

Senator J. Stuart Adams proposes the following substitute bill:

CONDOMINIUM AND COMMUNITY ASSOCIATION

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill enacts and modifies provisions relating to condominium and community associations.

Highlighted Provisions:

This bill:

- ▶ modifies and enacts provisions of the Condominium Ownership Act and the Community Association Act;
- ▶ enacts provisions relating to making changes to adjoining units or lots acquired by

§→ the ←§

same owner;

- ▶ enacts provisions relating to the responsibility for maintenance, repair, and replacement of common areas and units or lots;
- ▶ modifies reserve fund provisions;
- ▶ enacts a provision allowing management committee members and officers to be indemnified or to have their liability limited;
- ▶ enacts provisions allowing a preexisting association to make a later-enacted provision of law applicable to the association;
- ▶ modifies provisions relating to the organization of an association as a nonprofit

1st Sub. S.B. 90



57 ENACTS:

58 **57-8-4.5**, Utah Code Annotated 1953

58a **§→ 57-8-6.7, Utah Code Annotated 1953 ←§**

59 **57-8-10.3**, Utah Code Annotated 1953

60 **57-8-10.5**, Utah Code Annotated 1953

61 **57-8-55**, Utah Code Annotated 1953

62 **57-8a-107**, Utah Code Annotated 1953

63 **57-8a-108**, Utah Code Annotated 1953

63a **§→ 57-8a-109, Utah Code Annotated 1953 ←§**

64 **57-8a-222**, Utah Code Annotated 1953

65 **57-8a-223**, Utah Code Annotated 1953

66 **57-8a-224**, Utah Code Annotated 1953

67 **57-8a-501**, Utah Code Annotated 1953

68 **57-8a-502**, Utah Code Annotated 1953

69 **57-8a-601**, Utah Code Annotated 1953

70

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

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

73 **57-8-3. Definitions.**

74 As used in this chapter:

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

76 (a) common expenses on or against a unit owner pursuant to the provisions of the
77 declaration, bylaws, or this chapter; and

78 (b) an amount that an association of unit owners assesses to a unit owner under

79 Subsection 57-8-43(9)~~(h)~~(g).

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

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

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

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

85 (4) "Commercial condominium project" means a condominium project that has no
86 residential units within the project.

87 ~~(4)~~ (5) "Common areas and facilities" unless otherwise provided in the declaration or

243 otherwise.

243a **§→ Section 3. Section 57-8-6.7 is enacted to read:**

243b **57-8-6.7. Limit on fee for approval of plans.**

243c **(1) As used in this section:**

243d **(a) "Plan fee" means a fee that an association of unit owners charges for review and**
 243e **approval of unit plans.**

243f **(b) "Unit plans" means plans:**

243g **(i) for the construction or improvement of a unit; and**

243h **(ii) that are required to be approved by the association of unit owners before the unit**
 243i **construction or improvement may occur.**

243j **(2) An association of unit owners may not charge a plan fee that exceeds the actual cost**
 243k **of reviewing and approving the unit plans. ←§**

244 Section **§→ [3] 4 ←§** . Section 57-8-7 is amended to read:

245 **57-8-7. Common areas and facilities.**

246 (1) As used in this section:

247 (a) "Emergency repairs" means any repairs [~~which~~] that, if not made in a timely
 248 manner, will likely result in immediate and substantial damage to the common areas and
 249 facilities or to another unit or units[~~; and~~].

250 (b) "Reasonable notice" means:

251 (i) written notice [~~which~~] that is hand delivered to the unit at least 24 hours prior to the
 252 proposed entry[-]; or

253 (ii) in the case of emergency repairs, notice that is reasonable under the circumstances.

254 (2) Each unit owner shall be entitled to an undivided interest in the common areas and
 255 facilities in the percentages or fractions expressed in the declaration. The declaration may
 256 allocate to each unit an undivided interest in the common areas and facilities proportionate to
 257 either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an
 258 equal undivided interest in the common areas and facilities, subject to the following exception:
 259 each convertible space depicted on the condominium plat shall be allocated an undivided
 260 interest in the common areas and facilities proportionate to the size of the space vis-a-vis the
 261 aggregate size of all units so depicted, while the remaining undivided interest in the common
 262 areas and facilities shall be allocated equally among the other units so depicted. The undivided
 263 interest in the common areas and facilities allocated in accordance with this Subsection (2)
 264 shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal
 265 undivided interest in the common areas and facilities is allocated to each unit, the declaration

305 notice to the occupant of the unit prior to entry].

306 (9) (a) An association of unit owners is liable to repair damage it causes to the common
307 areas and facilities or to a unit the association of unit owners uses to access the common areas
308 and facilities.

309 (b) An association of unit owners shall repair damage described in Subsection (9)(a)
310 within a time that is reasonable under the circumstances.

311 Section ~~5~~ **→** [4] **5** ~~←~~ **5** . Section ~~57-8-7.5~~ is amended to read:

312 **57-8-7.5. Reserve analysis -- Reserve fund.**

313 (1) As used in this section[;]:

314 (a) "Reserve analysis" means an analysis to determine:

315 ~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
316 replacing, and restoring common areas and facilities that have a useful life of three years or
317 more and a remaining useful life of less than 30 years, but excluding any cost that can
318 reasonably be funded from the general budget or other funds of the association of unit owners;
319 and

320 ~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

321 (b) "Reserve fund line item" means the line item in an association of unit owners'
322 budget that identifies the amount to be placed into a reserve fund.

