

1 **CONDOMINIUM AND COMMUNITY ASSOCIATION**

2 **REVISIONS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne L. Niederhauser**

6 House Sponsor: Gage Froerer

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies, enacts, and repeals provisions relating to condominium associations
11 and community associations.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies, repeals, and enacts provisions relating to the Condominium Ownership
15 Act and the Community Association Act;

16 ▶ provides what constitutes fair and reasonable notice;

17 ▶ modifies provisions relating to liens for assessments and related charges and the
18 process to collect assessments and enforce the liens;

19 ▶ modifies provisions relating to insurance;

20 ▶ enacts Community Association Act provisions, including provisions relating to:

21 • declaration content;

22 • the exercise of development rights;

23 • association bylaws, rules, and budget;

24 • creditor approval of specified actions;

25 • the collection of assessments and related charges; and

26 • insurance;

27 ▶ repeals redundant or obsolete provisions; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **57-8-3**, as last amended by Laws of Utah 2008, Chapter 291

36 **57-8-10**, as last amended by Laws of Utah 2009, Chapter 178

37 **57-8a-102**, as enacted by Laws of Utah 2004, Chapter 153

38 **ENACTS:**

39 **57-8-42**, Utah Code Annotated 1953

40 **57-8-43**, Utah Code Annotated 1953

41 **57-8-44**, Utah Code Annotated 1953

42 **57-8-45**, Utah Code Annotated 1953

43 **57-8-46**, Utah Code Annotated 1953

44 **57-8-47**, Utah Code Annotated 1953

45 **57-8-48**, Utah Code Annotated 1953

46 **57-8-49**, Utah Code Annotated 1953

47 **57-8-50**, Utah Code Annotated 1953

48 **57-8-51**, Utah Code Annotated 1953

49 **57-8-52**, Utah Code Annotated 1953

50 **57-8-53**, Utah Code Annotated 1953

51 **57-8-54**, Utah Code Annotated 1953

52 **57-8a-212**, Utah Code Annotated 1953

53 **57-8a-213**, Utah Code Annotated 1953

54 **57-8a-214**, Utah Code Annotated 1953

55 **57-8a-215**, Utah Code Annotated 1953

56 **57-8a-216**, Utah Code Annotated 1953

57 **57-8a-217**, Utah Code Annotated 1953

58 **57-8a-218**, Utah Code Annotated 1953

- 59 **57-8a-219**, Utah Code Annotated 1953
- 60 **57-8a-220**, Utah Code Annotated 1953
- 61 **57-8a-221**, Utah Code Annotated 1953
- 62 **57-8a-222**, Utah Code Annotated 1953
- 63 **57-8a-301**, Utah Code Annotated 1953
- 64 **57-8a-302**, Utah Code Annotated 1953
- 65 **57-8a-303**, Utah Code Annotated 1953
- 66 **57-8a-304**, Utah Code Annotated 1953
- 67 **57-8a-305**, Utah Code Annotated 1953
- 68 **57-8a-306**, Utah Code Annotated 1953
- 69 **57-8a-307**, Utah Code Annotated 1953
- 70 **57-8a-308**, Utah Code Annotated 1953
- 71 **57-8a-309**, Utah Code Annotated 1953
- 72 **57-8a-310**, Utah Code Annotated 1953
- 73 **57-8a-311**, Utah Code Annotated 1953
- 74 **57-8a-401**, Utah Code Annotated 1953
- 75 **57-8a-402**, Utah Code Annotated 1953
- 76 **57-8a-403**, Utah Code Annotated 1953
- 77 **57-8a-404**, Utah Code Annotated 1953
- 78 **57-8a-405**, Utah Code Annotated 1953
- 79 **57-8a-406**, Utah Code Annotated 1953
- 80 **57-8a-407**, Utah Code Annotated 1953

81 REPEALS:

- 82 **57-8-20**, as last amended by Laws of Utah 2010, Chapter 309
- 83 **57-8-29**, as last amended by Laws of Utah 2000, Chapter 99
- 84 **57-8a-202**, as enacted by Laws of Utah 2004, Chapter 153
- 85 **57-8a-203**, as enacted by Laws of Utah 2004, Chapter 153
- 86 **57-8a-204**, as enacted by Laws of Utah 2004, Chapter 153
- 87 **57-8a-205**, as enacted by Laws of Utah 2004, Chapter 153
- 88 **57-8a-207**, as enacted by Laws of Utah 2004, Chapter 153

89

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

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

92 **57-8-3. Definitions.**

93 As used in this chapter:

94 (1) "Assessment" means any charge imposed by the association, including:

95 (a) common expenses on or against a unit owner pursuant to the provisions of the
96 declaration, bylaws, or this chapter[-]; and

97 (b) an amount that an association of unit owners assesses to a unit owner under
98 Subsection 57-8-43(9)(h).

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

100 (a) acting as a group in accordance with the declaration and bylaws; or

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

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

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

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

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

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

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

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

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

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

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

120 (5) "Common expenses" means:

- 121 (a) all sums lawfully assessed against the unit owners;
- 122 (b) expenses of administration, maintenance, repair, or replacement of the common
123 areas and facilities;
- 124 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 125 (d) expenses declared common expenses by this chapter, or by the declaration or the
126 bylaws.

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

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

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

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

139 (10) "Condominium unit" means a unit together with the undivided interest in the
140 common areas and facilities appertaining to that unit. Any reference in this chapter to a
141 condominium unit includes both a physical unit together with its appurtenant undivided interest
142 in the common areas and facilities and a time period unit together with its appurtenant
143 undivided interest, unless the reference is specifically limited to a time period unit.

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

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

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

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

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

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

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

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

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

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

179 (21) "Par value" means a number of dollars or points assigned to each unit by the
180 declaration. Substantially identical units shall be assigned the same par value, but units located
181 at substantially different heights above the ground, or having substantially different views, or
182 having substantially different amenities or other characteristics that might result in differences

183 in market value, may be considered substantially identical within the meaning of this
184 subsection. If par value is stated in terms of dollars, that statement may not be considered to
185 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
186 fair market transaction at a different figure may affect the par value of any unit, or any
187 undivided interest in the common areas and facilities, voting rights in the unit owners'
188 association, liability for common expenses, or right to common profits, assigned on the basis
189 thereof.

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

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

195 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
196 57, Chapter 3, Recording of Documents.

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

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

206 (27) "Unit" means either a separate physical part of the property intended for any type
207 of independent use, including one or more rooms or spaces located in one or more floors or
208 part or parts of floors in a building or a time period unit, as the context may require. A
209 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
210 proposed condominium unit under an expandable condominium project, not constructed, is a
211 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

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

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

219 Section 2. Section **57-8-10** is amended to read:

220 **57-8-10. Contents of declaration.**

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

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

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

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

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

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

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

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

242 (c) The condominium plat recorded with the declaration may provide or supplement
243 the information required under Subsections (2)(a) and (b).

244 (d) (i) The declaration shall include the percentage or fraction of undivided interest in

245 the common areas and facilities appurtenant to each unit and its owner for all purposes,
246 including voting, derived and allocated in accordance with Subsection 57-8-7(2).

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

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

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

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

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

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

261 (e) The initial recorded declaration shall include:

262 (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv);
263 and

264 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
265 U.C.A. Sections 57-1-20 and 57-8-45 to (name of trustee), with power of sale, the unit and all
266 improvements to the unit for the purpose of securing payment of assessments under the terms
267 of the declaration."

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

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

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

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

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

279 (iv) The declaration shall state the extent to which any structure erected on any
280 convertible land will be compatible with structures on other portions of the land within the
281 condominium project in terms of quality of construction, the principal materials to be used, and
282 architectural style.

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

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

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

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

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

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

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

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

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

306 (iv) The declaration shall state:

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

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

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

311 (v) The declaration shall include a statement as to whether portions of the additional
312 land may be added to the condominium project at different times, together with any limitations
313 fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds
314 of these lands and regulating the order in which they may be added to the condominium
315 project.

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

319 (vii) The declaration shall state the maximum number of units that may be created on
320 the additional land. If portions of the additional land may be added to the condominium project
321 and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the
322 declaration shall also state the maximum number of units that may be created on each portion
323 added to the condominium project. If portions of the additional land may be added to the
324 condominium project and the boundaries of those portions are not fixed in accordance with
325 Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per
326 acre that may be created on any portion added to the condominium project.

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

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

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

342 (xi) The declaration shall contain a statement that any units created on any portion of
343 the additional land added to the condominium project will be substantially identical to the units
344 on the land originally within the project, or a statement of any limitations as to what types of
345 units may be created on it. The declaration may also contain a statement that no assurances are
346 made in that regard.

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

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

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

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

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

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

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

368 (ii) The declaration shall include a statement as to whether portions of the

369 withdrawable land may be withdrawn from the condominium project at different times,
370 together with any limitations fixing the boundaries of those portions by legal descriptions
371 setting forth the metes and bounds and regulating the order in which they may be withdrawn
372 from the condominium project.

373 (iii) The declaration shall include a legal description by metes and bounds of all of the
374 land within the condominium project to which the option to contract the project does not
375 extend.

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

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

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

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

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

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

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

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

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

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

399 (ii) otherwise complies with all covenants which would entitle the lessor to terminate

400 the lease if they were violated.

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

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

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

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

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

417 (9) (a) As used in this section, "rentals" or "rental unit" means:

418 (i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is occupied
419 by someone while no unit owner occupies the unit as the unit owner's primary residence; and

420 (ii) a unit owned by an entity or trust, regardless of who occupies the unit.

421 (b) (i) Subject to Subsections (9)(c), (f), and (g), an association of unit owners may:

422 (A) create restrictions on the number and term of rentals in a condominium project; or

423 (B) prohibit rentals in the condominium project.

