

## SB0191S01 compared with SB0191

~~deleted text~~ shows text that was in SB0191 but was deleted in SB0191S01.

inserted text shows text that was not in SB0191 but was inserted into SB0191S01.

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Senator Wayne A. Harper proposes the following substitute bill:

### CONDOMINIUM AND COMMUNITY ASSOCIATION

#### AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions governing community associations and condominium associations. =

##### Highlighted Provisions:

This bill:

- ▶ amends certain provisions of the Utah Nonprofit Corporation Act that apply to community associations;
- ▶ provides that a community association rule may not prohibit low water use on lawns during drought conditions;
- ▶ requires a community association created before March 5, 2023, to adopt required

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- rules regarding water efficient landscaping before June 30, 2023;
- ▶ provides that a community association that registers with the Department of Commerce is subject to the Community Association Act;
  - ▶ permits ~~{a}~~certains community ~~{association}~~associations to charge an annual fee to a lot owner who owns a rental lot;
  - ▶ permits ~~{an association}~~certains associations of unit owners to charge an annual fee to a unit owner who owns a rental unit;
  - ▶ clarifies provisions related to charging systems for electric or hybrid electric vehicles;
  - ▶ clarifies provisions related to the application of regulations related to solar system installation to attached dwellings;
  - ▶ requires an action against a community association board or board member for a violation of certain provisions to be brought no later than 18 months after the challenged board action;
  - ▶ defines terms; and
  - ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**16-6a-102**, as last amended by Laws of Utah 2017, Chapter 358

**16-6a-1602**, as enacted by Laws of Utah 2000, Chapter 300

**57-8-3**, as last amended by Laws of Utah 2020, Chapter 398

**57-8-8.2**, as enacted by Laws of Utah 2022, Chapter 439

**57-8-10.1**, as last amended by Laws of Utah 2018, Chapter 395

**57-8a-102**, as last amended by Laws of Utah 2020, Chapter 398

**57-8a-105**, as last amended by Laws of Utah 2020, Chapter 75

**57-8a-209**, as last amended by Laws of Utah 2021, Chapter 102

**57-8a-217**, as last amended by Laws of Utah 2015, Chapter 325

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57-8a-218, as last amended by Laws of Utah 2022, Chapter 439

57-8a-701, as last amended by Laws of Utah 2022, Chapter 439

57-8a-802, as enacted by Laws of Utah 2022, Chapter 439

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

Section 1. Section **16-6a-102** is amended to read:

**16-6a-102. Definitions.**

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States Postal Service.

(b) "Address" includes:

- (i) a post office box number;
- (ii) a rural free delivery route number; and
- (iii) a street name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Articles of incorporation" include:

- (a) amended articles of incorporation;
- (b) restated articles of incorporation;
- (c) articles of merger; and
- (d) a document of a similar import to the documents described in Subsections (3)(a) through (c).

(4) "Assumed corporate name" means a name assumed for use in this state:

- (a) by a:
  - (i) foreign corporation pursuant to Section 16-10a-1506; or
  - (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
- (b) because the corporate name of the foreign corporation described in Subsection

(4)(a) is not available for use in this state.

(5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage the affairs of a domestic or foreign nonprofit corporation.

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(b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of directors because of a power delegated to that person pursuant to Subsection 16-6a-801(2).

(6) (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted pursuant to this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit corporation irrespective of the one or more names by which the codes of rules are designated.

(b) "Bylaws" includes:

- (i) amended bylaws; and
- (ii) restated bylaws.

(7) (a) "Cash" or "money" means:

- (i) legal tender;
- (ii) a negotiable instrument; or
- (iii) other cash equivalent readily convertible into legal tender.

(b) "Cash" and "money" are used interchangeably in this chapter.

(8) (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution, redemption, transfer, or other characteristics.

(b) For purposes of Subsection (8)(a), a right is considered the same if it is determined by a formula applied uniformly to a group of memberships.

(9) (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed the writing.

(b) "Conspicuous" includes printing or typing in:

- (i) italics;
- (ii) boldface;
- (iii) contrasting color;
- (iv) capitals; or
- (v) underlining.

(10) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:

- (a) the ownership of voting shares;
- (b) contract; or

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(c) a means other than those specified in Subsection (10)(a) or (b).

(11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter.

(12) "Corporate name" means:

(a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;

(b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;

(c) the name of a foreign corporation as stated in the foreign corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation; or

(d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:

(i) articles of incorporation; or

(ii) document of similar import to articles of incorporation.

(13) (a) "Corporate records" means the records described in Section 16-6a-1601.

(b) "Corporate records" does not include correspondence, communications, notes, or other similar information, regardless of format or method of storage, that are not an official decision, published document, or record of the corporation.

~~(13)~~ (14) "Corporation" or "domestic corporation" means a corporation for profit that:

(a) is not a foreign corporation; and

(b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.

~~(14)~~ (15) "Delegate" means a person elected or appointed to vote in a representative assembly:

(a) for the election of a director; or

(b) on matters other than the election of a director.

~~(15)~~ (16) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.

~~(16)~~ (17) "Director" means a member of the board of directors.

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~~[(17)]~~ (18) (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:

- (i) members;
  - (ii) directors; or
  - (iii) officers.
- (b) "Distribution" does not include a fair-value payment for:
- (i) a good sold; or
  - (ii) a service received.

~~[(18)]~~ (19) "Division" means the Division of Corporations and Commercial Code.

~~[(19)]~~ (20) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.

~~[(20)]~~ (21) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.

~~[(21)]~~ (22) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

~~[(22)]~~ (23) (a) "Employee" includes an officer of a nonprofit corporation.