323 (2) Except as otherwise provided in the declaration, a management committee shall:

324 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
325 less frequently than every six years; and

326 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
327 ~~analysis to be conducted before July 1, 2012; and]~~

328 (b) review and, if necessary, update a previously conducted reserve analysis no less
329 frequently than every three years.

330 (3) The management committee may conduct a reserve analysis itself or may engage a
331 reliable person or organization, as determined by the management committee, to conduct the
332 reserve analysis.

333 (4) (a) A management committee may not use money in a reserve fund:

334 (i) for daily maintenance expenses, unless a majority of the members of the association
335 of unit owners vote to approve the use of reserve fund money for that purpose; or

336 (ii) for any purpose other than the purpose for which the reserve fund was established.

337 (b) A management committee shall maintain [a] reserve [~~fund~~] funds separate from
338 other funds of the association of unit owners.

339 (c) This Subsection (4) may not be construed to limit a management committee from
340 prudently investing money in a reserve fund, subject to any investment constraints imposed by
341 the declaration.

342 (5) An association of unit owners shall:

343 (a) annually provide unit owners a summary of the most recent reserve analysis or
344 update; and

345 (b) provide a copy of the complete reserve analysis or update to a unit owner who
346 requests a copy.

347 (6) In formulating its budget each year, an association of unit owners shall include a
348 reserve fund line item in:

349 (a) an amount the management committee determines, based on the reserve analysis, to
350 be prudent; or

351 (b) an amount required by the declaration, if the declaration requires an amount higher
352 than the amount determined under Subsection (6)(a).

353 [~~(5)~~] (7) Subsections (2)[, (3), (4), and] through (6) do not apply to an association of
354 unit owners during the period of declarant [management] control described in Subsection
355 57-8-16.5(1).

356 [~~(6) An association of unit owners shall:~~]

357 [~~(a) annually, at the annual meeting of unit owners or at a special meeting of unit~~
358 ~~owners:]~~

359 [~~(i) present the reserve study; and]~~

360 [~~(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether~~
361 ~~to fund a reserve fund and, if so, how to fund it and in what amount; and]~~

362 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~
363 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

364 [~~(7)~~] (8) This section applies to each association of unit owners, regardless of when the
365 association of unit owners was created.

366 Section ~~§~~ → [5] 6 ← ~~§~~ . Section **57-8-10.3** is enacted to read:

367 **57-8-10.3. Indemnification and limit of liability.**

368 Notwithstanding any conflict with the declaration or recorded bylaws, the
 369 organizational documents of an association of unit owners may indemnify and limit
 370 management committee member and officer liability to the extent permitted by the law under
 371 which the association of unit owners is organized.

372 Section ~~§~~ [6] 7 ~~←§~~ . Section **57-8-10.5** is enacted to read:

373 **57-8-10.5. Amending the declaration to make provisions of this chapter**
 374 **applicable.**

375 (1) An association of unit owners may amend the declaration to make applicable to the
 376 association of unit owners a provision of this chapter that is enacted after the creation of the
 377 association of unit owners, by complying with:

378 (a) the amendment procedures and requirements specified in the declaration and
 379 applicable provisions of this chapter; or

380 (b) the amendment procedures and requirements of this chapter, if the declaration
 381 being amended does not contain amendment procedures and requirements.

382 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

383 (a) the amendment grants a right, power, or privilege permitted by that specific section;
 384 and

385 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

386 Section ~~§~~ [7] 8 ~~←§~~ . Section **57-8-23** is amended to read:

387 **57-8-23. Removal no bar to subsequent resubmission.**

388 The removal provided for in Section 57-8-22 [~~shall~~] does not bar the subsequent
 389 resubmission of the property to the provisions of this [~~act~~] chapter.

390 Section ~~§~~ [8] 9 ~~←§~~ . Section **57-8-40** is amended to read:

391 **57-8-40. Organization of an association of unit owners under other law --**
 392 **Reorganization.**

393 (1) As used in this section, "organizational documents" means the documents related to
 394 the formation or operation of a nonprofit corporation or other legal entity formed by the
 395 management committee or the declarant.

396 (2) If permitted, required, or acknowledged by the declaration, the management
 397 committee may organize an association of unit owners [~~into~~] as:

398 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
399 Nonprofit Corporation Act[;]; or [other]

400 (b) any other entity organized under other law.

401 (3) Organizational documents for a nonprofit corporation or other entity formed in
402 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
403 obligations found in the declaration and any of the association's bylaws recorded at the time of
404 the formation of a nonprofit corporation or other entity [~~under Subsection (2)~~].

