

Effective 5/9/2017

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

- (1) As used in this section, "organizational documents" means the documents related to the formation or operation of a nonprofit corporation or other legal entity formed by the management committee or the declarant.
- (2) If permitted, required, or acknowledged by the declaration, the management committee may organize an association of unit owners as:
 - (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act; or
 - (b) any other entity organized under other law.
- (3) To the extent possible, organizational documents for a nonprofit corporation or other entity formed in accordance with Subsection (2) may not conflict with the rights and obligations found in the declaration or any of the association of unit owners' bylaws recorded at the time of the formation of a nonprofit corporation or other entity.
- (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the organizational documents of a nonprofit corporation or other entity formed in accordance with Subsection (2) may include an additional indemnification and liability limitation provision for:
 - (a) management committee members or officers; or
 - (b) similar persons in a position of control.
- (5) In the event of a conflict between this chapter's provisions, a statute under which the association of unit owners is organized, documents concerning the organization of the association of unit owners as a nonprofit corporation or other entity, the plat, the declaration, the bylaws, and rules or policies of the association of unit owners, the following order prevails:
 - (a) this chapter controls over a conflicting provision found in any of the sources listed in Subsections (5)(b) through (f);
 - (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources listed in Subsections (5)(c) through (f);
 - (c) the plat and the declaration control equally over a conflicting provision in any of the sources listed in Subsections (5)(d) through (f);
 - (d) an organizational document filed in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized, controls over a conflicting provision in any of the sources listed in Subsections (5)(e) through (f);
 - (e) the bylaws control over a conflicting provision in a source described in Subsection (5)(f); and
 - (f) a rule or policy of the association of unit owners that is adopted by the management committee yields to a conflicting provision in any of the sources listed in Subsections (5)(a) through (e).
- (6) Immediately upon the legal formation of an entity in compliance with this section, the association and unit owners are subject to any right, obligation, procedure, and remedy applicable to that entity.
- (7)
 - (a) The management committee may modify a form "articles of incorporation" or similar organizational document attached to a declaration for filing or re-filing if the modified version is otherwise consistent with this section's provisions.
 - (b) An organizational document attached to a declaration that is filed and concerns the organization of an entity may be amended in accordance with the organizational document's

own terms or any applicable law, regardless of whether the organizational document is recorded.

- (c) Except for amended bylaws, an initial or amended organizational document properly filed with the state does not need to be recorded.
- (8) This section applies to the reorganization of an association of unit owners previously organized if the entity's status is terminated or dissolved without the possibility of reinstatement.
- (9)
 - (a) This section applies to a condominium project regardless of when the condominium project is established.
 - (b) This section does not validate or invalidate the organization of an association of unit owners that occurred before May 5, 2008, regardless of whether the association of unit owners was otherwise in compliance with this section.

Amended by Chapter 324, 2017 General Session