

CONDOMINIUM PRIVACY

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Bryan D. Holladay

AN ACT RELATING TO THE CONDOMINIUM OWNERSHIP ACT; REQUIRING NOTICE TO CONDOMINIUM OCCUPANT PRIOR TO ENTRY BY MANAGEMENT; EXPANDING THE DEFINITION OF CRIMINAL TRESPASS; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

57-8-7, as last amended by Chapter 173, Laws of Utah 1975

57-8-8, as enacted by Chapter 111, Laws of Utah 1963

57-8-10, as last amended by Chapter 12, Laws of Utah 1992

76-6-206, as last amended by Chapter 142, Laws of Utah 1996

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

Section 1. Section **57-8-7** is amended to read:

57-8-7. Common areas and facilities.

(1) As used in this section:

(a) "emergency repairs" means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to the common areas and facilities or to another unit or units; and

(b) "reasonable notice" means written notice which is hand delivered to the unit at least 48 hours prior to the proposed entry.

~~[(+)]~~ (2) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentages or fractions expressed in the declaration. The declaration may allocate to each unit an undivided interest in the common areas and facilities proportionate to either the size or par value of ~~[such]~~ the unit. Otherwise, the declaration shall allocate to each unit an equal undivided interest in the common areas and facilities, subject to the following exception: each

28 convertible space depicted on the record of survey map shall be allocated an undivided interest in
29 the common areas and facilities proportionate to the size of [such] the space vis-a-vis the aggregate
30 size of all units so depicted, while the remaining undivided interest in the common areas and
31 facilities shall be allocated equally among the other units so depicted. The undivided interest in
32 the common areas and facilities allocated in accordance with this Subsection (2) shall add up to
33 one if stated as fractions or to 100% if stated as percentages. If an equal undivided interest in the
34 common areas and facilities is allocated to each unit, the declaration may simply state that fact and
35 need not express the fraction or percentage so allocated. Otherwise, the undivided interest allocated
36 to each unit shall be reflected by a table in the declaration, or by an exhibit or schedule
37 accompanying the declaration and recorded simultaneously with it, containing columns. The first
38 column shall identify the units, listing them serially or grouping them together in the case of units
39 to which identical undivided interests are allocated. Corresponding figures in the second and third
40 columns shall set forth the respective sizes or par values of those units and the fraction or
41 percentage of undivided interest in the common areas and facilities allocated thereto.

42 [~~(2)~~] (3) Except as otherwise expressly provided by this act, the undivided interest of each
43 unit owner in the common areas and facilities as expressed in the declaration shall have a
44 permanent character and shall not be altered without the consent of all of the unit owners expressed
45 in an amended declaration duly recorded. The undivided interest in the common areas and facilities
46 shall not be separated from the unit to which it appertains and shall be [~~deemed~~] considered to be
47 conveyed or encumbered or released from liens with the unit even though such interest is not
48 expressly mentioned or described in the conveyance or other instrument. A time period unit may
49 not be further divided into shorter time periods by a conveyance or disclaimer.

50 [~~(3)~~] (4) The common areas and facilities shall remain undivided and no unit owner or any
51 other person shall bring any action for partition or division of any part thereof, unless the property
52 has been removed from the provisions of this act as provided in Sections 57-8-22 and 57-8-31.
53 Any covenants to the contrary shall be null and void.

54 [~~(4)~~] (5) Each unit owner may use the common areas and facilities in accordance with the
55 purpose for which they were intended without hindering or encroaching upon the lawful rights of
56 the other unit owners.

57 [~~(5)~~] (6) The necessary work of maintenance, repair, and replacement of the common areas
58 and facilities and the making of any additions or improvements thereon shall be carried out only

59 as provided in this act or in the declaration or bylaws.

60 ~~[(6)]~~ (7) The manager or management committee shall have the [irrevocable] right to have
61 access to each unit from time to time during reasonable hours and after reasonable notice to the
62 occupant of the unit being entered, as may be necessary for the maintenance, repair, or replacement
63 of any of the common areas and facilities or for making emergency repairs necessary to prevent
64 damage to the common areas and facilities or to another unit or units.

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

66 **57-8-8. Compliance with covenants, bylaws and/or house rules and administrative**
67 **provisions.**

68 [Each] Subject to reasonable compliance therewith by the manager and the management
69 committee, each unit owner shall reasonably comply [strictly] with the covenants, conditions, and
70 restrictions as set forth in the declaration or in the deed to his unit, and with the bylaws and/or
71 house rules and with the administrative rules and regulations drafted pursuant thereto, as either of
72 the same may be lawfully amended from time to time, and failure to comply shall be ground for
73 an action to recover sums due for damages or injunctive relief or both, maintainable by the
74 manager or management committee on behalf of the unit owners, or in a proper case, by an
75 aggrieved unit owner.