405 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
406 organizational documents of [~~an~~] a nonprofit corporation or other entity formed in accordance
407 with Subsection (2) may include any additional indemnification and liability limitation
408 provision [~~for the management committee members and officers of the association that is~~
409 ~~permitted by the chapter under which the association is organized for~~] ~~§~~→ for ←~~§~~ :

410 ~~§~~→ [~~(a)~~] for:

411 ~~(i)~~ (a) ←~~§~~ board members, directors, and officers[;]; or

412 ~~§~~→ [~~(ii)~~] (b) ←~~§~~ similar persons in a position of control ~~§~~→ [f] . [f] [~~and~~] ←~~§~~

413 (5) In the event of a conflict between this chapter's provisions, a statute under which
414 the association of unit owners is organized, documents concerning the organization of the
415 association of unit owners as a nonprofit corporation or other entity, the declaration, the
416 bylaws, and association rules, the following order prevails:

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

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

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

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

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

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

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

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

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

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

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

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

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

450 Section ~~5~~ → [9] 10 ← ~~5~~ . Section 57-8-43 is amended to read:

451 **57-8-43. Insurance.**

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

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

456 [~~(a)~~] (i) issued or renewed on or after July 1, 2011; and

457 [~~(b)~~] (ii) issued to or renewed by:

458 [~~(i)~~] (A) a unit owner; or

459 [~~(ii)~~] (B) an association of unit owners, regardless of when the association of unit

553 \$10,000, ~~[whichever is less]~~ an amount not less than \$10,000.

554 ~~[(†)]~~ (i) (i) An association of unit owners shall provide notice in accordance with
555 Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)~~[(h)]~~~~(g)~~
556 for the association's policy deductible and of any change in the amount of the deductible.

557 (ii) (A) An association of unit owners that fails to provide notice as provided in
558 Subsection (9)~~[(†)]~~~~(i)~~(i) is responsible for the ~~[amount]~~ portion of the deductible ~~[increase]~~ that
559 the association of unit owners could have assessed to a unit owner under Subsection
560 (9)~~[(h)]~~~~(g)~~, but only to the extent that the unit owner does not have insurance coverage that
561 would otherwise apply under this Subsection (9).

562 (B) Notwithstanding Subsection (9)(i) ~~§~~→ ~~[(†)]~~ (ii) ~~←~~§ (A), an association of unit owners
562a that
563 provides notice of the association's policy deductible, as required under Subsection (9)(i)(i), but
564 fails to provide notice of a later increase in the amount of the deductible is responsible only for
565 the amount of the increase for which notice was not provided.

566 (iii) The failure of an association of unit owners to provide notice as provided in
567 Subsection (9)~~[(†)]~~~~(i)~~(i) may not be construed to invalidate any other provision of this section.

568 ~~[(†)]~~ (j) If, in the exercise of the business judgment rule, the management committee
569 determines that a ~~[claim]~~ covered loss is likely not to exceed the property insurance policy
570 deductible of the association of unit owners and until ~~§~~→ [if] it ~~←~~§ becomes apparent the covered
570a loss

571 exceeds the deductible of the property insurance of the association of unit owners and a claim
572 is submitted to the property insurance insurer of the association of unit owners:

573 (i) ~~[the]~~ a unit owner's policy is considered the policy for primary coverage [to the
574 amount of the policy deductible of the association of unit owners] for a loss occurring to the
575 unit owner's unit or to a limited common area or facility appurtenant to the unit;

576 (ii) the association of unit owners is responsible for any covered loss to any common
577 areas and facilities;

578 ~~[(†)]~~ (iii) a unit owner who does not have a policy to cover the [property insurance
579 policy deductible of the association of unit owners is responsible for the loss to the amount of
580 the policy deductible of the association of unit owners, as provided in Subsection (9)(h)]
581 damage to that unit owner's unit and appurtenant limited common areas and facilities is
582 responsible for that damage, and the association of unit owners may, as provided in Subsection
583 (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit

615 facilities appurtenant to a commercial unit in a mixed-use condominium project.

616 (ii) Notwithstanding any other provision of this section, an association of unit owners
 617 may obtain property insurance for fixtures, improvements, or betterments in a commercial unit
 618 in a mixed-use condominium project if allowed or required in the declaration.

619 (p) (i) This Subsection (9) does not prevent a person suffering a loss as a result of
 620 damage to property from asserting a claim, either directly or through subrogation, for the loss
 621 against a person at fault for the loss.

622 (ii) Subsection (9)(p)(i) does not affect Subsection (7).

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

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

627 (c) Each unit owner is an insured person under a liability insurance policy that an
 628 association of unit owners obtains [~~that insures against~~], but only for liability arising from:

629 (i) the unit owner's ownership interest in the common areas and facilities [~~or from~~]

629a ~~§~~ → [:] ; ← ~~§~~

630 (ii) maintenance, repair, or replacement of common areas and facilities; and

631 (iii) the unit owner's membership in the association of unit owners.

632 Section ~~§~~ → [10] 11 ← ~~§~~ . Section **57-8-55** is enacted to read:

633 **57-8-55. Consolidation of multiple associations of unit owners.**

634 (1) Two or more associations of unit owners may be consolidated into a single
 635 association of unit owners as provided in Title 16, Chapter 6a, Part 11, Merger, and this
 636 section.

637 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
 638 consolidation between two or more associations of unit owners to consolidate into a single
 639 association of unit owners is not effective unless it is approved by the unit owners of each of
 640 the consolidating associations of unit owners, by the highest percentage of allocated voting
 641 interests of the unit owners required by each association of unit owners to amend its respective
 642 declaration, articles, or bylaws.