(b) (i) Except as provided in Subsection ~~[(22)(b)(i)]~~ (23)(b)(ii), "employee" does not include a director of a nonprofit corporation.

(ii) Notwithstanding Subsection ~~[(22)(b)(i)]~~ (23)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.

~~[(23)]~~ (24) "Entity" includes:

- (a) a domestic or foreign corporation;
- (b) a domestic or foreign nonprofit corporation;
- (c) a limited liability company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a partnership;
- (h) a trust;

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- (i) two or more persons having a joint or common economic interest;
- (j) a state;
- (k) the United States; or
- (l) a foreign government.

~~[(24)]~~ (25) "Executive director" means the executive director of the Department of Commerce.

~~[(25)]~~ (26) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.

~~[(26)]~~ (27) "Foreign nonprofit corporation" means an entity:

- (a) incorporated under a law other than the laws of this state; and
- (b) that would be a nonprofit corporation if formed under the laws of this state.

~~[(27)]~~ (28) "Governmental entity" means:

- (a) (i) the executive branch of the state;
- (ii) the judicial branch of the state;
- (iii) the legislative branch of the state;
- (iv) an independent entity, as defined in Section 63E-1-102;
- (v) a political subdivision of the state;
- (vi) a state institution of higher education, as defined in Section 53B-3-102;
- (vii) an entity within the state system of public education; or
- (viii) the National Guard; or
- (b) any of the following that is established or controlled by a governmental entity listed

in Subsection ~~[(27)(a)]~~ (28)(a) to carry out the public's business:

- (i) an office;
- (ii) a division;
- (iii) an agency;
- (iv) a board;
- (v) a bureau;
- (vi) a committee;
- (vii) a department;
- (viii) an advisory board;
- (ix) an administrative unit; or

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(x) a commission.

~~[(28)]~~ (29) "Governmental subdivision" means:

- (a) a county;
- (b) a city;
- (c) a town; or
- (d) another type of governmental subdivision authorized by the laws of this state.

~~[(29)]~~ (30) "Individual" means:

- (a) a natural person;
- (b) the estate of an incompetent individual; or
- (c) the estate of a deceased individual.

~~[(30)]~~ (31) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.

~~[(31)]~~ (32) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.

(b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.

~~[(32)]~~ (33) (a) "Member" means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:

- (i) in the articles of incorporation;
- (ii) in the bylaws;
- (iii) by a resolution of the board of directors; or
- (iv) by a resolution of the members of the nonprofit corporation.

(b) "Member" includes:

- (i) "voting member"; and
- (ii) a shareholder in a water company.

~~[(33)]~~ (34) "Membership" refers to the rights and obligations of a member or members.

~~[(34)]~~ (35) "Mutual benefit corporation" means a nonprofit corporation:

(a) that issues shares of stock to its members evidencing a right to receive distribution of water or otherwise representing property rights; or

(b) all of whose assets are contributed or acquired by or for the members of the

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nonprofit corporation or their predecessors in interest to serve the mutual purposes of the members.

~~[(35)]~~ (36) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:

- (a) is not a foreign nonprofit corporation; and
- (b) is incorporated under or subject to this chapter.

~~[(36)]~~ (37) "Notice" means the same as that term is defined in Section 16-6a-103.

~~[(37)]~~ (38) "Party related to a director" means:

- (a) the spouse of the director;
- (b) a child of the director;
- (c) a grandchild of the director;
- (d) a sibling of the director;
- (e) a parent of the director;
- (f) the spouse of an individual described in Subsections ~~[(37)(b)]~~ (38)(b) through (e);
- (g) an individual having the same home as the director;
- (h) a trust or estate of which the director or another individual specified in this

Subsection ~~[(37)]~~ (38) is a substantial beneficiary; or

(i) any of the following of which the director is a fiduciary:

- (i) a trust;
- (ii) an estate;
- (iii) an incompetent;
- (iv) a conservatee; or
- (v) a minor.

~~[(38)]~~ (39) "Person" means an:

- (a) individual; or
- (b) entity.

~~[(39)]~~ (40) "Principal office" means:

(a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its principal office in the most recent document on file with the division providing that information, including:

- (i) an annual report;

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(ii) an application for a certificate of authority; or

(iii) a notice of change of principal office; or

(b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered office.

~~[(40)]~~ (41) "Proceeding" includes:

(a) a civil suit;

(b) arbitration;

(c) mediation;

(d) a criminal action;

(e) an administrative action; or

(f) an investigatory action.

~~[(41)]~~ (42) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign nonprofit corporation, means the writing or other document is actually received:

(a) by the domestic or foreign nonprofit corporation at:

(i) its registered office in this state; or

(ii) its principal office;

(b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or

(c) by another person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

~~[(42)]~~ (43) (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and Voting, on which a nonprofit corporation determines the identity of the nonprofit corporation's members.

(b) The determination described in Subsection ~~[(42)(a)]~~ (43)(a) shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

~~[(43)]~~ (44) "Registered agent" means the registered agent of:

(a) a domestic nonprofit corporation; or

(b) a foreign nonprofit corporation.

~~[(44)]~~ (45) "Registered office" means the office within this state designated by a

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domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation;
- (b) an application for a certificate of authority; or
- (c) a notice of change of registered office.

~~[(45)]~~ (46) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:

- (a) the preparation and maintenance of:
  - (i) minutes of the meetings of:
    - (A) the board of directors; or
    - (B) the members; and
  - (ii) the other records and information required to be kept by the nonprofit corporation pursuant to Section 16-6a-1601; and

- (b) authenticating records of the nonprofit corporation.

~~[(46)]~~ (47) "Share" means a unit of interest in a nonprofit corporation.

~~[(47)]~~ (48) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.