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

427 (c) If an association of unit owners prohibits or imposes restrictions on the number and
428 term of rentals, the restrictions shall include:

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

- 431 (A) a unit owner in the military for the period of the unit owner's deployment;
- 432 (B) a unit occupied by a unit owner's parent, child, or sibling;
- 433 (C) a unit owner whose employer has relocated the unit owner for no less than two
- 434 years; or
- 435 (D) a unit owned by a trust or other entity created for estate planning purposes if the
- 436 trust or other estate planning entity was created for the estate of:
 - 437 (I) a current resident of the unit; or
 - 438 (II) the parent, child, or sibling of the current resident of the unit;
 - 439 (ii) a provision allowing a unit owner who has a rental in the condominium project
 - 440 before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the
 - 441 county recorder of the county in which the condominium project is located to continue renting
 - 442 until:
 - 443 (A) the unit owner occupies the unit; or
 - 444 (B) an officer, owner, member, trustee, beneficiary, director, or person holding a
 - 445 similar position of ownership or control of an entity or trust that holds an ownership interest in
 - 446 the unit, occupies the unit; and
 - 447 (iii) a requirement that the association of unit owners create, by rule or resolution,
 - 448 procedures to:
 - 449 (A) determine and track the number of rentals and units in the condominium project
 - 450 subject to the provisions described in Subsections (9)(c)(i) and (ii); and
 - 451 (B) ensure consistent administration and enforcement of the rental restrictions.
 - 452 (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the
 - 453 following occur:
 - 454 (i) the conveyance, sale, or other transfer of a unit by deed;
 - 455 (ii) the granting of a life estate in the unit; or
 - 456 (iii) if the unit is owned by a limited liability company, corporation, partnership, or
 - 457 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,
 - 458 membership interests, or partnership interests in a 12-month period.
 - 459 (e) This section does not limit or affect residency age requirements for an association
 - 460 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42
 - 461 U.S.C. Sec. 3607.

462 (f) A declaration or amendment to a declaration recorded prior to transfer of the first
463 unit from the initial declarant may prohibit or restrict rentals without providing for the
464 exceptions, provisions, and procedures required under Subsection (9)(c).

465 (g) This section does not apply to:

466 (i) a condominium project containing a time period unit as defined in Section 57-8-3;

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

468 (iii) a condominium project in which the initial declaration is recorded before May 12,
469 2009.

470 (h) Notwithstanding this section, an association of unit owners may, upon unanimous
471 approval by all unit owners, restrict or prohibit rentals without an exception described in
472 Subsection (9)(c).

473 Section 3. Section **57-8-42** is enacted to read:

474 **57-8-42. Fair and reasonable notice.**

475 (1) Notice that an association of unit owners provides by a method allowed under Title
476 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable
477 notice, whether or not the association of unit owners is a nonprofit corporation.

478 (2) Notice that an association of unit owners provides by a method not referred to in
479 Subsection (1), including a method described in Subsection (3), constitutes fair and reasonable
480 notice if:

481 (a) the method is authorized in the declaration, articles, bylaws, or rules; and

482 (b) considering all the circumstances, the notice is fair and reasonable.

483 (3) (a) If provided in the declaration, articles, bylaws, or rules, an association of unit
484 owners may provide notice by electronic means, including text message, email, or the website
485 of the association of unit owners.

486 (b) Notwithstanding Subsection (3)(a), a unit owner may, by written demand, require
487 an association of unit owners to provide notice to the unit owner by mail.

488 Section 4. Section **57-8-43** is enacted to read:

489 **57-8-43. Insurance.**

490 (1) As used in this section, "reasonably available" means available using typical
491 insurance carriers and markets, irrespective of the ability of the association of unit owners to
492 pay.

493 (2) This section applies to an insurance policy or combination of insurance policies:

494 (a) issued or renewed on or after July 1, 2011; and

495 (b) issued to or renewed by:

496 (i) a unit owner; or

497 (ii) an association of unit owners, regardless of when the association of unit owners is
498 formed.

499 (3) Beginning not later than the day on which the first unit is conveyed to a person
500 other than a declarant, an association of unit owners shall maintain, to the extent reasonably
501 available:

502 (a) subject to Subsection (9), property insurance on the physical structures in the
503 condominium project, including common areas and facilities, limited common areas and
504 facilities, and units, insuring against all risks of direct physical loss commonly insured against,
505 including fire and extended coverage perils; and

506 (b) subject to Subsection (10), liability insurance, including medical payments
507 insurance covering all occurrences commonly insured against for death, bodily injury, and
508 property damage arising out of or in connection with the use, ownership, or maintenance of the
509 common areas and facilities.

510 (4) If an association of unit owners becomes aware that property insurance under
511 Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the
512 association of unit owners shall, within seven calendar days after becoming aware, give all unit
513 owners notice, as provided in Section 57-8-42, that the insurance is not reasonably available.

514 (5) (a) The declaration or bylaws may require the association of unit owners to carry
515 other types of insurance in addition to those described in Subsection (3).

516 (b) In addition to any type of insurance coverage or limit of coverage provided in the
517 declaration or bylaws and subject to the requirements of this section, an association of unit
518 owners may, as the management committee considers appropriate, obtain:

519 (i) an additional type of insurance than otherwise required; or

520 (ii) a policy with greater coverage than otherwise required.

521 (6) Unless a unit owner is acting within the scope of the unit owner's authority on
522 behalf of an association of unit owners, a unit owner's act or omission may not:

523 (a) void a property insurance policy under Subsection (3)(a) or a liability insurance

524 policy under Subsection (3)(b); or

525 (b) be a condition to recovery under a policy.

526 (7) An insurer under a property insurance policy or liability insurance policy obtained
527 under this section waives the insurer's right to subrogation under the policy against any unit
528 owner or member of the unit owner's household.

529 (8) (a) An insurance policy issued to an association of unit owners may not be
530 inconsistent with any provision of this section.

531 (b) A provision of a declaration, bylaw, rule, or other document governing the
532 association of unit owners that is contrary to a provision of this section has no effect.

533 (c) A property insurance or liability insurance policy issued to an association of unit
534 owners may not prevent a unit owner from obtaining insurance for the unit owner's own
535 benefit.

536 (9) (a) This Subsection (9) applies to property insurance required under Subsection
537 (3)(a).

538 (b) The property covered by property insurance shall include any property that, under
539 the declaration, is required to become common areas and facilities.

540 (c) The total amount of coverage provided by property insurance may not be less than
541 100% of the full replacement cost of the insured property at the time the insurance is purchased
542 and at each renewal date, excluding items normally excluded from property insurance policies.

543 (d) Property insurance shall include coverage for any fixture, improvement, or
544 betterment installed by a unit owner to a unit or to a limited common area, including a floor
545 covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall
546 covering, window, and any other item permanently part of or affixed to a unit or to a limited
547 common element.

548 (e) Notwithstanding anything in this section and unless otherwise provided in the
549 declaration, an association of unit owners is not required to obtain property insurance for a loss
550 to a unit that is not physically attached to:

551 (i) another unit; or

552 (ii) an above-ground structure that is part of a common area or facility.

553 (f) Each unit owner is an insured person under a property insurance policy.

554 (g) If a loss occurs that is covered by a property insurance policy in the name of an

555 association of unit owners and another property insurance policy in the name of a unit owner:

556 (i) the association's policy provides primary insurance coverage; and

557 (ii) notwithstanding Subsection (9)(g)(i), the unit owner's policy applies to that portion
558 of the loss attributable to the policy deductible of the association of unit owners.

559 (h) (i) As used in this Subsection (9)(h):

560 (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is
561 covered by a property insurance policy of an association of unit owners.

562 (B) "Unit damage" means damage to a unit or to a limited common area or facility
563 applicable to that unit, or both.

564 (C) "Unit damage percentage" means the percentage of total damage resulting in a
565 covered loss that is attributable to unit damage.

566 (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered
567 loss is responsible for an amount calculated by applying the unit damage percentage for that
568 unit to the amount of the deductible under the property insurance policy of the association of
569 unit owners.

570 (iii) If a unit owner does not pay the amount required under Subsection (9)(h)(ii) within
571 30 days after substantial completion of the repairs to the unit, an association of unit owners
572 may levy an assessment against the unit owner for that amount.

573 (i) An association of unit owners shall set aside an amount equal to the amount of the
574 association's property insurance policy deductible or \$10,000, whichever is less.

575 (j) (i) An association of unit owners shall provide notice in accordance with Section
576 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)(h) for the
577 association's policy deductible and of any change in the amount of the deductible.

578 (ii) An association of unit owners that fails to provide notice as provided in Subsection
579 (9)(j)(i) is responsible for the amount of the deductible increase that the association of unit
580 owners could have assessed to a unit owner under Subsection (9)(h).

581 (iii) The failure of an association of unit owners to provide notice as provided in
582 Subsection (9)(j)(i) may not be construed to invalidate any other provision of this section.

583 (k) If, in the exercise of the business judgment rule, the management committee
584 determines that a claim is likely not to exceed the property insurance policy deductible of the
585 association of unit owners:

586 (i) the unit owner's policy is considered the policy for primary coverage to the amount
587 of the policy deductible of the association of unit owners;

588 (ii) a unit owner who does not have a policy to cover the property insurance policy
589 deductible of the association of unit owners is responsible for the loss to the amount of the
590 policy deductible of the association of unit owners, as provided in Subsection (9)(h); and

591 (iii) the association of unit owners need not tender the claim to the association's
592 insurer.

593 (l) (i) An insurer under a property insurance policy issued to an association of unit
594 owners shall adjust with the association of unit owners a loss covered under the association's
595 policy.

596 (ii) Notwithstanding Subsection (9)(l)(i), the insurance proceeds for a loss under a
597 property insurance policy of an association of unit owners:

598 (A) are payable to an insurance trustee that the association of unit owners designates
599 or, if no trustee is designated, to the association of unit owners; and

600 (B) may not be payable to a holder of a security interest.

601 (iii) An insurance trustee or an association of unit owners shall hold any insurance
602 proceeds in trust for the association of unit owners, unit owners, and lien holders.

603 (iv) (A) Insurance proceeds shall be disbursed first for the repair or restoration of the
604 damaged property.

605 (B) After the disbursements described in Subsection (9)(l)(iv)(A) are made and the
606 damaged property has been completely repaired or restored or the project terminated, any
607 surplus proceeds are payable to the association of unit owners, unit owners, and lien holders.

608 (m) An insurer that issues a property insurance policy under this section, or the
609 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

610 (i) the association of unit owners;

611 (ii) a unit owner, upon the unit owner's written request; and

612 (iii) a holder of a security interest, upon the holder's written request.

613 (n) A cancellation or nonrenewal of a property insurance policy under this section is
614 subject to the procedures stated in Section 31A-21-303.

615 (10) (a) This Subsection (10) applies to a liability insurance policy required under
616 Subsection (3)(b).

617 (b) A liability insurance policy shall be in an amount determined by the management
618 committee but not less than an amount specified in the declaration or bylaws.

619 (c) Each unit owner is an insured person under a liability insurance policy that an
620 association of unit owners obtains that insures against liability arising from the unit owner's
621 interest in the common areas and facilities or from membership in the association of unit
622 owners.