643 (3) A declaration of consolidation under Subsection (2) shall:

644 (a) be prepared, executed, and certified by the president of the association of each of
 645 the consolidating associations of unit owners; and

646 (b) provide for the reallocation of the allocated interests in the consolidated association
 647 by stating:

648 (i) the reallocations of the allocated interests in the consolidated association of unit
 649 owners or the formulas used to reallocate the allocated interests; or

650 (ii) (A) the percentage of overall allocated interests of the consolidated association of
 651 unit owners that are allocated to all of the units comprising each of the consolidating
 652 associations of unit owners; and

653 (B) that the portion of the percentages allocated to each unit formerly comprising a part
 654 of a consolidating association of unit owners is equal to the percentages of allocated interests
 655 allocated to the unit by the declaration of the consolidating association of unit owners.

656 (4) A declaration of consolidation under Subsection (2) is not effective until it is
 657 recorded in the office of each applicable county recorder.

658 (5) Unless otherwise provided in the declaration of consolidation, the consolidated
 659 association of unit owners resulting from a consolidation under this section:

660 (a) is the legal successor for all purposes of all of the consolidating associations of unit
 661 owners;

662 (b) the operations and activities of all of the consolidating associations of unit owners
 663 shall be consolidated into the consolidated association of unit owners; and

664 (c) the consolidated association of unit owners holds all powers, rights, obligations,
 665 assets, and liabilities of all consolidating associations of unit owners.

666 Section ~~§~~ → [11] 12 ← ~~§~~ . Section 57-8a-102 is amended to read:

667 **57-8a-102. Definitions.**

668 As used in this chapter:

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

670 (i) by the association;

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

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

673 (b) "Assessment" includes:

674 (i) a common expense; and

675 (ii) an amount assessed against a lot owner under Subsection 57-8a-405[~~(8)~~](7).

676 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or

- 708 (ii) bylaws;
- 709 (iii) a plat;
- 710 (iv) a declaration of covenants, conditions, and restrictions; and
- 711 (v) rules of the association.
- 712 (8) "Judicial foreclosure" means a foreclosure of a lot:
- 713 (a) for the nonpayment of an assessment; and
- 714 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 715 property; and
- 716 (ii) as provided in Part 3, Collection of Assessments.
- 717 (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 718 (a) by a person or persons other than the owner; and
- 719 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 720 gratuity, or emolument.
- 721 (10) "Limited common areas" means common areas described in the declaration and
- 722 allocated for the exclusive use of one or more lot owners.
- 723 (11) "Lot" means:
- 724 (a) a lot, parcel, plot, or other division of land:
- 725 (i) designated for separate ownership or occupancy; and
- 726 (ii) (A) shown on a recorded subdivision plat; or
- 727 (B) the boundaries of which are described in a recorded governing document; or
- 728 (b) (i) a unit in a condominium association if the condominium association is a part of
- 729 a development; or
- 730 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 731 development.
- 732 (12) "~~Mixed-~~ ~~use~~ ~~project~~" means a project under this chapter that has both
- 732a residential
- 733 and commercial lots in the project.
- 734 ~~[(12)]~~ (13) "Nonjudicial foreclosure" means the sale of a lot:
- 735 (a) for the nonpayment of an assessment; and
- 736 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
- 737 57-1-34; and
- 738 (ii) as provided in Part 3, Collection of Assessments.

739 ~~[(13)]~~ (14) "Residential lot" means a lot, the use of which is limited by law, covenant,
740 or otherwise to primarily residential or recreational purposes.

741 Section ~~§~~ → [12] 13 ← ~~§~~ . Section 57-8a-107 is enacted to read:

742 **57-8a-107. Amending the declaration to make provisions of this chapter**
743 **applicable.**

744 (1) An association may amend the declaration to make applicable to the association a
745 provision of this chapter that is enacted after the creation of the association, by complying with:

746 (a) the amendment procedures and requirements specified in the declaration and
747 applicable provisions of this chapter; or

748 (b) the amendment procedures and requirements of this chapter, if the declaration
749 being amended does not contain amendment procedures and requirements.

750 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

751 (a) the amendment grants a right, power, or privilege permitted by that specific section;

752 and

753 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

754 Section ~~§~~ → [13] 14 ← ~~§~~ . Section 57-8a-108 is enacted to read:

755 **57-8a-108. Rules against perpetuities and unreasonable restraints -- Insubstantial**
756 **failure to comply.**

757 (1) The rule against perpetuities and the rule against unreasonable restraints on
758 alienation of real estate may not defeat a provision of a governing document.

759 (2) (a) A declaration that fails to comply with this chapter does not render a title to a lot
760 and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

761 (b) This chapter does not affect whether a substantial failure impairs marketability.

761a ~~§~~ → Section 15 . Section 57-8a-109 is enacted to read:

761b **57-8a-109. Limit on fee for approval of plans.**

761c **(1) As used in this section:**

761d **(a) "Lot plans" means plans:**

761e **(i) for the construction or improvement of a lot; and**

761f **(ii) that are required to be approved by the association before the lot construction or**
761g **improvement may occur.**

761h **(b) "Plan fee" means a fee that an association charges for review and approval of lot**
761i **plans.**

761j **(2) An association may not charge a plan fee that exceeds the actual cost of reviewing**
761k **and approving the lot plans. ←§**

762 Section ~~§~~ → [14] 16 ← ~~§~~ . Section 57-8a-211 is amended to read:

763 **Part 2. Administrative Provisions**

764 **57-8a-211. Reserve analysis -- Reserve fund.**

765 (1) As used in this section [;]:

766 (a) "Reserve analysis" means an analysis to determine:

767 [(a)] (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
768 replacing, and restoring common areas that have a useful life of three years or more and a
769 remaining useful life of less than 30 years, but excluding any cost that can reasonably be

801 require an amount higher than the amount determined under Subsection (6)(a) ~~§→ [†] ←§~~ .