~~[(48)]~~ (49) "State," when referring to a part of the United States, includes:

- (a) a state;
- (b) a commonwealth;
- (c) the District of Columbia;
- (d) an agency or governmental and political subdivision of a state, commonwealth, or

District of Columbia;

- (e) territory or insular possession of the United States; or
- (f) an agency or governmental and political subdivision of a territory or insular

possession of the United States.

~~[(49)]~~ (50) "Street address" means:

- (a) (i) street name and number;
- (ii) city or town; and
- (iii) United States post office zip code designation; or
- (b) if, by reason of rural location or otherwise, a street name, number, city, or town

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does not exist, an appropriate description other than that described in Subsection ~~[(49)(a)]~~ (50)(a) fixing as nearly as possible the actual physical location, but only if the information includes:

- (i) the rural free delivery route;
- (ii) the county; and
- (iii) the United States post office zip code designation.

~~[(50)]~~ (51) "Tribal nonprofit corporation" means a nonprofit corporation:

- (a) incorporated under the law of a tribe; and
- (b) that is at least 51% owned or controlled by the tribe.

~~[(51)]~~ (52) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

~~[(52)]~~ (53) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.

~~[(53)]~~ (54) "Vote" includes authorization by:

- (a) written ballot; and
- (b) written consent.

~~[(54)]~~ (55) (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.

(b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.

~~[(55)]~~ (56) (a) "Voting member" means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

(b) A person is not a voting member solely because of:

- (i) a right the person has as a delegate;
- (ii) a right the person has to designate a director; or
- (iii) a right the person has as a director.

(c) Except as the bylaws may otherwise provide, "voting member" includes a

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"shareholder" if the nonprofit corporation has shareholders.

~~[(56)]~~ (57) "Water company" means:

- (a) the same as that term is defined in Subsection 16-4-102(5); or
- (b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.

Section 2. Section **16-6a-1602** is amended to read:

### **16-6a-1602. Inspection of records by directors and members.**

(1) A director or member is entitled to inspect and copy any of the records of the nonprofit corporation described in Subsection 16-6a-1601(5):

- (a) during regular business hours;
- (b) at the nonprofit corporation's principal office; and
- (c) if the director or member gives the nonprofit corporation written demand, at least five business days before the date on which the member wishes to inspect and copy the records.

(2) In addition to the rights set forth in Subsection (1), a director or member is entitled to inspect and copy any of the other records of the nonprofit corporation described in Subsections 16-6a-1601(2) through (5):

- (a) during regular business hours;
- (b) at a reasonable location specified by the nonprofit corporation; and
- (c) at least five business days before the date on which the member wishes to inspect and copy the records, if the director or member:

- (i) meets the requirements of Subsection (3); and
- (ii) gives the nonprofit corporation written demand.

(3) A director or member may inspect and copy the records described in Subsection (2) only if:

- (a) the demand is made:
  - (i) in good faith; and
  - (ii) for a proper purpose;
- (b) the director or member describes with reasonable particularity the purpose and the records the director or member desires to inspect; and

(c) the records are directly connected with the described purpose.

(4) Notwithstanding Section 16-6a-102, for purposes of this section:

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(a) "member" includes:

- (i) a beneficial owner whose membership interest is held in a voting trust; and
- (ii) any other beneficial owner of a membership interest who establishes beneficial

ownership; and

(b) "proper purpose" means a purpose reasonably related to the demanding member's or director's interest as a member or director.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

- (a) the right of a director or member to inspect records under Section 16-6a-710;
- (b) the right of a member to inspect records to the same extent as any other litigant if

the member is in litigation with the nonprofit corporation; or

(c) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(7) A director or member may not use any information obtained through the inspection or copying of records permitted by Subsection (2) for any purposes other than those set forth in a demand made under Subsection (3).

Section 3. 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

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residential units within the project.

(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

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accordance with Section 57-8-13.

(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.

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(18) "Expandable condominium" means a condominium project to which additional 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) "Judicial foreclosure" means a foreclosure of a unit:

(a) for the nonpayment of an assessment;

(b) in the manner provided by law for the foreclosure of a mortgage on real property; and

(c) as provided in this chapter.

(23) "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.

(24) "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

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other units.

(25) "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.

(26) "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 reasonable rules covering the operation and maintenance of the property.

(27) "Management committee 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) (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.

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

(30) "Nonjudicial foreclosure" means the sale of a unit:

- (a) for the nonpayment of an assessment;
- (b) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and
- (c) as provided in this chapter.

(31) "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

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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.

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

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

(34) "Political sign" means any sign or document that advocates:

(a) the election or defeat of a candidate for public office; or

(b) the approval or defeat of a ballot proposition.

~~(34)~~ (35) "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.

~~(35)~~ (36) "Record," "recording," "recorded," and "recorder" have the meaning stated in Chapter 3, Recording of Documents.

~~(36)~~ (37) "Rentals" or "rental unit" means:

(a) a unit that:

(i) is not owned by an entity or trust; and

(ii) is occupied by an individual while the unit owner is not occupying the unit as the unit owner's primary residence; or

(b) an occupied unit owned by an entity or trust, regardless of who occupies the unit.

~~(37)~~ (38) "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.

~~(38)~~ (39) "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 Section 57-19-2.

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~~[(39)]~~ (40) "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.

~~[(40)]~~ (41) (a) "Unit" means a separate part of the property intended for any type of independent use, 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, in accordance with Subsection 57-8-13.4(3).

~~[(41)]~~ (42) "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.

~~[(42)]~~ (43) "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 condominium unit extend for the entire balance of the unexpired term or terms.