623 Section 5. Section **57-8-44** is enacted to read:

624 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
625 **collection.**

626 (1) (a) An association of unit owners has a lien on a unit for:

627 (i) an assessment;

628 (ii) except as provided in the declaration, fees, charges, and costs associated with
629 collecting an unpaid assessment, including:

630 (A) court costs and reasonable attorney fees;

631 (B) late charges;

632 (C) interest; and

633 (D) any other amount that the association of unit owners is entitled to recover under the
634 declaration, this chapter, or an administrative or judicial decision; and

635 (iii) a fine that the association of unit owners imposes against the owner of the unit.

636 (b) The recording of a declaration constitutes record notice and perfection of a lien
637 described in Subsection (1)(a).

638 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
639 is for the full amount of the assessment from the time the first installment is due, unless the
640 association of unit owners otherwise provides in a notice of assessment.

641 (3) An unpaid assessment or fine accrues interest at the rate provided:

642 (a) in Subsection 15-1-1(2); or

643 (b) in the governing documents, if the governing documents provide for a different
644 interest rate.

645 (4) A lien under this section has priority over each other lien and encumbrance on a
646 unit except:

647 (a) a lien or encumbrance recorded before the declaration is recorded;

648 (b) a first security interest on the unit recorded before a recorded notice of lien by or on
649 behalf of the association of unit owners; or

650 (c) a lien for real estate taxes or other governmental assessments or charges against the
651 unit.

652 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
653 Exemptions Act.

654 (6) Unless the declaration provides otherwise, if two or more associations of unit
655 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
656 when the liens are created.

657 Section 6. Section **57-8-45** is enacted to read:

658 **57-8-45. Enforcement of a lien.**

659 (1) (a) To enforce a lien established under Section 57-8-44, an association of unit
660 owners may:

661 (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a
662 deed of trust, in the manner provided by:

663 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

664 (B) this chapter; or

665 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

666 (A) law for the foreclosure of a mortgage; and

667 (B) this chapter.

668 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

669 (1)(a):

670 (i) the association of unit owners is considered to be the beneficiary under a trust deed;

671 and

672 (ii) the unit owner is considered to be the trustor under a trust deed.

673 (2) A unit owner's acceptance of the owner's interest in a unit constitutes a
674 simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as
675 provided in this section:

676 (a) for the purpose of securing payment of all amounts due under the declaration and
677 this chapter; and

678 (b) whether or not a conveyance in trust is included in the declaration or another

679 recorded document.

680 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
681 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a
682 qualified trustee.

683 (b) An association of unit owners' execution of a substitution of trustee form
684 authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

685 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
686 under Subsection 57-1-21(1)(a)(i) or (iv).

687 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
688 57-1-19 through 57-1-34.

689 (4) This chapter does not prohibit an association of unit owners from bringing an
690 action against a unit owner to recover an amount for which a lien is created under Section
691 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken
692 before the sale or foreclosure of the unit owner's unit under this chapter.

693 Section 7. Section **57-8-46** is enacted to read:

694 **57-8-46. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if**
695 **unit owner demands judicial foreclosure.**

696 (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association
697 of unit owners shall provide notice to the owner of the unit that is the intended subject of the
698 nonjudicial foreclosure.

699 (2) The notice under Subsection (1):

700 (a) shall:

701 (i) notify the unit owner that the association of unit owners intends to pursue
702 nonjudicial foreclosure with respect to the owner's unit to enforce the association of unit
703 owners' lien for an unpaid assessment;

704 (ii) notify the unit owner of the owner's right to demand judicial foreclosure in the
705 place of nonjudicial foreclosure;

706 (iii) be in substantially the following form:

707 "NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND
708 JUDICIAL FORECLOSURE

709 The (insert the name of the association of unit owners), the association for the project in

710 which your unit is located, intends to foreclose upon your unit and allocated interest in the
711 common areas and facilities using a procedure that will not require it to file a lawsuit or
712 involve a court. This procedure is being followed in order to enforce the association's lien
713 against your unit and to collect the amount of an unpaid assessment against your unit, together
714 with any applicable late fees and the costs, including attorney fees, associated with the
715 foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your
716 property be conducted in a lawsuit with the oversight of a judge. If you make this demand and
717 the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit
718 will likely be significantly higher than if a lawsuit were not required, and you may be
719 responsible for paying those costs and attorney fees. If you want to make this demand, you
720 must state in writing that 'I demand a judicial foreclosure proceeding upon my unit', or words
721 substantially to that effect. You must send this written demand by first class and certified U.S.
722 mail, return receipt requested, within 15 days after the date of the postmark on the envelope in
723 which this notice was mailed to you. The address to which you must mail your demand is
724 (insert the address of the association of unit owners for receipt of a demand)."; and

725 (iv) be mailed to the unit owner; and

726 (b) may be included with other association correspondence to the unit owner.

727 (3) An association of unit owners may not use a nonjudicial foreclosure to enforce a
728 lien if the unit owner mails the association of unit owners a written demand for judicial
729 foreclosure:

730 (a) by U.S. mail, certified with a return receipt requested;

731 (b) to the address stated in the association of unit owners' notice under Subsection (1);

732 and

733 (c) within 15 days after the date of the postmark on the envelope of the association of
734 unit owners' notice under Subsection (1).

735 Section 8. Section **57-8-47** is enacted to read:

736 **57-8-47. Provisions applicable to nonjudicial foreclosure.**

737 (1) An association of unit owners' nonjudicial foreclosure of a unit is governed by:

738 (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association of
739 unit owners' lien were a trust deed; and

740 (b) this chapter.

741 (2) If there is a conflict between a provision of this chapter and a provision of Sections
742 57-1-19 through 57-1-34 with respect to an association of unit owners' nonjudicial foreclosure
743 of a unit, the provision of this chapter controls.

744 Section 9. Section **57-8-48** is enacted to read:

745 **57-8-48. One-action rule not applicable -- Abandonment of enforcement**
746 **proceedings.**

747 (1) Subsection 78B-6-901(1) does not apply to an association of unit owners' judicial
748 or nonjudicial foreclosure of a unit under this part.

749 (2) An association of unit owners may abandon a judicial foreclosure, nonjudicial
750 foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure,
751 nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial
752 foreclosure, or sheriff's sale is not complete.

753 Section 10. Section **57-8-49** is enacted to read:

754 **57-8-49. Costs and attorney fees in lien enforcement action.**

755 (1) A court entering a judgment or decree in a judicial action brought under Sections
756 57-8-44 through 57-8-53 shall award the prevailing party its costs and reasonable attorney fees
757 incurred before the judgment or decree and, if the association of unit owners is the prevailing
758 party, any costs and reasonable attorney fees that the association of unit owners incurs
759 collecting the judgment.

760 (2) In a nonjudicial foreclosure, an association of unit owners may include in the
761 amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the
762 amount due, including the costs of preparing, recording, and foreclosing a lien.

763 Section 11. Section **57-8-50** is enacted to read:

764 **57-8-50. Action to recover unpaid assessment.**

765 An association of unit owners need not pursue a judicial foreclosure or nonjudicial
766 foreclosure to collect an unpaid assessment but may file an action to recover a money judgment
767 for the unpaid assessment without waiving the lien under Section 57-8-44.

768 Section 12. Section **57-8-51** is enacted to read:

769 **57-8-51. Appointment of receiver.**

770 In an action by an association of unit owners to collect an assessment or to foreclose a
771 lien for an unpaid assessment, a court may:

772 (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money
773 alleged to be due and owing to a unit owner:

774 (a) before commencement of the action; or

775 (b) during the pendency of the action; and

776 (2) order the receiver to pay the association of unit owners, to the extent of the
777 association's common expense assessment, money the receiver holds under Subsection (1).

778 Section 13. Section **57-8-52** is enacted to read:

779 **57-8-52. Termination of a delinquent owner's rights -- Notice -- Informal hearing.**

780 (1) As used in this section, "delinquent unit owner" means a unit owner who fails to
781 pay an assessment when due.

782 (2) A management committee may, if authorized in the declaration, bylaws, or rules
783 and as provided in this section, terminate a delinquent unit owner's right:

784 (a) to receive a utility service for which the unit owner pays as a common expense; or

785 (b) of access to and use of recreational facilities.

786 (3) (a) Before terminating a utility service or right of access to and use of recreational
787 facilities under Subsection (2), the manager or management committee shall give the
788 delinquent unit owner notice in a manner provided in the declaration, bylaws, or association of
789 unit owners rules.

790 (b) (i) A notice under Subsection (3)(a) shall state:

791 (A) that the association of unit owners will terminate the unit owner's utility service or
792 right of access to and use of recreational facilities, or both, if the association of unit owners
793 does not receive payment of the assessment within the time provided in the declaration, bylaws,
794 or association of unit owners rules, subject to Subsection (3)(b)(ii);

795 (B) the amount of the assessment due, including any interest or late payment fee; and

796 (C) the unit owner's right to request a hearing under Subsection (4).

797 (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.

798 (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a
799 utility service if service is terminated.

800 (4) (a) A delinquent unit owner may submit a written request to the management
801 committee for an informal hearing to dispute the assessment.

802 (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date

803 the delinquent unit owner receives the notice under Subsection (3).

804 (5) A management committee shall conduct an informal hearing requested under
805 Subsection (4) in accordance with the standards provided in the declaration, bylaws, or
806 association of unit owners rules.

807 (6) If a delinquent unit owner requests a hearing, the association of unit owners may
808 not terminate a utility service or right of access to and use of recreational facilities until after
809 the management committee:

810 (a) conducts the hearing; and

811 (b) enters a final decision.

812 (7) If an association of unit owners terminates a utility service or a right of access to
813 and use of recreational facilities, the association of unit owners shall take immediate action to
814 reinstate the service or right following the unit owner's payment of the assessment, including
815 any interest and late payment fee.

816 (8) An association of unit owners may:

817 (a) assess a unit owner for the cost associated with reinstating a utility service that the
818 association of unit owners terminates as provided in this section; and

819 (b) demand that the estimated cost to reinstate the utility service be paid before the
820 service is reinstated, if the estimated cost is included in a notice under Subsection (3).

821 Section 14. Section **57-8-53** is enacted to read:

822 **57-8-53. Requiring tenant in residential condominium unit to pay rent to**
823 **association of unit owners if owner fails to pay assessment.**

824 (1) As used in this section:

825 (a) "Amount owing" means the total of:

826 (i) any assessment or obligation under Subsection 57-8-44(1)(a) that is due and owing;

827 and

828 (ii) any applicable interest, late fee, and cost of collection that accrues after an
829 association of unit owners gives notice under Subsection (3).