802 [~~(5)~~] (7) Subsections (2)[~~-, (3), (4), and~~] through (6) do not apply to an association
803 during the period of administrative control.

804 [~~(6) An association shall:~~]

805 [~~(a) annually, at the annual meeting of lot owners or at a special meeting of lot
806 owners;~~]

807 [~~(i) present the reserve study; and~~]

808 [~~(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to
809 fund a reserve fund and, if so, how to fund it and in what amount; and~~]

810 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and
811 indicate in the minutes any decision relating to funding a reserve fund.~~]

812 [~~(7)~~] (8) This section applies to each association, regardless of when the association
813 was created.

814 Section ~~§→ [15] 17 ←§~~ . Section **57-8a-212** is amended to read:

815 **57-8a-212. Content of a declaration.**

816 (1) An initial declaration recorded on or after May 10, 2011 shall contain:

817 (a) the name of the project;

818 (b) the name of the association;

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

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

822 (e) if the declarant desires to reserve the option to expand the project, a statement
823 reserving the option to expand the project;

824 (f) the name of each county in which any part of the project is located;

825 (g) a legally sufficient description of the real estate included in the project;

826 (h) a description of any limited common areas and any real estate that is or is required
827 to become common areas;

828 (i) any restriction on the alienation of a lot, including a restriction on leasing; and

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

831 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to

832 U.C.A. Sections 57-1-20 and [~~57-8a-402~~] 57-8a-302 to (name of trustee), with power of sale,
 833 the lot and all improvements to the lot for the purpose of securing payment of assessments
 834 under the terms of the declaration."

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

838 (3) The location of a limited common area or real estate described in Subsection (1)(g)
 839 may be shown on a subdivision plat.

840 Section ~~§~~ → [16] 18 ← ~~§~~ . Section **57-8a-220** is amended to read:

841 **57-8a-220. Creditor approval may be required for lot owner or association action**
 842 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**
 843 **creditor or creditor's successor.**

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

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

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

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

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

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

856 (iii) prevent an insurance trustee or the association from receiving or distributing
 857 insurance proceeds under Subsection ~~57-8a-405~~ [(+2)](11).

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

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

862 (ii) requiring the association to increase an assessment at the lender's direction by an

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

898 Section ~~§~~ → [17] 19 ← ~~§~~ . Section 57-8a-222 is enacted to read:

899 **57-8a-222. Removing or altering partition between dwelling units on adjoining**
 900 **lots.**

901 (1) Subject to the declaration, a lot owner may, after acquiring an adjoining lot with a
 902 dwelling unit that shares a common wall with a dwelling unit on the lot owner's lot:

903 (a) remove or alter a partition between the lot owner's lot and the acquired lot, even if
 904 the partition is entirely or partly common areas; or

905 (b) create an aperture to the adjoining lot or portion.

906 (2) A lot owner may not take an action under Subsection (1) if the action would:

907 (a) impair the structural integrity or mechanical systems of the building or either lot;

908 (b) reduce the support of any portion of the common areas or another lot; or

909 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
 910 government land use ordinance, or a building code.

911 (3) The board may require a lot owner to submit, at the lot owner's expense, a
 912 registered professional engineer's or registered architect's opinion stating that a proposed
 913 change to the lot owner's lot will not:

914 (a) impair the structural integrity or mechanical systems of the building or either lot;

915 (b) reduce the support or integrity of common areas; or

916 (c) compromise structural components.

917 (4) The board may require a lot owner to pay all of the association's legal and other
 918 expenses related to a proposed alteration to the lot or building under this section.

919 (5) An action under Subsection (1) does not change an assessment or voting right
 920 attributable to the lot owner's lot or the acquired lot, unless the declaration provides otherwise.

921 Section ~~§~~ → [18] 20 ← ~~§~~ . Section 57-8a-223 is enacted to read:

922 **57-8a-223. Eminent domain -- Common area.**

923 Unless the declaration provides otherwise:

924 (1) if part of the common area is taken by eminent domain:

925 (a) the entity taking part of the common area shall pay to the association the portion of
 926 the compensation awarded for the taking that is attributable to the common area; and

927 (b) the association shall equally divide any portion of the award attributable to the
 928 taking of a limited common area among the owners of the lots to which the limited common
 929 area was allocated at the time of the taking; and

930 (2) an association shall submit for recording to each applicable county recorder the
 931 court judgment or order in an eminent domain action that results in the taking of some or all of
 932 the common area.

933 Section ~~§~~ [19] 21 ~~←~~§ . Section 57-8a-224 is enacted to read:

934 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
 935 **common area and lots.**

936 (1) As used in this section:

937 (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely
 938 result in immediate and substantial damage to a common area or to another lot.

939 (b) "Reasonable notice" means:

940 (i) written notice that is hand delivered to the lot at least 24 hours before the proposed
 941 entry; or

942 (ii) in the case of an emergency repair, notice that is reasonable under the
 943 circumstances.