Section 4. Section **57-8-8.2** is amended to read:

### **57-8-8.2. Electric vehicle charging systems -- Restrictions -- Responsibilities.**

(1) As used in this section:

(a) "Charging system" means a device that is:

(i) used to provide electricity to an electric or hybrid electric vehicle; and

(ii) designed to ensure a safe connection between the electric grid and the vehicle.

(b) "General electrical contractor" means the same as that term is defined in Section 58-55-102.

(c) "Residential electrical contractor" means the same as that term is defined in Section 58-55-102.

(2) Notwithstanding any provision in an association's governing documents to the contrary, an association may not prohibit a unit owner from installing or using a charging system in:

(a) a parking space:

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- (i) assigned to the unit owner's unit; and
- (ii) used for the parking or storage of a vehicle or equipment; or
- (b) a limited common area parking space designated for the unit owner's exclusive use.
- (3) An association may:
  - (a) require a unit owner to submit an application for approval of the installation of a charging system;
  - (b) require the unit owner to agree in writing to:
    - (i) hire a general electrical contractor or residential electrical contractor to install the charging system; or
    - (ii) if a charging system is installed in a common area, provide reimbursement to the association for the actual cost of the increase in the association's insurance premium attributable to the installation or use of the charging system;
  - (c) require a charging system to comply with:
    - (i) the association's reasonable design criteria governing the dimensions, placement, or external appearance of the charging system; or
    - (ii) applicable building codes;
  - (d) impose a reasonable charge to cover costs associated with the review and permitting of a charging [station] system;
  - (e) impose a reasonable restriction on the installation and use of a charging [station] system that does not significantly:
    - (i) increase the cost of the charging [station] system; or
    - (ii) decrease the efficiency or performance of the charging [station] system; or
  - (f) require a unit owner to pay the costs associated with installation, metering, and use of the charging [station] system, including the cost of:
    - (i) electricity associated with the charging [station] system; and
    - (ii) damage to a general common area, a limited common area, or an area subject to the exclusive use of another unit owner that results from the installation, use, maintenance, repair, removal, or replacement of the charging [station] system.
- (4) A unit owner who installs a charging system shall disclose to a prospective buyer of the unit:
  - (a) the existence of the charging [station] system; and

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(b) the unit owner's related responsibilities under this section.

(5) Unless the unit owner and the association or the declarant otherwise agree:

(a) a charging [~~station~~] system installed under this section is the personal property of the unit owner of the unit with which the charging station is associated; and

(b) a unit owner who installs a charging [~~station~~] system shall, before transferring ownership of the owner's unit, unless the prospective buyer of the unit accepts ownership and all rights and responsibilities that apply to the charging station under this section:

(i) remove the charging [~~station~~] system; and

(ii) restore the premises to the condition before installation of the charging [~~station~~] system.

Section 5. Section **57-8-10.1** is amended to read:

### **57-8-10.1. Rental restrictions.**

(1) (a) Subject to Subsections (1)(b), (5), and (6), an association of unit owners may:

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

(ii) prohibit rentals in the condominium project.

(b) An association of unit owners that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a declaration or by amending the declaration.

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

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

(i) a unit owner in the military for the period of the unit owner's deployment;

(ii) a unit occupied by a unit owner's parent, child, or sibling;

(iii) a unit owner whose employer has relocated the unit owner for two years or less;

(iv) a unit owned by an entity that is occupied by an individual who:

(A) has voting rights under the entity's organizing documents; and

(B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

(v) a unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

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(A) a current resident of the unit; or

(B) the parent, child, or sibling of the current resident of the unit;

(b) a provision that allows a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of the county in which the condominium project is located to continue renting until:

(i) the unit owner occupies the unit;

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; or

(iii) the unit is transferred; and

(c) a requirement that the association of unit owners create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (2)(a) and (b); and

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b)(iii), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a unit by deed;

(b) the granting of a life estate in the unit; or

(c) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration or amendment to a declaration recorded before transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2).

(6) (a) Subsections (1) through (5) do not apply to:

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

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

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(iii) subject to Subsection (6)(b), a condominium project in which the initial declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association of unit owners:

- (A) adopts a rental restriction or prohibition; or
- (B) amends an existing rental restriction or prohibition.

(b) An association that adopts a rental restriction or amends an existing rental restriction or prohibition before May 9, 2017, is not required to include the exemption described in Subsection (2)(a)(iv).

(7) Notwithstanding this section, an association of unit owners may restrict or prohibit rentals without an exception described in Subsection (2) if:

- (a) the restriction or prohibition receives unanimous approval by all unit owners; and
- (b) when the restriction or prohibition requires an amendment to the association of unit owners' declaration, the association of unit owners fulfills all other requirements for amending the declaration described in the association of unit owners' governing documents.

(8) Except as provided in Subsection (9), an association of unit owners may not require a unit owner who owns a rental unit to:

- (a) obtain the association of unit owners' approval of a prospective renter;
- (b) give the association of unit owners:
  - (i) a copy of a rental application;
  - (ii) a copy of a renter's or prospective renter's credit information or credit report;
  - (iii) a copy of a renter's or prospective renter's background check; or
  - (iv) documentation to verify the renter's age; or
- (c) pay an additional assessment, fine, or fee because the unit is a rental unit.

(9) (a) A unit owner who owns a rental unit shall give an association of unit owners the documents described in Subsection (8)(b) if the unit owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

(b) If an association of unit owners' declaration lawfully prohibits or restricts occupancy of the units by a certain class of individuals, the association of unit owners may require a unit owner who owns a rental unit to give the association of unit owners the information described in Subsection (8)(b), if:

- (i) the information helps the association of unit owners determine whether the renter's

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occupancy of the unit complies with the association of unit owners' declaration; and

(ii) the association of unit owners uses the information to determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration.