830 (b) "Lease" means an arrangement under which a tenant occupies a unit owner's
831 residential condominium unit in exchange for the unit owner receiving a consideration or
832 benefit, including a fee, service, gratuity, or emolument.

833 (c) "Tenant" means a person, other than the unit owner, who has regular, exclusive

834 occupancy of the unit owner's residential condominium unit.

835 (2) Subject to Subsections (3) and (4), the management committee may require a tenant
836 under a lease with a unit owner to pay the association of unit owners all future lease payments
837 due to the unit owner:

838 (a) if:

839 (i) the unit owner fails to pay an assessment for a period of more than 60 days after the
840 assessment is due and payable; and

841 (ii) authorized in the declaration, bylaws, or rules;

842 (b) beginning with the next monthly or periodic payment due from the tenant; and

843 (c) until the association of unit owners is paid the amount owing.

844 (3) (a) Before requiring a tenant to pay lease payments to the association of unit owners
845 under Subsection (2), the manager or management committee shall give the unit owner notice,
846 in accordance with the declaration, bylaws, or association rules.

847 (b) The notice required under Subsection (3)(a) shall state:

848 (i) the amount of the assessment due, including any interest, late fee, collection cost,
849 and attorney fees;

850 (ii) that any costs of collection, including attorney fees, and other assessments that
851 become due may be added to the total amount due and to be paid through the collection of
852 lease payments; and

853 (iii) that the association intends to demand payment of future lease payments from the
854 unit owner's tenant if the unit owner does not pay the amount owing within 15 days.

855 (4) (a) If a unit owner fails to pay the amount owing within 15 days after the manager
856 or management committee gives the unit owner notice under Subsection (3), the manager or
857 management committee may exercise the rights of the association of unit owners under
858 Subsection (2) by delivering a written notice to the tenant.

859 (b) A notice under Subsection (4)(a) shall state that:

860 (i) due to the unit owner's failure to pay an assessment within the required time, the
861 manager or management committee has notified the unit owner of the manager or management
862 committee's intent to collect all lease payments until the amount owing is paid;

863 (ii) the law requires the tenant to make all future lease payments, beginning with the
864 next monthly or other periodic payment, to the association of unit owners, until the amount

865 owing is paid; and

866 (iii) the tenant's payment of lease payments to the association of unit owners does not
867 constitute a default under the terms of the lease with the unit owner.

868 (c) The manager or management committee shall mail a copy of the notice to the unit
869 owner.

870 (5) (a) A tenant to whom notice under Subsection (4) is given shall pay to the
871 association of unit owners all future lease payments as they become due and owing to the unit
872 owner:

873 (i) beginning with the next monthly or other periodic payment after the notice under
874 Subsection (4) is delivered to the tenant; and

875 (ii) until the association of unit owners notifies the tenant under Subsection (6) that the
876 amount owing is paid.

877 (b) A unit owner:

878 (i) shall credit each payment that the tenant makes to the association of unit owners
879 under this section against any obligation that the tenant owes to the owner as though the tenant
880 made the payment to the owner; and

881 (ii) may not initiate a suit or other action against a tenant for failure to make a lease
882 payment that the tenant pays to an association of unit owners as required under this section.

883 (6) (a) Within five business days after the amount owing is paid, the manager or
884 management committee shall notify the tenant in writing that the tenant is no longer required to
885 pay future lease payments to the association of unit owners.

886 (b) The manager or management committee shall mail a copy of the notification
887 described in Subsection (6)(a) to the unit owner.

888 (7) (a) An association of unit owners shall deposit money paid to the association of unit
889 owners under this section in a separate account and disburse that money to the association of
890 unit owners until:

891 (i) the amount owing is paid; and

892 (ii) any cost of administration, not to exceed \$25, is paid.

893 (b) The association of unit owners shall, within five business days after the amount
894 owing is paid, pay to the unit owner any remaining balance.

895 Section 15. Section **57-8-54** is enacted to read:

896 **57-8-54. Statement from manager or management committee of unpaid**
897 **assessment.**

898 (1) A manager or management committee shall issue a written statement indicating any
899 unpaid assessment with respect to a unit owner's unit upon:

900 (a) a written request by the unit owner; and

901 (b) payment of a reasonable fee not to exceed \$25.

902 (2) A written statement under Subsection (1) is conclusive in favor of a person who
903 relies on the written statement in good faith.

904 Section 16. Section **57-8a-102** is amended to read:

905 **57-8a-102. Definitions.**

906 As used in this chapter:

907 (1) (a) "Assessment" means a charge imposed or levied:

908 (i) by the association;

909 (ii) on or against a lot or a lot owner; and

910 (iii) pursuant to a governing document recorded with the county recorder.

911 (b) "Assessment" includes:

912 (i) a common expense[-]; and

913 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(8).

914 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
915 other legal entity, each member of which:

916 (i) is an owner of a residential lot located within the jurisdiction of the association, as
917 described in the governing documents; and

918 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

919 (A) real property taxes;

920 (B) insurance premiums;

921 (C) maintenance costs; or

922 (D) for improvement of real property not owned by the member.

923 (b) "Association" or "homeowner association" does not include an association created
924 under Title 57, Chapter 8, Condominium Ownership Act.

925 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
926 authority to manage the affairs of the association.

- 927 (4) "Common areas" means property that the association:
928 (a) owns;
929 (b) maintains;
930 (c) repairs; or
931 (d) administers.
- 932 (5) "Common expense" means costs incurred by the association to exercise any of the
933 powers provided for in the association's governing documents.
- 934 (6) "Declarant":
935 (a) means the person who executes a declaration and submits it for recording in the
936 office of the recorder of the county in which the property described in the declaration is
937 located; and
938 (b) includes the person's successor and assign.
- 939 [~~6~~] (7) (a) "Governing documents" means a written instrument by which the
940 association may:
941 (i) exercise powers; or
942 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
943 association.
- 944 (b) "Governing documents" includes:
945 (i) articles of incorporation;
946 (ii) bylaws;
947 (iii) a plat;
948 (iv) a declaration of covenants, conditions, and restrictions; and
949 (v) rules of the association.
- 950 (8) "Judicial foreclosure" means a foreclosure of a lot:
951 (a) for the nonpayment of an assessment; and
952 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
953 property; and
954 (ii) as provided in Part 3, Collection of Assessments.
- 955 [~~7~~] (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
956 (a) by a person or persons other than the owner; and
957 (b) for which the owner receives a consideration or benefit, including a fee, service,

958 gratuity, or emolument.

959 (10) "Limited common areas" means common areas described in the declaration and
960 allocated for the exclusive use of one or more lot owners.

961 [~~8~~] (11) "Lot" means:

962 (a) a lot, parcel, plot, or other division of land:

963 (i) designated for separate ownership or occupancy; and

964 (ii) (A) shown on a recorded subdivision plat; or

965 (B) the boundaries of which are described in a recorded governing document; or

966 (b) (i) a unit in a condominium association if the condominium association is a part of
967 a development; or

968 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
969 development.

970 (12) "Nonjudicial foreclosure" means the sale of a lot:

971 (a) for the nonpayment of an assessment; and

972 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
973 57-1-34; and

974 (ii) as provided in Part 3, Collection of Assessments.

975 [~~9~~] (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or
976 otherwise to primarily residential or recreational purposes.

977 Section 17. Section **57-8a-212** is enacted to read:

978 **57-8a-212. Content of a declaration.**

979 (1) A declaration shall contain:

980 (a) the name of the project;

981 (b) the name of the association;

982 (c) a statement that the project is not a cooperative;

983 (d) a statement indicating any portions of the project that contain condominiums
984 governed by Chapter 8, Condominium Ownership Act;

985 (e) the name of each county in which any part of the project is located;

986 (f) a legally sufficient description of the real estate included in the project;

987 (g) a description of any limited common areas and any real estate that is or is required
988 to become common areas;

989 (h) (i) a description of any right to convert lots to common areas or convert common
990 areas to lots, withdraw real estate from the project, or add real estate to the project; and

991 (ii) for each right under Subsection (1)(h)(i), a legally sufficient description of the real
992 estate to which the right applies;

993 (i) if a development right may be exercised with respect to different parcels of real
994 estate at different times;

995 (i) a statement of that right;

996 (ii) (A) a statement fixing the boundaries of those parcels and regulating the order in
997 which the parcels may be subjected to the exercise of the right; or

998 (B) a statement that a fixing of boundaries and regulating of the order described in
999 Subsection (1)(h)(ii)(A) are not assured;

1000 (j) any restriction on the alienation of a lot, including a restriction on leasing; and

1001 (k) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or
1002 (iv); and

1003 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
1004 U.C.A. Sections 57-1-20 and 57-8a-402 to (name of trustee), with power of sale, the lot and all
1005 improvements to the lot for the purpose of securing payment of assessments under the terms of
1006 the declaration."

1007 (2) A declaration may contain any other information the declarant considers
1008 appropriate, including any restriction on the use of a lot, the number of persons who may
1009 occupy a lot, or other qualifications of a person who may occupy a lot.

1010 Section 18. Section **57-8a-213** is enacted to read:

1011 **57-8a-213. Exercise of development rights.**

1012 (1) (a) To exercise a development right reserved in a declaration under Subsection
1013 57-8a-212(1)(h), the declarant shall prepare, execute, and submit for recording in the county
1014 recorder's office;

1015 (i) an amendment to the declaration if the purpose of the exercise of a development
1016 right is:

1017 (A) to convert lots to common areas or to convert common areas to lots; or

1018 (B) to withdraw real estate from the project; or

1019 (ii) a supplement to the declaration if the purpose of the exercise of a development

1020 right is to add real estate to the project.

1021 (b) An amendment or supplement to the declaration or plat shall describe any common
1022 areas and limited common areas created by the amendment or supplement to the declaration or
1023 plat and designate the lot to which each limited common area is allocated.

1024 (2) This section does not extend the time limit stated in the declaration under
1025 Subsection 57-8a-212(1)(h) for the exercise of a development right.

1026 (3) A development right may be reserved to the declarant on real estate added to the
1027 project if:

1028 (a) the supplement to the declaration adding the real estate includes the information
1029 required in Subsection 57-8a-212(1)(h); and

1030 (b) the plat complies with applicable requirements under, as applicable, Title 10,
1031 Chapter 9a, Part 6, Subdivisions, or Title 17, Chapter 27a, Part 6, Subdivisions.