944 (2) Except as otherwise provided in the declaration or Part 4, Insurance:

945 (a) an association is responsible for the maintenance, repair, and replacement of
 946 common areas; and

947 (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot
 948 owner's lot.

949 (3) After reasonable notice to the occupant of the lot being entered, the board may
 950 access a lot:

951 (a) from time to time during reasonable hours, as necessary for the maintenance, repair,
 952 or replacement of any of the common areas; or

953 (b) for making an emergency repair.

954 (4) (a) An association is liable to repair damage it causes to the common areas or to a
 955 lot the association uses to access the common areas.

956 (b) An association shall repair damage described in Subsection (4)(a) within a time that
 957 is reasonable under the circumstances.

958 (5) Subsections (2), (3), and (4) do not apply during the period of administrative
 959 control as defined in Section 57-8a-104.

960 Section ~~§~~ → [20] 22 ← ~~§~~ . Section **57-8a-402** is amended to read:

961 **57-8a-402. Applicability of part.**

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

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

964 (b) issued to or renewed by:

965 (i) a lot owner; or

966 (ii) an association, regardless of when the association is formed.

967 (2) ~~[This]~~ Unless otherwise provided in the declaration, this part does not apply to a
 968 project if all of the project's lots are restricted to entirely nonresidential use.

969 (3) Subject to Subsection (4), this part does not apply to a project if:

970 (a) the initial declaration for the project is recorded before January 1, 2012;

971 (b) the project includes attached dwellings; and

972 (c) the declaration requires each lot owner to insure the lot owner's dwelling.

973 (4) (a) An association ~~[that is subject to a declaration recorded before January 1, 2012]~~
 974 to which this part does not apply under Subsection (3) may amend the declaration, as provided
 975 in the declaration and applicable law, to subject the association to this part.

976 (b) During the period of administrative control, an amendment under Subsection (4)(a)
 977 requires the consent of the declarant.

978 Section ~~§~~ → [21] 23 ← ~~§~~ . Section **57-8a-403** is amended to read:

979 **57-8a-403. Property and liability insurance required -- Notice if insurance not**
 980 **reasonably available.**

981 (1) Beginning not later than the day on which the first lot is conveyed to a person other
 982 than a declarant, an association shall maintain, to the extent reasonably available:

983 (a) subject to Section 57-8a-405, blanket property insurance or guaranteed replacement
 984 cost insurance on the physical structure of all attached dwellings, limited common areas
 985 appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks
 986 of direct physical loss commonly insured against, including fire and extended coverage perils;

987 and

988 (b) subject to Section 57-8a-406, liability insurance~~[-including medical payments~~
 989 ~~insurance]~~ covering all occurrences commonly insured against for death, bodily injury, and
 990 property damage arising out of or in connection with the use, ownership, or maintenance of the
 991 common areas.

992 (2) If an association becomes aware that property insurance under Subsection (1)(a) or
 993 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,
 994 within seven calendar days after becoming aware, give all lot owners notice, as provided in
 995 Section ~~[57-8a-215]~~ 57-8a-214, that the insurance is not reasonably available.

996 Section ~~§~~ **→ [22] 24 ←** ~~§~~ . Section **57-8a-404** is amended to read:

997 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**
 998 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

999 (1) (a) The declaration or bylaws may require the association to carry other types of
 1000 insurance in addition to those described in Section 57-8a-403.

1001 (b) In addition to any type of insurance coverage or limit of coverage provided in the
 1002 declaration or bylaws and subject to the requirements of this part, an association may, as the
 1003 board considers appropriate, obtain:

1004 (i) an additional type of insurance than otherwise required; or

1005 (ii) a policy with greater coverage than otherwise required.

1006 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf
 1007 of an association, a lot owner's act or omission may not:

1008 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability
 1009 insurance policy under Subsection 57-8a-403(1)(b); or

1010 (b) be a condition to recovery under a policy.

1011 (3) An insurer under a property insurance policy or liability insurance policy obtained
 1012 by an association under this part waives its right to subrogation under the policy against [~~any~~
 1013 ~~lot owner or member of the lot owner's household.];~~

1014 (a) any person residing with a lot owner, if the lot owner resides on the lot; and

1015 (b) the lot owner.

1016 (4) (a) An insurance policy issued to an association may not be inconsistent with any
 1017 provision of this part.

1018 (b) A provision of a governing document that is contrary to a provision of this part has
1019 no effect.

1020 (c) [~~A~~] Neither the governing documents nor a property insurance or liability insurance
1021 policy issued to an association may [not] prevent a lot owner from obtaining insurance for the
1022 lot owner's own benefit.

1023 Section ~~§~~ → [23] 25 ← ~~§~~ . Section **57-8a-405** is amended to read:

1024 **57-8a-405. Property insurance.**

1025 (1) This section applies to property insurance required under Subsection
1026 57-8a-403(1)(a).

1027 [~~(2)~~] ~~The property covered by property insurance shall include any property that, under~~
1028 ~~the declaration, is required to become common areas.]~~

1029 [~~(3)~~] (2) The total amount of coverage provided by blanket property insurance or
1030 guaranteed replacement cost insurance may not be less than 100% of the full replacement cost
1031 of the insured property at the time the insurance is purchased and at each renewal date,
1032 excluding:

1033 (a) items normally excluded from property insurance policies~~[-]; and~~

1034 (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use
1035 project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use
1036 project.

