

1
2 **CONDOMINIUM AND COMMUNITY ASSOCIATION**

3 **AMENDMENTS**

4 2017 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Carol Spackman Moss**

7 Senate Sponsor: Don L. Ipson

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies provisions of the Condominium Ownership Act and the Community
12 Association Act related to organization and governing documents.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ addresses the hierarchy of the governing documents of a condominium or
16 community association;
- 17 ▶ enacts provisions related to the organization and reorganization of a community
18 association; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 [57-8-39](#), as last amended by Laws of Utah 2015, Chapter 325

27 [57-8-40](#), as last amended by Laws of Utah 2013, Chapter 152

28 ENACTS:

29 [57-8a-228](#), Utah Code Annotated 1953

30

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

32 Section 1. Section **57-8-39** is amended to read:

33 **57-8-39. Limitation on requirements for amending governing documents --**

34 **Limitation on contracts.**

35 (1) (a) (i) To amend the governing documents, the governing documents may not
36 require:

37 (A) for an amendment adopted after the period of administrative control, the vote or
38 approval of unit owners with more than 67% of the voting interests;

39 (B) the approval of any specific unit owner; or

40 (C) the vote or approval of lien holders holding more than 67% of the first position
41 security interests secured by a mortgage or trust deed in the association of unit owners.

42 (ii) Any provision in the governing documents that prohibits a vote or approval to
43 amend any part of the governing documents during a particular time period is invalid.

44 (b) Subsection (1)(a) does not apply to an amendment affecting only:

45 (i) the undivided interest of each unit owner in the common areas and facilities, as
46 expressed in the declaration;

47 (ii) unit boundaries; or

48 (iii) unit owners' voting rights.

49 (2) (a) A contract for services such as garbage collection, maintenance, lawn care, or
50 snow removal executed on behalf of the association of unit owners during a period of
51 administrative control is binding beyond the period of administrative control unless terminated
52 by the [~~board of directors~~] management committee after the period of administrative control
53 ends.

54 (b) Subsection (2)(a) does not apply to golf course and amenity management, utilities,
55 cable services, and other similar services that require an investment of infrastructure or capital.

56 (3) Voting interests under Subsection (1) are calculated in the manner required by the
57 governing documents.

58 (4) Nothing in this section affects any other rights reserved by the declarant.

59 (5) This section applies to an association of unit owners regardless of when the
60 association of unit owners is created.

61 Section 2. Section **57-8-40** is amended to read:

62 **57-8-40. Organization of an association of unit owners under other law --**
63 **Governing document hierarchy -- Reorganization.**

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

67 (2) If permitted, required, or acknowledged by the declaration, the management
68 committee may organize an association of unit owners as:

69 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
70 Nonprofit Corporation Act; or

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

72 (3) ~~[Organizational]~~ To the extent possible, organizational documents for a nonprofit
73 corporation or other entity formed in accordance with Subsection (2) ~~[shall, to the extent~~
74 ~~possible,]~~ may not conflict with the rights and obligations found in the declaration ~~[and]~~ or any
75 of the ~~[association's]~~ association of unit owners' bylaws recorded at the time of the formation of
76 a nonprofit corporation or other entity.

77 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
78 organizational documents of a nonprofit corporation or other entity formed in accordance with
79 Subsection (2) may include ~~[any]~~ an additional indemnification and liability limitation
80 provision for:

81 (a) ~~[board members, directors, and]~~ management committee members or officers; or

82 (b) similar persons in a position of control.

83 (5) In the event of a conflict between this chapter's provisions, a statute under which
84 the association of unit owners is organized, documents concerning the organization of the
85 association of unit owners as a nonprofit corporation or other entity, the plat, the declaration,

86 the bylaws, and ~~[association]~~ rules or policies of the association of unit owners, the following
87 order prevails:

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

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

93 (c) the plat and the declaration control equally over a conflicting provision in any of the
94 sources listed in Subsections (5)(d) through (f);

95 ~~[(e)]~~ (d) an organizational document filed in accordance with Title 16, Chapter 6a,
96 Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized,
97 controls over a conflicting provision in any of the sources listed in Subsections (5)~~[(d)]~~(e)
98 through (f);

99 ~~[(d) the declaration controls over a conflicting provision in any of the sources listed in~~
100 ~~Subsections (5)(e) or (f);]~~

101 (e) the bylaws control over a conflicting provision in ~~[association rules]~~ a source
102 described in Subsection (5)(f); and

103 (f) ~~[the association rules yield]~~ a rule or policy of the association of unit owners that is
104 adopted by the management committee yields to a conflicting provision in any of the sources
105 listed in ~~[Subsection]~~ Subsections (5)(a) through (e).