1032 Section 19. Section **57-8a-214** is enacted to read:

1033 **57-8a-214. Board action to enforce governing documents -- Parameters.**

1034 (1) (a) The board shall use its reasonable judgment to determine whether to exercise
1035 the association's powers to impose sanctions or pursue legal action for a violation of the
1036 governing documents, including:

1037 (i) whether to compromise a claim made by or against the board or the association; and

1038 (ii) whether to pursue a claim for an unpaid assessment.

1039 (b) The association may not be required to take enforcement action if the board

1040 determines, after fair review and acting in good faith and without conflict of interest, that under
1041 the particular circumstances:

1042 (i) the association's legal position does not justify taking any or further enforcement
1043 action;

1044 (ii) the covenant, restriction, or rule in the governing documents is likely to be
1045 construed as inconsistent with current law;

1046 (iii) (A) a technical violation has or may have occurred; and

1047 (B) the violation is not material as to a reasonable person or does not justify expending
1048 the association's resources; or

1049 (iv) it is not in the association's best interests to pursue an enforcement action, based
1050 upon hardship, expense, or other reasonable criteria.

1051 (2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego
1052 enforcement, the association is not prevented from later taking enforcement action under
1053 different circumstances.

1054 (3) The board may not be arbitrary, capricious, or against public policy in taking or not
1055 taking enforcement action.

1056 (4) This section does not govern whether the association's action in enforcing a
1057 provision of the governing documents constitutes a waiver or modification of that provision.

1058 Section 20. Section **57-8a-215** is enacted to read:

1059 **57-8a-215. Fair and reasonable notice.**

1060 (1) Notice that an association provides by a method allowed under Title 16, Chapter 6a,
1061 Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, regardless of
1062 whether or not the association is a nonprofit corporation.

1063 (2) Notice that an association provides by a method not referred to in Subsection (1)
1064 constitutes fair and reasonable notice if:

1065 (a) the method is authorized in the declaration, articles, bylaws, or rules; and

1066 (b) considering all the circumstances, the notice is fair and reasonable.

1067 (3) (a) If provided in the declaration, articles, bylaws, or rules, an association may
1068 provide notice by electronic means, including text message, email, or the association's website.

1069 (b) Notwithstanding Subsection (3)(a), a lot owner may, by written demand, require an
1070 association to provide notice to the lot owner by mail.

1071 Section 21. Section **57-8a-216** is enacted to read:

1072 **57-8a-216. Budget.**

1073 (1) At least annually the board shall prepare and adopt a budget for the association.

1074 (2) The board shall present the adopted budget to association members at a meeting of
1075 the members.

1076 (3) A budget is disapproved if within 45 days after the date of the meeting under
1077 Subsection (2) at which the board presents the adopted budget:

1078 (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of
1079 the lot owners in the association; and

1080 (b) the vote is taken at a special meeting called for that purpose by lot owners under the
1081 declaration, articles, or bylaws.

1082 (4) If a budget is disapproved under Subsection (3), the budget that the board last
1083 adopted that was not disapproved by members continues as the budget until and unless the
1084 board presents another budget to members and that budget is not disapproved.

1085 Section 22. Section **57-8a-217** is enacted to read:

1086 **57-8a-217. Association bylaws -- Recording required -- Bylaw requirements.**

1087 (1) No later than the date of the first lot sale, an association shall file its bylaws for
1088 recording in the office of the recorder of each county in which any part of the real estate
1089 included within the association is located.

1090 (2) Unless otherwise provided in the declaration, an association's bylaws shall state:

1091 (a) the number of board members;

1092 (b) the title of each of the association's officers;

1093 (c) the manner and method of officer election by the board or, if the declaration
1094 requires, by the lot owners;

1095 (d) (i) the board member and officer:

1096 (A) qualifications;

1097 (B) powers and duties; and

1098 (C) terms of office;

1099 (ii) the method for removing a board member or officer; and

1100 (iii) the method for filling a board member or officer vacancy;

1101 (e) the powers that the board or officers may delegate to other persons or to a managing
1102 agent;

1103 (f) the officers who may prepare, execute, certify, and record amendments to the
1104 declaration on behalf of the association;

1105 (g) a method for the board or lot owners to amend the bylaws, consistent with Section
1106 16-6a-1010; and

1107 (h) subject to the provisions of the declaration and unless the declaration or this chapter
1108 requires that a provision appear in a declaration, any other matter that is necessary or
1109 appropriate for conducting the affairs of the association, including:

1110 (i) meetings;

1111 (ii) voting requirements; and

1112 (iii) quorum requirements.

1113 (3) An association shall file any amended bylaws for recording in the same manner as
1114 the association is required to file the initial bylaws for recording under Subsection (1).

1115 Section 23. Section **57-8a-218** is enacted to read:

1116 **57-8a-218. Association rules, including design criteria -- Requirements and**
1117 **limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

1118 (1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit,
1119 create exceptions to, expand, or enforce the rules and design criteria of the association.

1120 (b) A board's action under Subsection (1)(a) is subject to:

1121 (i) this section;

1122 (ii) any limitation that the declaration imposes on the authority stated in Subsection

1123 (1)(a);

1124 (iii) the limitation on rules in Sections 57-8a-219 and 57-8a-220;

1125 (iv) the board's duty to exercise business judgment on behalf of:

1126 (A) the association; and

1127 (B) the lot owners in the association; and

1128 (v) the right of the lot owners or declarant to disapprove the action under Subsection

1129 (4).

1130 (2) Except as provided in Subsection (3), before adopting, amending, modifying,
1131 canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the
1132 association, the board shall:

1133 (a) at least 15 days before the board will meet to consider a change to a rule or design
1134 criterion, deliver notice to lot owners, as provided in Section 57-8a-215, that the board is
1135 considering a change to a rule or design criterion;

1136 (b) provide an open forum at the board meeting giving lot owners an opportunity to be
1137 heard at the board meeting before the board takes action under Subsection (1)(a); and

1138 (c) deliver a copy of the change in the rules or design criteria approved by the board to
1139 the lot owners as provided in Section 57-8a-215 within 15 days after the date of the board
1140 meeting.

1141 (3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving
1142 notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common
1143 area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

1144 (b) The board shall provide notice under Subsection (2) to the lot owners of a rule
1145 adopted under Subsection (3)(a).

1146 (4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if
1147 within 60 days after the date of the board meeting where the action was taken:

1148 (a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests
1149 of the lot owners in the association; and

1150 (ii) the vote is taken at a special meeting called for that purpose by the lot owners
1151 under the declaration, articles, or bylaws; or

1152 (b) (i) the declarant delivers to the board a writing of disapproval; and

1153 (ii) (A) the declarant is within the period of declarant control; or

1154 (B) for an expandable project, the declarant has the right to add real estate to the
1155 project.

1156 (5) (a) The board has no obligation to call a meeting of the lot owners to consider
1157 disapproval, unless lot owners submit a petition, in the same manner as the declaration,
1158 articles, or bylaws provide for a special meeting, for the meeting to be held.

1159 (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the
1160 board's action is:

1161 (i) stayed until after the meeting is held; and

1162 (ii) subject to the outcome of the meeting.

1163 Section 24. Section **57-8a-219** is enacted to read:

1164 **57-8a-219. Equal treatment by rules required -- Limits on association rules and**
1165 **design criteria.**

1166 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot
1167 owners similarly.

1168 (b) (i) Notwithstanding Subsection (1)(a), a rule may:

1169 (A) vary according to the level and type of service that the association provides to lot
1170 owners; and

1171 (B) differ between residential and nonresidential uses.

1172 (ii) During the period of administrative control, a declarant may exempt the declarant
1173 from association rules and the rulemaking procedure under Section 57-8a-218 if the declaration
1174 reserves the right to exempt to the declarant.

1175 (2) (a) A rule criterion may not abridge the rights of a lot owner to display religious
1176 and holiday signs, symbols, and decorations inside a dwelling on a lot.

1177 (b) Notwithstanding Subsection (2)(a), the association may adopt time, place, and
1178 manner restrictions with respect to displays visible from outside the dwelling or lot.

1179 (3) (a) A rule may not regulate the content of political signs.

1180 (b) Notwithstanding Subsection (3)(a):

1181 (i) a rule may regulate the time, place, and manner of posting a political sign; and

1182 (ii) an association design provision may establish design criteria for political signs.

1183 (4) (a) A rule may not interfere with the freedom of a lot owner to determine the
1184 composition of the lot owner's household.

1185 (b) Notwithstanding Subsection (4)(a), an association may:

1186 (i) require that all occupants of a dwelling be members of a single housekeeping unit;

1187 and

1188 (ii) limit the total number of occupants permitted in each residential dwelling on the
1189 basis of the residential dwelling's:

1190 (A) size and facilities; and

1191 (B) fair use of the common areas.

1192 (5) (a) A rule may not interfere with an activity of a lot owner within the confines of a
1193 dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.

1194 (b) Notwithstanding Subsection (5)(a), a rule may prohibit an activity within a dwelling
1195 on an owner's lot if the activity:

1196 (i) is not normally associated with a project restricted to residential use; or

1197 (ii) (A) creates monetary costs for the association or other lot owners;

1198 (B) creates a danger to the health or safety of occupants of other lots;

1199 (C) generates excessive noise or traffic;

1200 (D) creates unsightly conditions visible from outside the dwelling;

1201 (E) creates an unreasonable source of annoyance to persons outside the lot; or

1202 (F) if there are attached dwellings, creates the potential for smoke to enter another lot
1203 owner's dwelling, the common areas, or limited common areas.

1204 (c) If permitted by law, an association may adopt rules described in Subsection (5)(b)
1205 that affect the use of or behavior inside the dwelling.