1037 [~~(4)~~] (3) Property insurance shall include coverage for any fixture, improvement, or
1038 betterment installed ~~[by a lot owner]~~ at any time to an attached dwelling or to a limited
1039 common area appurtenant to a dwelling on a lot, whether installed in the original construction
1040 or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical
1041 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
1042 permanently part of or affixed to an attached dwelling or to a limited common area.

1043 [~~(5)~~] (4) Notwithstanding anything in this part and unless otherwise provided in the
1044 declaration, an association is not required to obtain property insurance for a loss to a dwelling
1045 that is not physically attached to another dwelling or to a common area structure.

1046 [~~(6)~~] (5) Each lot owner is an insured person under a property insurance policy.

1047 [~~(7)~~] (6) If a loss occurs that is covered by a property insurance policy in the name of
1048 an association and another property insurance policy in the name of a lot owner:

1111 surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the
 1112 declaration.

1113 ~~[(13)]~~ (12) An insurer that issues a property insurance policy under this part, or the
 1114 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

1115 (a) the association;

1116 (b) a lot owner, upon the lot owner's written request; and

1117 (c) a holder of a security interest, upon the holder's written request.

1118 ~~[(14)]~~ (13) A cancellation or nonrenewal of a property insurance policy under this
 1119 section is subject to the procedures stated in Section 31A-21-303.

1120 ~~[(15)]~~ (14) A board that acquires from an insurer the property insurance required in this
 1121 section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of
 1122 the full replacement cost of the insured property at the time of the loss.

1123 (15) (a) Unless required in the declaration, property insurance coverage is not required
 1124 for fixtures, improvements, or betterments in a commercial lot or limited common areas
 1125 appurtenant to a commercial lot in a mixed- ~~§~~ → [used] use ← ~~§~~ project.

1126 (b) Notwithstanding any other provision of this part, an association may obtain
 1127 property insurance for fixtures, improvements, and betterments in a commercial lot in a
 1128 mixed- ~~§~~ → [used] use ← ~~§~~ project if allowed or required in the declaration.

1129 (16) (a) This section does not prevent a person suffering a loss as a result of damage to
 1130 property from asserting a claim, either directly or through subrogation, for the loss against a
 1131 person at fault for the loss.

1132 (b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

1133 Section ~~§~~ → [24] 26 ← ~~§~~ . Section **57-8a-406** is amended to read:

1134 **57-8a-406. Liability insurance.**

1135 (1) This section applies to a liability insurance policy required under Subsection
 1136 57-8a-403(1)(b).

1137 (2) A liability insurance policy shall be in an amount determined by the board but not
 1138 less than an amount specified in the declaration or bylaws.

1139 (3) Each lot owner is an insured person under a liability insurance policy that an
 1140 association obtains [~~that insures against~~], but only for liability arising from:

1141 (a) the lot owner's ownership interest in the common areas [~~or from~~];

1142 (b) maintenance, repair, or replacement of common areas; and

1143 (c) the lot owner's membership in the association.

1144 Section ~~§~~ → [25] 27 ← ~~§~~ . Section **57-8a-407** is amended to read:

1145 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1146 (1) (a) If a portion of the project for which insurance is required under this part is
1147 damaged or destroyed, the association shall repair or replace the portion within a reasonable
1148 amount of time unless:

1149 (i) the project is terminated;

1150 (ii) repair or replacement would be illegal under a state statute or local ordinance
1151 governing health or safety; or

1152 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the
1153 association vote not to rebuild; and

1154 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that
1155 lot that will not be rebuilt votes not to rebuild.

1156 (b) If a portion of a project is not repaired or replaced because the project is terminated,
1157 the termination provisions of applicable law and the governing documents apply.

1158 (2) (a) The cost of repair or replacement of any lot in excess of insurance proceeds and
1159 reserves is a common expense[-] to the extent the association is required under this chapter to
1160 provide insurance coverage for the lot.

1161 (b) The cost of repair or replacement of any common area in excess of insurance
1162 proceeds and reserves is a common expense.

1163 (3) If the entire project is damaged or destroyed and not repaired or replaced:

1164 (a) the association shall use the insurance proceeds attributable to the damaged
1165 common areas to restore the damaged area to a condition compatible with the remainder of the
1166 project;

1167 (b) the association shall distribute the insurance proceeds attributable to lots and
1168 common areas that are not rebuilt to:

1169 (i) the lot owners of the lots that are not rebuilt;

1170 (ii) the lot owners of the lots to which those common areas that are not rebuilt were
1171 allocated; or

1172 (iii) lien holders; and

1173 (c) the association shall distribute the remainder of the proceeds to all the lot owners or
 1174 lien holders in proportion to the common expense liabilities of all the lots.

1175 (4) If the lot owners vote not to rebuild a lot:

1176 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote
 1177 as if the lot had been condemned; and

1178 (b) the association shall prepare, execute, and submit for recording an amendment to
 1179 the declaration reflecting the reallocations described in Subsection (4)(a).

