

HB0255S01 compared with HB0255

~~{deleted text}~~ shows text that was in HB0255 but was deleted in HB0255S01.

inserted text shows text that was not in HB0255 but was inserted into HB0255S01.

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Representative Mike Schultz proposes the following substitute bill:

CONDOMINIUM AND COMMUNITY OWNERSHIP~~{ACT}~~

AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: ~~{_____}~~ J. Stuart Adams

LONG TITLE

General Description:

This bill amends provisions related to condominium ~~{common expenses}~~ and community associations.

Highlighted Provisions:

This bill:

- ▶ defines terms; ~~{and}~~
- ▶ provides that an unconstructed unit is allocated:
 - the unconstructed unit's share of undivided interest in common areas and facilities; and
 - voting rights~~{~~

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†; and

- ▶ provides that a declarant of a condominium or community project may, under certain conditions, appoint the declarants officers, employees, or agents to the association board or management committee.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

57-8-3, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

57-8-16.5, as enacted by Laws of Utah 1975, Chapter 173

57-8-24, as last amended by Laws of Utah 1975, Chapter 173

57-8a-502, as enacted by Laws of Utah 2013, Chapter 152

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

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

57-8-3. Definitions.

As used in this chapter:

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

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

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

Subsection 57-8-43(9)(g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Common expenses" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

(18) "Expandable condominium" means a condominium project to which additional

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land or an interest in it may be added in accordance with the declaration and this chapter.

(19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

(20) "Governing documents":

(a) means a written instrument by which an association of unit owners may:

(i) exercise powers; or

(ii) manage, maintain, or otherwise affect the property under the jurisdiction of the

association of unit owners; and

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

(iv) a declaration of covenants, conditions, and restrictions; and

(v) rules of the association of unit owners.

(21) "Independent third party" means a person that:

(a) is not related to the unit owner;

(b) shares no pecuniary interests with the unit owner; and

(c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

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

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

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

(25) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the

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reasonable rules covering the operation and maintenance of the property.

(26) (a) "Means of electronic communication" means an electronic system that allows individuals to communicate orally in real time.

(b) "Means of electronic communication" includes:

- (i) web conferencing;
- (ii) video conferencing; and
- (iii) telephone conferencing.

(27) "Meeting" means a gathering of a management committee, whether in person or by means of electronic communication, at which the management committee can take binding action.

(28) "Mixed-use condominium project" means a condominium project that has both residential and commercial units in the condominium project.

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

(30) "Period of administrative control" means the period of control described in Subsection 57-8-16.5(1).

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

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

(33) "Record," "recording," "recorded," and "recorder" have the meaning stated in

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[~~Title 57,~~] Chapter 3, Recording of Documents.

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

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

(36) "Unconstructed unit" means a unit that:

(a) is intended, as depicted in the condominium plat, to be fully or partially contained in a building; and

(b) is not constructed.

~~(36)~~ (37) (a) "Unit" means ~~[either]~~ a separate ~~[physical]~~ part of the property intended for any type of independent use, ~~[including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or a time period unit, as the context may require.~~
A] which is created by the recording of a declaration and a condominium plat that describes the unit boundaries.

(b) "Unit" includes one or more rooms or spaces located in one or more floors or a portion of a floor in a building.

(c) "Unit" includes a convertible space [shall be treated as a unit], in accordance with Subsection 57-8-13.4(3). ~~[A proposed condominium unit under an expandable condominium project, not constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6 are met.]~~

~~(37)~~ (38) "Unit number" means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.

~~(38)~~ (39) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the

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condominium unit extend for the entire balance of the unexpired term or terms.

Section 2. Section 57-8-16.5 is amended to read:

57-8-16.5. Appointment and removal of committee members and association officers -- Renewal or ratification of contracts -- Failure to establish association or committee.

(1) (a) The declaration may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the members of the management committee or some or all of the officers of the ~~[unit owners']~~ association of unit owners, or to exercise powers and responsibilities otherwise assigned by the declaration and by this act to the ~~[unit owners']~~ association of unit owners, its officers, or the management committee.

(b) If the declaration authorizes the declarant to appoint or remove some or all members of the management committee or some or all of the officers of the association of unit owners during the period of control contemplated by this subsection, the declarant may appoint the declarant's officers, employees or agents as members of the management committee or as officers of the association of unit owners.

(c) No amendment to the declaration not consented to by all unit owners shall increase the scope of this authorization, and no such authorization shall be valid after the first to occur of the following:

~~[(a)]~~ (i) expiration of the time limit set by the declaration, which shall not exceed six years in the case of an expandable condominium, four years in the case of a condominium project containing any convertible land, or three years in the case of any other condominium project; or

~~[(b)]~~ (ii) after units to which three-fourths of the undivided interest in the common areas and facilities appertain have been conveyed, or after all additional land has been added to the project and all convertible land has been converted, whichever last occurs.

(2) If entered into during the period of control contemplated by Subsection (1), no management contract, lease of recreational areas or facilities, or any other contract or lease designed to benefit the declarant which was executed by or on behalf of the ~~[unit owners']~~ association of unit owners or the unit owners as a group shall be binding after such period of control unless then renewed or ratified by the consent of unit owners of units to which a

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majority of the votes in the ~~[unit owners']~~ association of unit owners appertains.

(3) If the ~~[unit owners']~~ association of unit owners or management committee is not in existence or does not have officers at the time of the creation of a condominium project, the declarant shall, until there is an association or management committee with these officers, have the power and responsibility to act in all instances where this act or the declaration requires action by the ~~[unit owners']~~ association of unit owners, the management committee, or any of the officers of them.

(4) This section shall be strictly construed to protect the rights of the unit owners.

Section ~~{2}3~~. Section 57-8-24 is amended to read:

57-8-24. Common profits, common expenses, and voting rights -- Unit --

Unconstructed unit.

~~[The common profits of the property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the unit owners according to their]~~

(1) A unit is created by the recording of the declaration and a condominium plat that describes the unit.

(2) An association of unit owners shall, according to each unit owner's respective percentage or fractional undivided interests in the common areas and facilities[-]:

(a) distribute the property's common profits among the unit owners;

(b) except as otherwise provided in the declaration for unconstructed units, assess the unit owners the property's common expenses; and

(c) make voting rights available to the unit owners.

(3) (a) After the recording of a condominium project's declaration, an unconstructed unit is a unit for the purposes of the declaration and this chapter, including:

(i) allocation of undivided interests in the common areas and facilities in accordance with Subsection 57-8-7(2); and

(ii) voting rights in accordance with Section 57-8-24.

(b) Subsection (3)(a) applies to a condominium project regardless of when the condominium project's initial declaration was recorded.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 4. Section 57-8a-502 is amended to read:

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

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

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

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

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

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

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

(c) During a period of administrative control, except as provided in Subsection (2)(a), a declarant may appoint the declarant's officers, employees or agents as members of the board.

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

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

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

Section 5. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,

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the date of veto override.