- 1206 (6) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written
1207 objection to the board, alter the allocation of financial burdens among the various lots.
- 1208 (b) Notwithstanding Subsection (6)(a), an association may:
- 1209 (i) change the common areas available to a lot owner;
- 1210 (ii) adopt generally applicable rules for the use of common areas; or
- 1211 (iii) deny use privileges to a lot owner who:
- 1212 (A) is delinquent in paying assessments;
- 1213 (B) abuses the common areas; or
- 1214 (C) violates the governing documents.
- 1215 (c) This Subsection (6) does not permit a rule that:
- 1216 (i) alters the method of levying assessments; or
- 1217 (ii) increases the amount of assessments as provided in the declaration.
- 1218 (7) (a) Subject to Subsection (7)(b), a rule may not:
- 1219 (i) prohibit the transfer of a lot; or
- 1220 (ii) require the consent of the association or board to transfer a lot.
- 1221 (b) Unless contrary to a declaration, a rule may require a minimum lease term.
- 1222 (8) (a) A rule may not require a lot owner to dispose of personal property that was in or
1223 on a lot before the adoption of the rule or design criteria if the personal property was in
1224 compliance with all rules and other governing documents previously in force.
- 1225 (b) The exemption in Subsection (8)(a):
- 1226 (i) applies during the period of the lot owner's ownership of the lot; and
- 1227 (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of
1228 the rule described in Subsection (8)(a).
- 1229 (9) A rule or action by the association or action by the board may not unreasonably
1230 impede a declarant's right to develop:
- 1231 (a) the project; or
- 1232 (b) other properties in the vicinity of the project.
- 1233 (10) A rule or association or board action may not interfere with:
- 1234 (a) the use or operation of an amenity that the association does not own or control; or
- 1235 (b) the exercise of a right associated with an easement.
- 1236 (11) A rule may not divest a lot owner of the right to proceed in accordance with a

1237 completed application for design review, or to proceed in accordance with another approval
1238 process, under the terms of the governing documents in existence at the time the completed
1239 application was submitted by the owner for review.

1240 (12) Unless otherwise provided in the declaration, an association may by rule:

1241 (a) regulate the use, maintenance, repair, replacement, and modification of common
1242 areas;

1243 (b) impose and receive any payment, fee, or charge for:

1244 (i) the use, rental, or operation of the common areas, except limited common areas; and

1245 (ii) a service provided to a lot owner;

1246 (c) impose a charge for a late payment of an assessment;

1247 (d) establish a reasonable administrative fee associated with the sale of a lot; or

1248 (e) provide for the indemnification of its officers and board consistent with Title 16,

1249 Chapter 6a, Utah Revised Nonprofit Corporation Act.

1250 (13) A rule shall be reasonable.

1251 (14) A declaration, or an amendment to a declaration, may vary any of the
1252 requirements of Subsections (1) through (12), except Subsection (1)(b)(ii).

1253 (15) A rule may not be inconsistent with a provision of a declaration.

1254 Section 25. Section **57-8a-220** is enacted to read:

1255 **57-8a-220. Display of the flag.**

1256 (1) An association may not prohibit a lot owner from displaying a United States flag
1257 inside a dwelling or limited common area or on a lot, if the display complies with United States
1258 Code, Title 4, Chapter 1, The Flag, or with a rule or custom pertaining to the proper display of
1259 the flag.

1260 (2) (a) Notwithstanding Subsection (1), an association may establish reasonable
1261 restrictions on the size of a flag and on the place, duration, and manner of placement or display
1262 of a flag if the restrictions are necessary to protect a substantial interest of the association.

1263 (b) In an action that an association brings for a violation of a restriction under
1264 Subsection (2)(a), the association bears the burden of proof that the restriction is necessary to
1265 protect a substantial interest of the association.

1266 (3) An association may restrict the display of a flag on the common areas.

1267 Section 26. Section **57-8a-221** is enacted to read:

1268 **57-8a-221. Creditor approval may be required for lot owner or association action**
1269 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**
1270 **creditor or creditor's successor.**

1271 (1) (a) Subject to Subsection (1)(b), a declaration may:

1272 (i) condition the effectiveness of lot owners' actions specified in the declaration on the
1273 approval of a specified number or percentage of lenders holding a security interest in the lots;
1274 or

1275 (ii) condition the effectiveness of association actions specified in the declaration on the
1276 approval of a specified number or percentage of lenders that have extended credit to the
1277 association.

1278 (b) A condition under Subsection (1)(a) may not:

1279 (i) deny or delegate the lot owners' or board's control over the association's general
1280 administrative affairs;

1281 (ii) prevent the association or board from commencing, intervening in, or settling any
1282 litigation or proceeding; or

1283 (iii) prevent an insurance trustee or the association from receiving or distributing
1284 insurance proceeds under Subsection 57-8a-405(12).

1285 (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection
1286 (1)(b) by:

1287 (i) requiring the association to deposit the association's assessments before default with
1288 the lender assigned the income; or

1289 (ii) requiring the association to increase an assessment at the lender's direction by an
1290 amount reasonably necessary to pay the loan in accordance with the loan terms.

1291 (d) This Subsection (1) applies to:

1292 (i) an association formed before, on, or after May 10, 2011; and

1293 (ii) documents created and recorded before, on, or after May 10, 2011.

1294 (2) Subject to this chapter and applicable law, a lender who has extended credit to an
1295 association secured by an assignment of income or an encumbrance of the common areas may
1296 enforce the lender's security agreement as provided in the agreement.

1297 (3) (a) Subject to Subsection (4), a security holder's consent that is required under
1298 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:

1299 (i) the association sends written notice of the proposed amendment or action by
1300 certified or registered mail to the security holder's address stated in a recorded document
1301 evidencing the security interest; and

1302 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security
1303 holder's response does not receive a response within 60 days after the association sends notice
1304 under Subsection (3)(a)(i).

1305 (b) If a security holder's address for receiving notice is not stated in a recorded
1306 document evidencing the security interest, an association:

1307 (i) shall use reasonable efforts to find a mailing address for the security holder; and

1308 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).

1309 (4) If a security holder responds in writing within 60 days after the association sends
1310 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to
1311 another person, the association:

1312 (a) shall:

1313 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the
1314 security interest at the address provided by the security holder in the security holder's response;
1315 or

1316 (ii) if no address is provided:

1317 (A) use reasonable efforts to find a mailing address for the person assigned or
1318 conveyed the security interest; and

1319 (B) send notice by certified or registered mail to the person at the address that the
1320 association finds under Subsection (4)(a)(ii)(A); and

1321 (b) may not presume the security holder's consent under Subsection (3)(a) unless the
1322 person designated in a notice under Subsection (4)(a) to receive the response from the person
1323 assigned or conveyed the security interest does not receive a response within 60 days after the
1324 association sends the notice.

1325 Section 27. Section **57-8a-222** is enacted to read:

1326 **57-8a-222. Reincorporation of terminated or dissolved association.**

1327 (1) An association that is terminated or dissolved without possibility of reinstatement
1328 under Title 16, Chapter 6a, Utah Nonprofit Corporation Act, may be reincorporated by the
1329 acting directors of the association refiling articles of incorporation that are substantially similar

1330 to the articles of incorporation, as amended, in existence at the time of termination or
1331 dissolution.

1332 (2) Upon the association's reincorporation under Subsection (1), the board of directors
1333 shall readopt bylaws for the association that are the same as the bylaws that were in existence
1334 at the time of termination or dissolution.

1335 Section 28. Section **57-8a-301** is enacted to read:

1336 **Part 3. Collection of Assessments**

1337 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

1338 (1) (a) An association has a lien on a lot for:

1339 (i) an assessment;

1340 (ii) except as provided in the declaration, fees, charges, and costs associated with
1341 collecting an unpaid assessment, including:

1342 (A) court costs and reasonable attorney fees;

1343 (B) late charges;

1344 (C) interest; and

1345 (D) any other amount that the association is entitled to recover under the declaration,
1346 this chapter, or an administrative or judicial decision; and

1347 (iii) a fine that the association imposes against the owner of the lot.

1348 (b) The recording of a declaration constitutes record notice and perfection of a lien
1349 described in Subsection (1)(a).

1350 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
1351 is for the full amount of the assessment from the time the first installment is due, unless the
1352 association otherwise provides in a notice of assessment.

1353 (3) An unpaid assessment or fine accrues interest at the rate provided:

1354 (a) in Subsection 15-1-1(2); or

1355 (b) in the declaration, if the declaration provides for a different interest rate.

1356 (4) A lien under this section has priority over each other lien and encumbrance on a lot
1357 except:

1358 (a) a lien or encumbrance recorded before the declaration is recorded;

1359 (b) a first security interest on the lot recorded before a recorded notice of lien by or on
1360 behalf of the association; or

1361 (c) a lien for real estate taxes or other governmental assessments or charges against the
1362 lot.

1363 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
1364 Exemptions Act.

1365 (6) Unless the declaration provides otherwise, if two or more associations have liens
1366 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
1367 created.

1368 Section 29. Section **57-8a-302** is enacted to read:

1369 **57-8a-302. Enforcement of a lien.**

1370 (1) (a) To enforce a lien established under Section 57-8a-301, an association may:

1371 (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed
1372 of trust, in the manner provided by:

1373 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

1374 (B) this part; or

1375 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

1376 (A) law for the foreclosure of a mortgage; and

1377 (B) this part.

1378 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

1379 (1)(a):

1380 (i) the association is considered to be the beneficiary under a trust deed; and

1381 (ii) the lot owner is considered to be the trustor under a trust deed.

1382 (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous
1383 conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this
1384 section:

1385 (a) for the purpose of securing payment of all amounts due under the declaration and
1386 this chapter; and

1387 (b) whether or not a conveyance in trust is included in the declaration or another
1388 recorded document.

1389 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
1390 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified
1391 trustee.

1392 (b) An association's execution of a substitution of trustee form authorized in Section
1393 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

1394 (c) A person may not be a trustee under this part unless the person qualifies as a trustee
1395 under Subsection 57-1-21(1)(a)(i) or (iv).

1396 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
1397 57-1-19 through 57-1-34.

1398 (4) This part does not prohibit an association from bringing an action against a lot
1399 owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking
1400 a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure
1401 of the lot owner's lot under this part.

1402 Section 30. Section **57-8a-303** is enacted to read:

1403 **57-8a-303. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited**
1404 **if unit owner demands judicial foreclosure.**

1405 (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association
1406 shall provide notice to the owner of the lot that is the intended subject of the nonjudicial
1407 foreclosure.

1408 (2) The notice under Subsection (1):

1409 (a) shall:

1410 (i) notify the lot owner that the association intends to pursue nonjudicial foreclosure
1411 with respect to the owner's lot to enforce the association's lien for an unpaid assessment;

1412 (ii) notify the lot owner of the owner's right to demand judicial foreclosure in the place
1413 of nonjudicial foreclosure;

1414 (iii) be in substantially the following form:

1415 "NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND

1416 JUDICIAL FORECLOSURE

1417 The (insert the name of the association), the association for the project in which your lot
1418 is located, intends to foreclose upon your lot and allocated interest in the common areas using a
1419 procedure that will not require it to file a lawsuit or involve a court. This procedure is being
1420 followed in order to enforce the association's lien against your lot and to collect the amount of
1421 an unpaid assessment against your lot, together with any applicable late fees and the costs,
1422 including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the

1423 right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight
1424 of a judge. If you make this demand and the association prevails in the lawsuit, the costs and
1425 attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit
1426 were not required, and you may be responsible for paying those costs and attorney fees. If you
1427 want to make this demand, you must state in writing that 'I demand a judicial foreclosure
1428 proceeding upon my lot', or words substantially to that effect. You must send this written
1429 demand by first class and certified U.S. mail, return receipt requested, within 15 days after the
1430 date of the postmark on the envelope in which this notice was mailed to you. The address to
1431 which you must mail your demand is (insert the association's address for receipt of a
1432 demand)."; and

1433 (iv) be mailed to the lot owner; and

1434 (b) may be included with other association correspondence to the lot owner.