1180 Section ~~§~~ → [26] 28 ← ~~§~~ . Section **57-8a-501** is enacted to read:

1181 **Part 5. Association Board**

1182 **57-8a-501. Board acts for association.**

1183 Except as limited in a declaration, the association bylaws, or other provisions of this
 1184 chapter, a board acts in all instances on behalf of the association.

1185 Section ~~§~~ → [27] 29 ← ~~§~~ . Section **57-8a-502** is enacted to read:

1186 **57-8a-502. Period of administrative control.**

1187 (1) Unless otherwise provided for in a declaration, a period of administrative control
 1188 terminates on the first to occur of the following:

1189 (a) 60 days after 75% of the lots that may be created are conveyed to lot owners other
 1190 than a declarant;

1191 (b) seven years after all declarants have ceased to offer lots for sale in the ordinary
 1192 course of business; or

1193 (c) the day the declarant, after giving written notice to the lot owners, records an
 1194 instrument voluntarily surrendering all rights to control activities of the association.

1195 (2) (a) A declarant may voluntarily surrender the right to appoint and remove a member
 1196 of the board before the period of administrative control terminates under Subsection (1).

1197 (b) Subject to Subsection (2)(a), the declarant may require, for the duration of the
 1198 period of administrative control, that actions of the association or board, as specified in a
 1199 recorded instrument executed by the declarant, be approved by the declarant before they
 1200 become effective.

1201 (3) (a) Upon termination of the period of administrative control, the lot owners shall
 1202 elect a board consisting of an odd number of at least three members, a majority of whom shall
 1203 be lot owners.

1204 (b) Unless the declaration provides for the election of officers by the lot owners, the
 1205 board shall elect officers of the association.

1206 (c) The board members and officers shall take office upon election or appointment.

1207 Section ~~§~~ [28] 30 ~~←§~~ . Section **57-8a-601** is enacted to read:

1208 **Part 6. Consolidation of Associations**

1209 **57-8a-601. Consolidation of multiple associations.**

1210 (1) Two or more associations may be consolidated into a single association as provided
 1211 in Title 16, Chapter 6a, Part 11, Merger, and this section.

1212 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
 1213 consolidation between two or more associations to consolidate into a single association is not
 1214 effective unless it is approved by the lot owners of each of the consolidating associations by the
 1215 highest percentage of allocated voting interests of the lot owners required by each association
 1216 to amend its respective declaration, articles, or bylaws.

1217 (3) A declaration of consolidation under Subsection (2) shall:

1218 (a) be prepared, executed, and certified by the president of each of the consolidating
 1219 associations; and

1220 (b) provide for the reallocation of the allocated interests in the consolidated association
 1221 by stating:

1222 (i) the reallocations of the allocated interests in the consolidated association or the
 1223 formulas used to reallocate the allocated interests; or

1224 (ii) (A) the percentage of overall allocated interests of the consolidated association that
 1225 are allocated to all of the lots comprising each of the consolidating associations; and

1226 (B) that the portion of the percentages allocated to each lot formerly comprising a part
 1227 of a consolidating association is equal to the percentages of allocated interests allocated to the
 1228 lot by the declaration of the consolidating association.

1229 (4) A declaration of consolidation under Subsection (2) is not effective until it is
 1230 recorded in the office of each applicable county recorder.

1231 (5) Unless otherwise provided in the declaration of consolidation ~~§~~ [1] :

1231a (a) ~~←§~~ the consolidated

1232 association resulting from a consolidation under this section ~~§~~ [1] :

1233 ~~(a)~~ ~~←§~~ is the legal successor for all purposes of all of the consolidating associations;

1234 (b) the operations and activities of all of the consolidating associations shall be

1235 consolidated into the consolidated association; and

1236 (c) the consolidated association holds all powers, rights, obligations, assets, and

1237 liabilities of all consolidating associations.

1238 Section ~~§~~ → [29] 31 ← ~~§~~ . Section **76-6-206** is amended to read:

1239 **76-6-206. Criminal trespass.**

1240 (1) As used in this section, "enter" means intrusion of the entire body.

1241 (2) A person is guilty of criminal trespass if, under circumstances not amounting to

1242 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section

1243 76-10-2402 regarding commercial obstruction:

1244 (a) the person enters or remains unlawfully on property and:

1245 (i) intends to cause annoyance or injury to any person or damage to any property,

1246 including the use of graffiti as defined in Section 76-6-107;

1247 (ii) intends to commit any crime, other than theft or a felony; or

1248 (iii) is reckless as to whether his presence will cause fear for the safety of another;

1249 (b) knowing the person's entry or presence is unlawful, the person enters or remains on

1250 property as to which notice against entering is given by:

1251 (i) personal communication to the actor by the owner or someone with apparent

1252 authority to act for the owner;

1253 (ii) fencing or other enclosure obviously designed to exclude intruders; or

1254 (iii) posting of signs reasonably likely to come to the attention of intruders; or

1255 (c) the person enters a condominium unit in violation of Subsection ~~57-8-7[(7)]~~(8).

1256 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was

1257 committed in a dwelling, in which event it is a class A misdemeanor.

1258 (b) A violation of Subsection (2)(c) is an infraction.

1259 (4) It is a defense to prosecution under this section that:

1260 (a) the property was open to the public when the actor entered or remained; and

1261 (b) the actor's conduct did not substantially interfere with the owner's use of the

1262 property.