(c) An association that permits at least 35% of the units in the association to be rental units may charge a unit owner who owns a rental unit an annual fee of up to \$250 to defray the association's additional administrative expenses directly related to a unit that is a rental unit.

(10) The provisions of Subsections (8) and (9) apply to an association of unit owners regardless of when the association of unit owners is created.

Section 6. Section **57-8a-102** is amended to read:

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

As used in this chapter:

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

(i) by the association;

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

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

(b) "Assessment" includes:

(i) a common expense; and

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

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

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

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

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

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

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

(3) "Board meeting" means a gathering of a board, whether in person or by means of

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electronic communication, at which the board can take binding action.

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

(5) "Common areas" means property that the association:

- (a) owns;
- (b) maintains;
- (c) repairs; or
- (d) administers.

(6) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(7) "Declarant":

(a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and

(b) includes the person's successor and assign.

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

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

(10) (a) "Governing documents" means a written instrument by which the association may:

(i) exercise powers; or

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

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association.

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

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

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

(12) "Judicial foreclosure" means a foreclosure of a lot:

(a) for the nonpayment of an assessment;

(b) in the manner provided by law for the foreclosure of a mortgage on real property;

and

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

(13) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

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

(15) "Lot" means:

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

(i) designated for separate ownership or occupancy; and

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

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

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

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

(16) (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.

(17) "Mixed-use project" means a project under this chapter that has both residential and commercial lots in the project.

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

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(a) for the nonpayment of an assessment;

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

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

(19) "Period of administrative control" means the period during which the person who filed the association's governing documents or the person's successor in interest retains authority to:

(a) appoint or remove members of the association's board of directors; or

(b) exercise power or authority assigned to the association under the association's governing documents.

(20) "Political sign" means any sign or document that advocates:

(a) the election or defeat of a candidate for public office; or

(b) the approval or defeat of a ballot proposition.

~~[(20)]~~ (21) "Rentals" or "rental lot" means:

(a) a lot that:

(i) is not owned by an entity or trust; and

(ii) is occupied by an individual while the lot owner is not occupying the lot as the lot owner's primary residence; or

(b) an occupied lot owned by an entity or trust, regardless of who occupies the lot.

~~[(21)]~~ (22) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.

(23) (a) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association that:

(i) is not set forth in a contract, easement, article of incorporation, bylaw, or declaration; and

(ii) governs:

(A) the conduct of persons; or

(B) the use, quality, type, design, or appearance of real property or personal property.

(b) "Rule" does not include the internal business operating procedures of a board.

~~[(22)]~~ (24) "Solar energy system" means:

(a) a system that is used to produce electric energy from sunlight; and

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(b) the components of the system described in Subsection [(22)(a)] (24)(a).

Section 7. Section **57-8a-105** is amended to read:

### **57-8a-105. Registration with Department of Commerce -- Department publication of educational materials.**

(1) As used in this section, "department" means the Department of Commerce created in Section 13-1-2.

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

(a) the name and address of the association;

(b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;

(c) contact information for the manager;

(d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) (a) During any period of noncompliance with the registration requirement described in Subsection (2) or the requirement for an updated registration described in Subsection (4):

(i) a lien may not arise under Section 57-8a-301; and

(ii) an association may not enforce an existing lien that arose under Section 57-8a-301.

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(b) A period of noncompliance with the registration requirement of Subsection (2) or with the updated registration requirement of Subsection (4) does not begin until after the expiration of the 90-day period specified in Subsection (2) or (4), respectively.

(c) An association that is not in compliance with the registration requirement described in Subsection (2) may end the period of noncompliance by registering with the department in the manner established by the department under Subsection (2).

(d) An association that is not in compliance with the updated registration requirement described in Subsection (4) may end the period of noncompliance by submitting to the department an updated registration in the manner established by the department under Subsection (4).

(e) Except as described in Subsection (5)(f), beginning on the date an association ends a period of noncompliance:

(i) a lien may arise under Section 57-8a-301 for any event that:

(A) occurred during the period of noncompliance; and

(B) would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements described in this section; and

(ii) an association may enforce a lien described in this Subsection (5)(e) or a lien that existed before the period of noncompliance.

(f) If an owner's residential lot is conveyed to an independent third party during a period of noncompliance described in this Subsection (5):

(i) a lien that arose under Section 57-8a-301 before the conveyance of the residential lot became final is extinguished when the conveyance of the residential lot becomes final; and

(ii) an event that occurred before the conveyance of the residential lot became final, and that would have given rise to a lien under Section 57-8a-301 had the association been in compliance with the registration requirements of this section, may not give rise to a lien under Section 57-8a-301 if the conveyance of the residential lot becomes final before the association ends the period of noncompliance.

(6) The department shall publish educational materials on the department's website providing, in simple and easy to understand language, a brief overview of state law governing associations, including:

(a) a description of the rights and responsibilities provided in this chapter to any party

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under the jurisdiction of an association; and

(b) instructions regarding how an association may be organized and dismantled in accordance with this chapter.

(7) Unless otherwise expressly exempted, this chapter applies to an association that registers with the department under this section.

Section 8. Section **57-8a-209** is amended to read:

### **57-8a-209. Rental restrictions.**

(1) (a) Subject to Subsections (1)(b), (5), (6), and (10), an association may:

- (i) create restrictions on the number and term of rentals in an association; or
- (ii) prohibit rentals in the association.

(b) An association that creates a rental restriction or prohibition in accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a recorded declaration of covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions.