1435 (3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot
1436 owner mails the association a written demand for judicial foreclosure:

1437 (a) by U.S. mail, certified with a return receipt requested;

1438 (b) to the address stated in the association's notice under Subsection (1); and

1439 (c) within 15 days after the date of the postmark on the envelope of the association's
1440 notice under Subsection (1).

1441 Section 31. Section **57-8a-304** is enacted to read:

1442 **57-8a-304. Provisions applicable to nonjudicial foreclosure.**

1443 (1) An association's nonjudicial foreclosure of a lot is governed by:

1444 (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association's
1445 lien were a trust deed; and

1446 (b) this part.

1447 (2) If there is a conflict between a provision of this part and a provision of Sections
1448 57-1-19 through 57-1-34 with respect to an association's nonjudicial foreclosure of a lot, the
1449 provision of this part controls.

1450 Section 32. Section **57-8a-305** is enacted to read:

1451 **57-8a-305. One-action rule not applicable -- Abandonment of enforcement**
1452 **proceeding.**

1453 (1) Subsection 78B-6-901(1) does not apply to an association's judicial or nonjudicial

1454 foreclosure of a lot under this part.

1455 (2) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or
1456 sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial
1457 foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or
1458 sheriff's sale is not complete.

1459 Section 33. Section **57-8a-306** is enacted to read:

1460 **57-8a-306. Costs and attorney fees in lien enforcement action.**

1461 (1) A court entering a judgment or decree in a judicial action brought under this part
1462 shall award the prevailing party its costs and reasonable attorney fees incurred before the
1463 judgment or decree and, if the association is the prevailing party, any costs and reasonable
1464 attorney fees that the association incurs collecting the judgment.

1465 (2) In a nonjudicial foreclosure, an association may include in the amount due, and may
1466 collect, all costs and reasonable attorney fees incurred in collecting the amount due, including
1467 the costs of preparing, recording, and foreclosing a lien.

1468 Section 34. Section **57-8a-307** is enacted to read:

1469 **57-8a-307. Action to recover unpaid assessment.**

1470 An association need not pursue a judicial foreclosure or nonjudicial foreclosure to
1471 collect an unpaid assessment but may file an action to recover a money judgment for the unpaid
1472 assessment without waiving the lien under Section 57-8a-301.

1473 Section 35. Section **57-8a-308** is enacted to read:

1474 **57-8a-308. Appointment of receiver.**

1475 In an action by an association to collect an assessment or to foreclose a lien for an
1476 unpaid assessment, a court may:

1477 (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money
1478 alleged to be due and owing to a lot owner:

1479 (a) before commencement of the action; or

1480 (b) during the pendency of the action; and

1481 (2) order the receiver to pay the association, to the extent of the association's common
1482 expense assessment, money the receiver holds under Subsection (1).

1483 Section 36. Section **57-8a-309** is enacted to read:

1484 **57-8a-309. Termination of a delinquent owner's rights -- Notice -- Informal**

1485 **hearing.**

1486 (1) As used in this section, "delinquent lot owner" means a lot owner who fails to pay
1487 an assessment when due.

1488 (2) A board may, if authorized in the declaration, bylaws, or rules and as provided in
1489 this section, terminate a delinquent lot owner's right:

1490 (a) to receive a utility service for which the lot owner pays as a common expense; or

1491 (b) of access to and use of recreational facilities.

1492 (3) (a) Before terminating a utility service or right of access to and use of recreational
1493 facilities under Subsection (2), the manager or board shall give the delinquent lot owner notice
1494 in a manner provided in the declaration, bylaws, or association rules.

1495 (b) (i) A notice under Subsection (3)(a) shall state:

1496 (A) that the association will terminate the lot owner's utility service or right of access
1497 to and use of recreational facilities, or both, if the association does not receive payment of the
1498 assessment within the time provided in the declaration, bylaws, or association rules, subject to
1499 Subsection (3)(b)(ii);

1500 (B) the amount of the assessment due, including any interest or late payment fee; and

1501 (C) the lot owner's right to request a hearing under Subsection (4).

1502 (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.

1503 (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a
1504 utility service if service is terminated.

1505 (4) (a) A delinquent lot owner may submit a written request to the board for an
1506 informal hearing to dispute the assessment.

1507 (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date
1508 the delinquent lot owner receives the notice under Subsection (3).

1509 (5) A board shall conduct an informal hearing requested under Subsection (4) in
1510 accordance with the standards provided in the declaration, bylaws, or association rules.

1511 (6) If a delinquent lot owner requests a hearing, the association may not terminate a
1512 utility service or right of access to and use of recreational facilities until after the board:

1513 (a) conducts the hearing; and

1514 (b) enters a final decision.

1515 (7) If an association terminates a utility service or a right of access to and use of

1516 recreational facilities, the association shall take immediate action to reinstate the service or
1517 right following the lot owner's payment of the assessment, including any interest and late
1518 payment fee.

1519 (8) An association may:

1520 (a) assess a lot owner for the cost associated with reinstating a utility service that the
1521 association terminates as provided in this section; and

1522 (b) demand that the estimated cost to reinstate the utility service be paid before the
1523 service is reinstated, if the estimated cost is included in a notice under Subsection (3).

1524 Section 37. Section **57-8a-310** is enacted to read:

1525 **57-8a-310. Requiring tenant in residential condominium lot to pay rent to**
1526 **association if owner fails to pay assessment.**

1527 (1) As used in this section:

1528 (a) "Amount owing" means the total of:

1529 (i) any assessment or obligation under Section 57-8a-301 that is due and owing; and

1530 (ii) any applicable interest, late fee, and cost of collection.

1531 (b) "Lease" means an arrangement under which a tenant occupies a lot owner's lot in
1532 exchange for the lot owner receiving a consideration or benefit, including a fee, service,
1533 gratuity, or emolument.

1534 (c) "Tenant" means a person, other than the lot owner, who has regular, exclusive
1535 occupancy of the lot owner's lot.

1536 (2) Subject to Subsections (3) and (4), the board may require a tenant under a lease
1537 with a lot owner to pay the association all future lease payments due to the lot owner:

1538 (a) if:

1539 (i) the lot owner fails to pay an assessment for a period of more than 60 days after the
1540 assessment is due and payable; and

1541 (ii) authorized in the declaration, bylaws, or rules;

1542 (b) beginning with the next monthly or periodic payment due from the tenant; and

1543 (c) until the association is paid the amount owing.

1544 (3) (a) Before requiring a tenant to pay lease payments to the association under
1545 Subsection (2), the association's manager or board shall give the lot owner notice, in
1546 accordance with the declaration, bylaws, or association rules.

1547 (b) The notice required under Subsection (3)(a) shall state:
1548 (i) the amount of the assessment due, including any interest, late fee, collection cost,
1549 and attorney fees;

1550 (ii) that any costs of collection, including attorney fees, and other assessments that
1551 become due may be added to the total amount due and be paid through the collection of lease
1552 payments; and

1553 (iii) that the association intends to demand payment of future lease payments from the
1554 lot owner's tenant if the lot owner does not pay the amount owing within 15 days.

1555 (4) (a) If a lot owner fails to pay the amount owing within 15 days after the
1556 association's manager or board gives the lot owner notice under Subsection (3), the
1557 association's manager or board may exercise the association's rights under Subsection (2) by
1558 delivering a written notice to the tenant.

1559 (b) A notice under Subsection (4)(a) shall state that:

1560 (i) due to the lot owner's failure to pay an assessment within the required time, the
1561 board has notified the lot owner of the board's intent to collect all lease payments until the
1562 amount owing is paid;

1563 (ii) the law requires the tenant to make all future lease payments, beginning with the
1564 next monthly or other periodic payment, to the association, until the amount owing is paid; and

1565 (iii) the tenant's payment of lease payments to the association does not constitute a
1566 default under the terms of the lease with the lot owner.

1567 (c) The manager or board shall mail a copy of the notice to the lot owner.

1568 (5) (a) A tenant to whom notice under Subsection (4) is given shall pay to the
1569 association all future lease payments as they become due and owing to the lot owner:

1570 (i) beginning with the next monthly or other periodic payment after the notice under
1571 Subsection (4) is delivered to the tenant; and

1572 (ii) until the association notifies the tenant under Subsection (6) that the amount owing
1573 is paid.

1574 (b) A lot owner:

1575 (i) shall credit each payment that the tenant makes to the association under this section
1576 against any obligation that the tenant owes to the owner as though the tenant made the payment
1577 to the owner; and

1578 (ii) may not initiate a suit or other action against a tenant for failure to make a lease
1579 payment that the tenant pays to an association as required under this section.

1580 (6) (a) Within five business days after the amount owing is paid, the association's
1581 manager or board shall notify the tenant in writing that the tenant is no longer required to pay
1582 future lease payments to the association.

1583 (b) The manager or board shall mail a copy of the notification described in Subsection
1584 (6)(a) to the lot owner.

1585 (7) (a) An association shall deposit money paid to the association under this section in
1586 a separate account and disburse that money to the association until:

1587 (i) the amount owing is paid; and

1588 (ii) any cost of administration, not to exceed \$25, is paid.

1589 (b) The association shall, within five business days after the amount owing is paid, pay
1590 to the lot owner any remaining balance.

1591 Section 38. Section **57-8a-311** is enacted to read:

1592 **57-8a-311. Statement from association's manager or board of unpaid assessment.**

1593 (1) An association's manager or board shall issue a written statement indicating any
1594 unpaid assessment with respect to a lot owner's lot upon:

1595 (a) a written request by the lot owner; and

1596 (b) payment of a reasonable fee not to exceed \$25.

1597 (2) A written statement under Subsection (1) is conclusive in favor of a person who
1598 relies on the written statement in good faith.

1599 Section 39. Section **57-8a-401** is enacted to read:

1600 **Part 4. Insurance**

1601 **57-8a-401. Definition.**

1602 As used in this part, "reasonably available" means available using typical insurance
1603 carriers and markets, irrespective of the ability of the association to pay.