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

109 (7) (a) ~~[A]~~ The management committee may modify a form "articles of incorporation"
110 or similar organizational document attached to a declaration ~~[may be modified by the~~
111 ~~management committee]~~ for filing or re-filing if the modified version is otherwise consistent
112 with this section's provisions.

113 (b) An organizational document attached to a declaration that is filed and concerns the

114 organization of an entity may be amended in accordance with [its] the organizational
115 document's own terms or any applicable law, [~~notwithstanding the fact that~~] regardless of
116 whether the organizational document [~~might be~~] is recorded.

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

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

122 (9) (a) This section applies to [all] a condominium [~~projects, whether~~] project
123 regardless of when the condominium project is established [~~before or after May 5, 2008~~].

124 (b) This section does not validate or invalidate the organization of an association of of
125 unit owners that occurred before May 5, 2008, regardless of whether [~~or not~~] the association of of
126 unit owners was otherwise in compliance with this section.

127 Section 3. Section **57-8a-228** is enacted to read:

128 **57-8a-228. Organization of an association -- Governing document hierarchy --**
129 **Reorganization.**

130 (1) As used in this section, "organizational documents" means the documents related to
131 the formation or operation of a nonprofit corporation or other legal entity formed by the board
132 or the declarant.

133 (2) If permitted, required, or acknowledged by the declaration, the board may organize
134 an association as:

135 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
136 Nonprofit Corporation Act; or

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

138 (3) To the extent possible, organizational documents for a nonprofit corporation or
139 other entity formed in accordance with Subsection (2) may not conflict with the rights and
140 obligations found in the declaration or any of the association's bylaws recorded at the time of
141 the formation of a nonprofit corporation or other entity.

142 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
143 organizational documents of a nonprofit corporation or other entity formed in accordance with
144 Subsection (2) may include an additional indemnification and liability limitation provision for:

- 145 (a) board members or officers; or
- 146 (b) similar persons in a position of control.

147 (5) In the event of a conflict between this chapter's provisions, a statute under which
148 the association is organized, documents concerning the organization of the association as a
149 nonprofit corporation or other entity, the plat, the declaration, the bylaws, and association rules
150 or policies, the following order prevails:

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

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

156 (c) the plat and the declaration control equally over a conflicting provision in any of the
157 sources listed in Subsections (5)(d) through (f);

158 (d) an organizational document filed in accordance with Title 16, Chapter 6a, Utah
159 Revised Nonprofit Corporation Act, or any other law under which an entity is organized
160 controls over a conflicting provision in any of the sources listed in Subsections (5)(e) and (f);

161 (e) the bylaws control over a conflicting provision in a source described in Subsection
162 (5)(f); and

163 (f) an association rule or policy that is adopted by the board yields to a conflicting
164 provision in any of the sources listed in Subsections (5)(a) through (e).

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

168 (7) (a) The board may modify a form "articles of incorporation" or similar
169 organizational document attached to a declaration for filing or re-filing if the modified version

170 is otherwise consistent with this section's provisions.

171 (b) An organizational document attached to a declaration that is filed and concerns the
172 organization of an entity may be amended in accordance with the organizational document's
173 own terms or any applicable law, regardless of whether the organizational document is
174 recorded.

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

177 (8) This section applies to the reorganization of an association previously organized if
178 the entity's status is terminated or dissolved without the possibility of reinstatement.

179 (9) (a) This section applies regardless of when the association is created.

180 (b) This section does not validate or invalidate the organization of an association that
181 occurred before May 9, 2017, regardless of whether the association was otherwise in
182 compliance with this section.