(2) If an association prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

(a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner's lot:

- (i) a lot owner in the military for the period of the lot owner's deployment;
- (ii) a lot occupied by a lot owner's parent, child, or sibling;
- (iii) a lot owner whose employer has relocated the lot owner for two years or less;
- (iv) a lot owned by an entity that is occupied by an individual who:

(A) has voting rights under the entity's organizing documents; and

(B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

(v) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:

(A) the estate of a current resident of the lot; or

(B) the parent, child, or sibling of the current resident of the lot;

(b) a provision that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of

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the county in which the association is located to continue renting until:

(i) the lot owner occupies the lot;

(ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; or

(iii) the lot is transferred; and

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (2)(a) and (b); and

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b)(iii), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a lot by deed;

(b) the granting of a life estate in the lot; or

(c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2).

(6) (a) Subsections (1) through (5) do not apply to:

(i) an association that contains a time period unit as defined in Section 57-8-3;

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

(iii) subject to Subsection (6)(b), an association that is formed before May 12, 2009, unless, on or after May 12, 2015, the association:

(A) adopts a rental restriction or prohibition; or

(B) amends an existing rental restriction or prohibition.

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(b) An association that adopts a rental restriction or amends an existing rental restriction or prohibition before May 9, 2017, is not required to include the exemption described in Subsection (2)(a)(iv).

(7) Notwithstanding this section, an association may restrict or prohibit rentals without an exception described in Subsection (2) if:

(a) the restriction or prohibition receives unanimous approval by all lot owners; and

(b) when the restriction or prohibition requires an amendment to the association's recorded declaration of covenants, conditions, and restrictions, the association fulfills all other requirements for amending the recorded declaration of covenants, conditions, and restrictions described in the association's governing documents.

(8) Except as provided in Subsection (9), an association may not require a lot owner who owns a rental lot to:

(a) obtain the association's approval of a prospective renter;

(b) give the association:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age; or

(c) pay an additional assessment, fine, or fee because the lot is a rental lot.

(9) (a) A lot owner who owns a rental lot shall give an association the documents described in Subsection (8)(b) if the lot owner is required to provide the documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

(b) If an association's declaration of covenants, conditions, and restrictions lawfully prohibits or restricts occupancy of the lots by a certain class of individuals, the association may require a lot owner who owns a rental lot to give the association the information described in Subsection (8)(b), if:

(i) the information helps the association determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions; and

(ii) the association uses the information to determine whether the renter's occupancy of the lot complies with the association's declaration of covenants, conditions, and restrictions.

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(c) An association that permits at least 35% of the lots in the association to be rental lots may charge a lot owner who owns a rental lot an annual fee of up to \$250 to defray the association's additional administrative expenses directly related to a lot that is a rental lot.

(10) Notwithstanding Subsection (1)(a), an association may not restrict or prohibit the rental of an internal accessory dwelling unit, as defined in Section 10-9a-530, constructed within a lot owner's residential lot, if the internal accessory dwelling unit complies with all applicable:

- (a) land use ordinances;
- (b) building codes;
- (c) health codes; and
- (d) fire codes.

(11) The provisions of Subsections (8) through (10) apply to an association regardless of when the association is created.

Section 9. Section **57-8a-217** is amended to read:

**57-8a-217. Association rules, including design criteria -- Requirements and limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

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

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

- (i) this section;
- (ii) any limitation that the declaration imposes on the authority stated in Subsection (1)(a);
- (iii) the limitation on rules in Sections 57-8a-218 and 57-8a-219;
- (iv) the board's duty to exercise business judgment on behalf of:
  - (A) the association; and
  - (B) the lot owners in the association; ~~[and]~~
- (v) the right of the lot owners or declarant to disapprove the action under Subsection (4)~~[:]~~; and
- (vi) Subsection (7).

(2) Except as provided in Subsection (3), before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules ~~[and design criteria]~~ of the

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association, the board shall:

(a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is considering a change to a rule or design criterion;

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

(c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board meeting.

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

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

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

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

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

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

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

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

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

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

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

(ii) subject to the outcome of the meeting.

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(6) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under this section if the declaration reserves to the declarant the right to exempt the declarant.

(7) An action against an association or member of the association's board based upon failure to comply with the requirements of Subsection (2) shall be commenced no later than 18 months after the day on which the board took the challenged action under Subsection (2).

Section 10. Section **57-8a-218** is amended to read:

**57-8a-218. Equal treatment by rules required -- Limits on association rules and design criteria.**

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

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

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

(ii) differ between residential and nonresidential uses; and

(iii) for a lot that an owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals who may use the common areas and facilities as guests of the lot tenant or lot owner.

(2) (a) If a lot owner owns a rental lot and is in compliance with the association's governing documents and any rule that the association adopts under Subsection (4), a rule may not treat the lot owner differently because the lot owner owns a rental lot.

(b) Notwithstanding Subsection (2)(a), a rule may:

(i) limit or prohibit a rental lot owner from using the common areas for purposes other than attending an association meeting or managing the rental lot;

(ii) if the rental lot owner retains the right to use the association's common areas, even occasionally:

(A) charge a rental lot owner a fee to use the common areas; or

(B) for a lot that an owner leases for a term of less than 30 days, impose a reasonable limit on the number of individuals who may use the common areas and facilities as guests of the lot tenant or lot owner; or

(iii) include a provision in the association's governing documents that:

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(A) requires each tenant of a rental lot to abide by the terms of the governing documents; and

(B) holds the tenant and the rental lot owner jointly and severally liable for a violation of a provision of the governing documents.

(3) (a) A rule criterion may not abridge the rights of a lot owner to display a religious or holiday sign, symbol, or decoration:

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

(B) the exterior of the dwelling, unless the association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the exterior; or

(C) the front yard of the dwelling, unless the association has an ownership interest in, or a maintenance, repair, or replacement obligation for, the yard.