1604 Section 40. Section **57-8a-402** is enacted to read:

1605 **57-8a-402. Applicability of part.**

1606 (1) This part applies to an insurance policy or combination of insurance policies:

1607 (a) issued or renewed on or after July 1, 2011; and

1608 (b) issued to or renewed by:

- 1609 (i) a lot owner; or
- 1610 (ii) an association, regardless of when the association is formed.
- 1611 (2) This part does not apply to a project if all of the project's lots are restricted to
- 1612 entirely nonresidential use.

1613 Section 41. Section **57-8a-403** is enacted to read:

1614 **57-8a-403. Property and liability insurance required -- Notice if insurance not**

1615 **reasonably available.**

1616 (1) Beginning not later than the day on which the first lot is conveyed to a person other

1617 than a declarant, an association shall maintain, to the extent reasonably available:

1618 (a) subject to Section 57-8a-405, property insurance on the physical structure of all

1619 attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common

1620 areas in the project, insuring against all risks of direct physical loss commonly insured against,

1621 including fire and extended coverage perils; and

1622 (b) subject to Section 57-8a-406, liability insurance, including medical payments

1623 insurance covering all occurrences commonly insured against for death, bodily injury, and

1624 property damage arising out of or in connection with the use, ownership, or maintenance of the

1625 common areas.

1626 (2) If an association becomes aware that property insurance under Subsection (1)(a) or

1627 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,

1628 within seven calendar days after becoming aware, give all lot owners notice, as provided in

1629 Section 57-8a-215, that the insurance is not reasonably available.

1630 Section 42. Section **57-8a-404** is enacted to read:

1631 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**

1632 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

1633 (1) (a) The declaration or bylaws may require the association to carry other types of

1634 insurance in addition to those described in Section 57-8a-403.

1635 (b) In addition to any type of insurance coverage or limit of coverage provided in the

1636 declaration or bylaws and subject to the requirements of this part, an association may, as the

1637 board considers appropriate, obtain:

- 1638 (i) an additional type of insurance than otherwise required; or
- 1639 (ii) a policy with greater coverage than otherwise required.

1640 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf
1641 of an association, a lot owner's act or omission may not:

1642 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability
1643 insurance policy under Subsection 57-8a-403(1)(b); or

1644 (b) be a condition to recovery under a policy.

1645 (3) An insurer under a property insurance policy or liability insurance policy obtained
1646 under this part waives its right to subrogation under the policy against any lot owner or member
1647 of the lot owner's household.

1648 (4) (a) An insurance policy issued to an association may not be inconsistent with any
1649 provision of this part.

1650 (b) A provision of a governing document that is contrary to a provision of this part has
1651 no effect.

1652 (c) A property insurance or liability insurance policy issued to an association may not
1653 prevent a lot owner from obtaining insurance for the lot owner's own benefit.

1654 Section 43. Section **57-8a-405** is enacted to read:

1655 **57-8a-405. Property insurance.**

1656 (1) This section applies to property insurance required under Subsection
1657 57-8a-403(1)(a).

1658 (2) The property covered by property insurance shall include any property that, under
1659 the declaration, is required to become common areas.

1660 (3) The total amount of coverage provided by property insurance may not be less than
1661 100% of the full replacement cost of the insured property at the time the insurance is purchased
1662 and at each renewal date, excluding items normally excluded from property insurance policies.

1663 (4) Property insurance shall include coverage for any fixture, improvement, or
1664 betterment installed by a lot owner to an attached dwelling or to a limited common area
1665 appurtenant to a dwelling on a lot, including a floor covering, cabinet, light fixture, electrical
1666 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
1667 permanently part of or affixed to an attached dwelling or to a limited common area.

1668 (5) Notwithstanding anything in this part and unless otherwise provided in the
1669 declaration, an association is not required to obtain property insurance for a loss to a dwelling
1670 that is not physically attached to another dwelling or to a common area structure.

- 1671 (6) Each lot owner is an insured person under a property insurance policy.
- 1672 (7) If a loss occurs that is covered by a property insurance policy in the name of an
1673 association and another property insurance policy in the name of a lot owner:
- 1674 (a) the association's policy provides primary insurance coverage; and
1675 (b) notwithstanding Subsection (7)(a) and subject to Subsection (8):
- 1676 (i) a lot owner is responsible for the association's policy deductible; and
1677 (ii) the lot owner's policy applies to that portion of the loss attributable to the
1678 association's policy deductible.
- 1679 (8) (a) As used in this Subsection (8):
- 1680 (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is
1681 covered by an association's property insurance policy.
- 1682 (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a
1683 limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.
- 1684 (iii) "Lot damage percentage" means the percentage of total damage resulting in a
1685 covered loss that is attributable to lot damage.
- 1686 (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is
1687 responsible for an amount calculated by applying the lot damage percentage for that lot to the
1688 amount of the deductible under the association's property insurance policy.
- 1689 (c) If a lot owner does not pay the amount required under Subsection (8)(b) within 30
1690 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot,
1691 or the limited common area appurtenant to the lot, an association may levy an assessment
1692 against a lot owner for that amount.
- 1693 (9) An association shall set aside an amount equal to the amount of the association's
1694 property insurance policy deductible or \$10,000, whichever is less.
- 1695 (10) (a) An association shall provide notice in accordance with Section 57-8a-215 to
1696 each lot owner of the lot owner's obligation under Subsection (8) for the association's policy
1697 deductible and of any change in the amount of the deductible.
- 1698 (b) An association that fails to provide notice as provided in Subsection (10)(a) is
1699 responsible for the amount of the deductible increase that the association could have assessed
1700 to a lot owner under Subsection (8).
- 1701 (c) An association's failure to provide notice as provided in Subsection (10)(a) may not

1702 be construed to invalidate any other provision of this part.

1703 (11) If, in the exercise of the business judgment rule, the board determines that a claim
1704 is likely not to exceed the association's property insurance policy deductible:

1705 (a) the lot owner's policy is considered the policy for primary coverage to the amount
1706 of the association's policy deductible;

1707 (b) a lot owner who does not have a policy to cover the association's property insurance
1708 policy deductible is responsible for the loss to the amount of the association's policy deductible,
1709 as provided in Subsection (8); and

1710 (c) the association need not tender the claim to the association's insurer.

1711 (12) (a) An insurer under a property insurance policy issued to an association shall
1712 adjust with the association a loss covered under the association's policy.

1713 (b) Notwithstanding Subsection (12)(a), the insurance proceeds for a loss under an
1714 association's property insurance policy:

1715 (i) are payable to an insurance trustee that the association designates or, if no trustee is
1716 designated, to the association; and

1717 (ii) may not be payable to a holder of a security interest.

1718 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for
1719 the association, lot owners, and lien holders.

1720 (d) (i) Insurance proceeds shall be disbursed first for the repair or restoration of the
1721 damaged property.

1722 (ii) After the disbursements described in Subsection (12)(d)(i) are made and the
1723 damaged property has been completely repaired or restored or the project terminated, any
1724 surplus proceeds are payable to the association, lot owners, and lien holders.

1725 (13) An insurer that issues a property insurance policy under this part, or the insurer's
1726 authorized agent, shall issue a certificate or memorandum of insurance to:

1727 (a) the association;

1728 (b) a lot owner, upon the lot owner's written request; and

1729 (c) a holder of a security interest, upon the holder's written request.

1730 (14) A cancellation or nonrenewal of a property insurance policy under this section is
1731 subject to the procedures stated in Section 31A-21-303.

1732 Section 44. Section **57-8a-406** is enacted to read:

1733 **57-8a-406. Liability insurance.**

1734 (1) This section applies to a liability insurance policy required under Subsection
1735 57-8a-403(1)(b).

1736 (2) A liability insurance policy shall be in an amount determined by the board but not
1737 less than an amount specified in the declaration or bylaws.

1738 (3) Each lot owner is an insured person under a liability insurance policy that an
1739 association obtains that insures against liability arising from the lot owner's interest in the
1740 common areas or from membership in the association.

1741 Section 45. Section **57-8a-407** is enacted to read:

1742 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1743 (1) (a) If a portion of the project for which insurance is required under this part is
1744 damaged or destroyed, the association shall repair or replace the portion within a reasonable
1745 amount of time unless:

1746 (i) the project is terminated;

1747 (ii) repair or replacement would be illegal under a state statute or local ordinance
1748 governing health or safety; or

1749 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the
1750 association vote not to rebuild; and

1751 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that
1752 lot that will not be rebuilt votes not to rebuild.

1753 (b) If a portion of a project is not repaired or replaced because the project is terminated,
1754 the termination provisions of applicable law and the governing documents apply.

1755 (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a
1756 common expense.

1757 (3) If the entire project is damaged or destroyed and not repaired or replaced:

1758 (a) the association shall use the insurance proceeds attributable to the damaged
1759 common areas to restore the damaged area to a condition compatible with the remainder of the
1760 project;

1761 (b) the association shall distribute the insurance proceeds attributable to lots and
1762 common areas that are not rebuilt to:

1763 (i) the lot owners of the lots that are not rebuilt;

- 1764 (ii) the lot owners of the lots to which those common areas that are not rebuilt were
- 1765 allocated; or
- 1766 (iii) lien holders; and
- 1767 (c) the association shall distribute the remainder of the proceeds to all the lot owners or
- 1768 lien holders in proportion to the common expense liabilities of all the lots.
- 1769 (4) If the lot owners vote not to rebuild a lot:
- 1770 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote
- 1771 as if the lot had been condemned; and
- 1772 (b) the association shall prepare, execute, and submit for recording an amendment to
- 1773 the declaration reflecting the reallocations described in Subsection (4)(a).

1774 Section 46. **Repealer.**

1775 This bill repeals:

1776 Section **57-8-20, Lien for nonpayment of common expenses.**

1777 Section **57-8-29, Insurance.**

1778 Section **57-8a-202, Unpaid assessment -- Costs and attorney fees.**

1779 Section **57-8a-203, Unpaid assessment -- Lien -- Foreclosure.**

1780 Section **57-8a-204, Unpaid assessment -- Utility service -- Right of access and use.**

1781 Section **57-8a-205, Unpaid assessment -- Future lease payments.**

1782 Section **57-8a-207, Payment of unpaid assessment by encumbrancer.**

Legislative Review Note
as of 2-18-11 6:17 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 167

SHORT TITLE: Condominium and Community Association Revisions

SPONSOR: Niederhauser, W.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.