document for recording [~~or filing~~] with any county recorder in the state asserting a lien, or
723 notice of interest, or other claim of interest in certain real property.

724 (3) "Owner" means a person who has a vested ownership interest in certain real
725 property.

726 (4) "Record interest holder" means a person who holds or possesses a present, lawful
727 property interest in certain real property, including an owner, titleholder, mortgagee, trustee, or
728 beneficial owner, and whose name and interest in that real property appears in the county
729 recorder's records for the county in which the property is located.

730 (5) "Record owner" means an owner whose name and ownership interest in certain real
731 property is recorded [~~or filed~~] in the county recorder's records for the county in which the
732 property is located.

733 (6) "Wrongful lien" means any document that purports to create a lien, notice of
734 interest, or encumbrance on an owner's interest in certain real property and at the time it is
735 recorded [~~or filed~~] is not:

736 (a) expressly authorized by this chapter or another state or federal statute;

737 (b) authorized by or contained in an order or judgment of a court of competent
738 jurisdiction in the state; or

739 (c) signed by or authorized pursuant to a document signed by the owner of the real
740 property.

741 Section 20. Section **38-9-3** is amended to read:

742 **38-9-3. County recorder may reject wrongful lien within scope of employment --**
743 **Good faith requirement.**

744 (1) A county recorder may reject recording of a lien if the county recorder determines
745 the lien is a wrongful lien as defined in Section 38-9-1. If the county recorder rejects the
746 document, the county recorder shall immediately return the original document together with a
747 notice that the document was rejected pursuant to this section to the person attempting to
748 record [~~or file~~] the document or to the address provided on the document.

749 (2) A county recorder who, within the scope of the county recorder's employment,
750 rejects or accepts a document for recording [~~or filing~~] in good faith under this section may not
751 be liable for damages [~~except as otherwise provided by law~~].

752 (3) If a rejected document is later found to be recordable pursuant to a court order, it
753 shall have no retroactive recording priority.

754 (4) Nothing in this chapter shall preclude any person from pursuing any remedy
755 pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

756 Section 21. Section **38-9-4** is amended to read:

757 **38-9-4. Civil liability for filing wrongful lien -- Damages.**

758 (1) A lien claimant who records [~~or files~~] or causes a wrongful lien as defined in
759 Section 38-9-1 to be recorded [~~or filed~~] in the office of the county recorder against real
760 property is liable to a record interest holder for any actual damages proximately caused by the
761 wrongful lien.

762 (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful
763 lien within ten days from the date of written request from a record interest holder of the real
764 property delivered personally or mailed to the last-known address of the lien claimant, the
765 person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever
766 is greater, and for reasonable attorney fees and costs.

767 (3) A person is liable to the record owner of real property for \$10,000 or for treble
768 actual damages, whichever is greater, and for reasonable attorney fees and costs, who records
769 [~~or files~~] or causes to be recorded [~~or filed~~] a wrongful lien as defined in Section 38-9-1 in the

770 office of the county recorder against the real property, knowing or having reason to know that
771 the document:

772 (a) is a wrongful lien;

773 (b) is groundless; or

774 (c) contains a material misstatement or false claim.

S.B. 63 1st Sub. (Green) - Modifications to Recording Requirements

Fiscal Note

2009 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.