(b) Notwithstanding Subsection (3)(a), the association may adopt a reasonable time, place, and manner restriction with respect to a display that is:

(i) outside a dwelling on:

(A) a lot;

(B) the exterior of the dwelling; or

(C) the front yard of the dwelling; and

(ii) visible from outside the lot.

(4) (a) A rule may not prohibit a lot owner from displaying a political sign:

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

(B) the exterior of the dwelling, regardless of whether the association has an ownership interest in the exterior; or

(C) the front yard of the dwelling, regardless of whether the association has an ownership interest in the yard.

(b) A rule may not regulate the content of a political sign.

(c) Notwithstanding Subsection (4)(a), a rule may reasonably regulate the time, place, and manner of posting a political sign.

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(d) An association design provision may not establish design criteria for a political sign.

(5) (a) A rule may not prohibit a lot owner from displaying a for-sale sign:

(i) inside a dwelling on a lot; or

(ii) outside a dwelling on:

(A) a lot;

(B) the exterior of the dwelling, regardless of whether the association has an ownership interest in the exterior; or

(C) the front yard of the dwelling, regardless of whether the association has an ownership interest in the yard.

(b) Notwithstanding Subsection (5)(a), a rule may reasonably regulate the time, place, and manner of posting a for-sale sign.

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

(b) Notwithstanding Subsection (6)(a), an association may:

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

or

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

(A) size and facilities; and

(B) fair use of the common areas.

(7) (a) A rule may not interfere with a reasonable activity of a lot owner within the confines of a dwelling or lot, including backyard landscaping or amenities, to the extent that the activity is in compliance with local laws and ordinances, including nuisance laws and ordinances.

(b) Notwithstanding Subsection (7)(a), a rule may prohibit an activity within the confines of a dwelling or lot, including backyard landscaping or amenities, if the activity:

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

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

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

(C) generates excessive noise or traffic;

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

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

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

(c) If permitted by law, an association may adopt rules described in Subsection (7)(b) that affect the use of or behavior inside the dwelling.

(8) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.

(b) Notwithstanding Subsection (8)(a), an association may:

(i) change the common areas available to a lot owner;

(ii) adopt generally applicable rules for the use of common areas; or

(iii) deny use privileges to a lot owner who:

(A) is delinquent in paying assessments;

(B) abuses the common areas; or

(C) violates the governing documents.

(c) This Subsection (8) does not permit a rule that:

(i) alters the method of levying assessments; or

(ii) increases the amount of assessments as provided in the declaration.

(9) (a) Subject to Subsection (9)(b), a rule may not:

(i) prohibit the transfer of a lot; or

(ii) require the consent of the association or board to transfer a lot.

(b) Unless contrary to a declaration, a rule may require a minimum lease term.

(10) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

(b) The exemption in Subsection (10)(a):

(i) applies during the period of the lot owner's ownership of the lot; and

(ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (10)(a).

(11) A rule or action by the association or action by the board may not unreasonably impede a declarant's ability to satisfy existing development financing for community

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improvements and right to develop:

- (a) the project; or
- (b) other properties in the vicinity of the project.

(12) A rule or association or board action may not interfere with:

- (a) the use or operation of an amenity that the association does not own or control; or
- (b) the exercise of a right associated with an easement.

(13) A rule may not divest a lot owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.

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

- (a) regulate the use, maintenance, repair, replacement, and modification of common areas;
- (b) impose and receive any payment, fee, or charge for:
  - (i) the use, rental, or operation of the common areas, except limited common areas; and
  - (ii) a service provided to a lot owner;
- (c) impose a charge for a late payment of an assessment; or
- (d) provide for the indemnification of the association's officers and board consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(15) A rule may not prohibit a lot owner from installing a personal security camera immediately adjacent to the entryway, window, or other outside entry point of the owner's dwelling unit.

(16) ~~{[An]}~~(a) An association~~[-{ }]~~

~~[(a)]~~ shall adopt rules supporting water-efficient landscaping, including allowance for low water use on lawns during drought conditions~~[-and]~~.

(b) A rule may not:

(i) prohibit or restrict the conversion of a grass park strip to water-efficient landscaping[-]; or

(ii) prohibit low water use on lawns during drought conditions.

(c) An association subject to this chapter and formed before March 5, 2023, shall adopt rules required under Subsection (16)(a) before June 30, 2023.

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(17) (a) Except as provided in Subsection (17)(b), a rule may not prohibit the owner of a residential lot from constructing an internal accessory dwelling unit, as defined in Section 10-9a-530, within the owner's residential lot.

(b) Subsection (17)(a) does not apply if the construction would violate:

(i) a local land use ordinance;

(ii) a building code;

(iii) a health code; or

(iv) a fire code.

(18) A rule shall be reasonable.

(19) A declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1), (2), (6), and (8) through (14), except Subsection (1)(b)(ii).

(20) A rule may not be inconsistent with a provision of the association's declaration, bylaws, or articles of incorporation.

(21) This section applies to an association regardless of when the association is created.

Section 11. Section **57-8a-701** is amended to read:

**57-8a-701. Solar energy system -- Prohibition or restriction in declaration or association rule.**

(1) As used in this section, "detached dwelling" means a detached dwelling for which the association does not have an ownership interest in the detached dwelling's roof.

(2) (a) A governing document other than a declaration may not prohibit an owner of a lot with:

(i) a detached dwelling from installing a solar energy system; or

(ii) a dwelling attached to other dwellings from installing a solar energy system, if:

(A) the association does not have an ownership interest in the dwelling's roof or building exterior;

(B) the association does not have a maintenance, repair, or replacement obligation in the dwelling's roof or building exterior; and

(C) all lot owners with attached dwellings in the building agree to the installation of the solar energy system.

(b) A governing document other than a declaration or an association rule may not

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restrict an owner of a lot with:

- (i) a detached dwelling from installing a solar energy system on the owner's lot; or
- (ii) a dwelling attached to other dwellings from installing a solar energy system on the

roof of the dwelling's building, if:

(A) the association does not have an ownership interest in the dwelling's roof or building exterior;

(B) the association does not have a maintenance, repair, or replacement obligation in the dwelling's roof or building exterior; and

(C) all lot owners with attached dwellings in the building agree to the installation of the solar energy system.

(3) A declaration may, for a lot with a detached dwelling:

- (a) prohibit a lot owner from installing a solar energy system; or
- (b) impose a restriction other than a prohibition on a solar energy system's size,

location, or manner of placement if the restriction:

- (i) decreases the solar energy system's production by 5% or less;
- (ii) increases the solar energy system's cost of installation by 5% or less; and
- (iii) complies with Subsection (6).

(4) (a) If a declaration does not expressly prohibit the installation of a solar energy system on a lot with a detached dwelling, an association may not amend the declaration to impose a prohibition on the installation of a solar energy system unless the association approves the prohibition by a vote of greater than 67% of the allocated voting interests of the lot owners in the association.

(b) An association may amend an existing provision in a declaration that prohibits the installation of a solar energy system on a lot with a detached dwelling if the association approves the amendment by a vote of greater than 67% of the allocated voting interests of the lot owners in the association.

(5) An association may, by association rule, for a lot with a detached dwelling, impose a restriction other than a prohibition on a lot owner's installation of a solar energy system if the restriction:

- (a) complies with Subsection (6);
- (b) decreases the solar energy system's production by 5% or less; and

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(c) increases the solar energy system's cost of installation by 5% or less.

(6) A declaration or an association rule may require an owner of a [detached] dwelling that installs a solar energy system on the owner's lot:

(a) to install a solar energy system that, or install the solar energy system in a manner that:

(i) complies with applicable health, safety, and building requirements established by the state or a political subdivision of the state;

(ii) if the solar energy system is used to heat water, is certified by:

(A) the Solar Rating and Certification Corporation; or

(B) a nationally recognized solar certification entity;

(iii) if the solar energy system is used to produce electricity, complies with applicable safety and performance standards established by:

(A) the National Electric Code;

(B) the Institute of Electrical and Electronics Engineers;

(C) Underwriters Laboratories;

(D) an accredited electrical testing laboratory; or

(E) the state or a political subdivision of the state;

(iv) if the solar energy system is mounted on a roof:

(A) does not extend above the roof line; or

(B) has panel frame, support bracket, or visible piping or wiring that has a color or texture that is similar to the roof material; or

(v) if the solar energy system is mounted on the ground, is not visible from the street that a lot fronts;

(b) to pay any reasonable cost or expense incurred by the association to review an application to install a solar energy system;

(c) be responsible, jointly and severally with any subsequent owner of the lot while the violation of the rule or requirement occurs, for any cost or expense incurred by the association to enforce a declaration requirement or association rule; or

(d) as a condition of installing a solar energy system, to record a deed restriction against the owner's lot that runs with the land that requires the current owner of the lot to indemnify or reimburse the association or a member of the association for any loss or damage

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caused by the installation, maintenance, or use of the solar energy system, including costs and reasonable attorney fees incurred by the association or a member of the association.

Section 12. Section **57-8a-802** is amended to read:

### **57-8a-802. Electric vehicle charging systems -- Restrictions -- Responsibilities.**

(1) Notwithstanding any provision in an association's governing documents to the contrary, an association may not prohibit a lot owner from installing or using a charging system in:

(a) a parking space:

(i) on the lot owner's lot; and

(ii) used for the parking or storage of a vehicle or equipment; or

(b) a limited common area parking space designated for the lot owner's exclusive use.

(2) An association may:

(a) require a lot owner to submit an application for approval of the installation of a charging system;

(b) require the lot owner to agree in writing to:

(i) hire a general electrical contractor or residential electrical contractor to install the charging system; or

(ii) if a charging system is installed in a common area, provide reimbursement to the association for the actual cost of the increase in the association's insurance premium attributable to the installation or use of the charging system;

(c) require a charging system to comply with:

(i) the association's reasonable design criteria governing the dimensions, placement, or external appearance of the charging system; or

(ii) applicable building codes;

(d) impose a reasonable charge to cover costs associated with the review and permitting of a charging [station] system;

(e) impose a reasonable restriction on the installation and use of a charging [station] system that does not significantly:

(i) increase the cost of the charging [station] system; or

(ii) decrease the efficiency or performance of the charging [station] system; or

(f) require a lot owner to pay the costs associated with installation, metering, and use of

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the charging [~~station~~] system, including the cost of:

(i) electricity associated with the charging [~~station~~] system; and

(ii) damage to a general common area, a limited common area, or an area subject to the exclusive use of another lot owner that results from the installation, use, maintenance, repair, removal, or replacement of the charging [~~station~~] system.

(3) A lot owner who installs a charging system shall disclose to a prospective buyer of the lot:

(a) the existence of the charging [~~station~~] system; and

(b) the lot owner's related responsibilities under this section.

(4) Unless the lot owner and the association or the declarant otherwise agree:

(a) a charging [~~station~~] system installed under this section is the personal property of the lot owner of the lot with which the charging [~~station~~] system is associated; and

(b) a lot owner who installs a charging [~~station~~] system shall, before transferring ownership of the owner's lot, unless the prospective buyer of the lot accepts ownership and all rights and responsibilities that apply to the charging [~~station~~] system under this section:

(i) remove the charging [~~station~~] system; and

(ii) restore the premises to the condition before installation of the charging [~~station~~] system.