76 Section 3. Section **57-8-10** is amended to read:

77 **57-8-10. Contents of declaration.**

78 (1) Prior to the conveyance of any unit in a condominium project, a declaration shall be
79 recorded that contains the covenants, conditions, and restrictions relating to the project that shall
80 be enforceable equitable servitudes, where reasonable, and which shall run with the land. Unless
81 otherwise provided, these servitudes may be enforced by any unit owner and his successors in
82 interest.

83 (2) (a) For every condominium project:

84 (i) The declaration shall include a description of the land or interests in real property
85 included within the project.

86 (ii) The declaration shall contain a description of any buildings, which states the number
87 of storeys and basements, the number of units, the principal materials of which the building is or
88 is to be constructed, and a description of all other significant improvements contained or to be
89 contained in the project.

90 (iii) The declaration shall contain the unit number of each unit, the square footage of each
91 unit, and any other description or information necessary to properly identify each unit.

92 (iv) The declaration shall describe the common areas and facilities of the project.

93 (v) The declaration shall describe any limited common areas and facilities and shall state
94 to which units the use of the common areas and facilities is reserved.

95 (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other
96 apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall
97 constitute a limited common area and facility appertaining to that unit exclusively, whether or not
98 the declaration makes such a provision.

99 (c) The record of survey map recorded with the declaration may provide or supplement the
100 information required under Subsections (2)(a) and (b).

101 (d) (i) The declaration shall include the percentage or fraction of undivided interest in the
102 common areas and facilities appurtenant to each unit and its owner for all purposes, including
103 voting, derived and allocated in accordance with Subsection 57-8-7[(1)](2).

104 (ii) If any use restrictions are to apply, the declaration shall state the purposes for which
105 the units are intended and restricted as to use.

106 (iii) (A) The declaration shall include the name of a person to receive service of process
107 on behalf of the project, in the cases provided by this chapter, together with the residence or place
108 of business of that person.

109 (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall
110 maintain a place of business within, this state.

111 (iv) The declaration shall describe the method by which it may be amended consistent with
112 this chapter.

113 (v) Any further matters in connection with the property may be included in the declaration,
114 which the person or persons executing the declaration may consider desirable consistent with this
115 chapter.

116 (vi) The declaration shall contain a statement of intention that this chapter applies to the
117 property.

118 (3) (a) If the condominium project contains any convertible land:

119 (i) The declaration shall contain a legal description by metes and bounds of each area of
120 convertible land within the condominium project.

121 (ii) The declaration shall state the maximum number of units that may be created within
122 each area of convertible land.

123 (iii) (A) The declaration shall state, with respect to each area of convertible land, the
124 maximum percentage of the aggregate land and floor area of all units that may be created and the
125 use of which will not or may not be restricted exclusively to residential purposes.

126 (B) The statements described in Subsection (3)(a)(iii)(A) need not be supplied if none of
127 the units on other portions of the land within the project are restricted exclusively to residential
128 use.

129 (iv) The declaration shall state the extent to which any structure erected on any convertible
130 land will be compatible with structures on other portions of the land within the condominium
131 project in terms of quality of construction, the principal materials to be used, and architectural
132 style.

133 (v) The declaration shall describe all other improvements that may be made on each area
134 of convertible land within the condominium project.

135 (vi) The declaration shall state that any units created within each area of convertible land
136 will be substantially identical to the units on other portions of the land within the project or it shall
137 describe in detail what other type of units may be created.

138 (vii) The declaration shall describe the declarant's reserved right, if any, to create limited
139 common areas and facilities within any convertible land in terms of the types, sizes, and maximum
140 number of the limited common areas within each convertible land.

141 (b) The record of survey map recorded with the declaration may provide or supplement
142 the information required under Subsection (3)(a).

143 (4) If the condominium is an expandable condominium project:

144 (a) (i) (A) The declaration shall contain an explicit reservation of an option to expand the
145 project.

146 (B) The declaration shall include a statement of any limitations on the option to expand,
147 including a statement as to whether the consent of any unit owners shall be required and, a
148 statement as to the method by which consent shall be ascertained, or a statement that there are no
149 such limitations.

150 (ii) The declaration shall include a time limit, not exceeding seven years from the date of
151 the recording of the declaration, upon which the option to expand the condominium project shall

152 expire, together with a statement of any circumstances which will terminate the option prior to
153 expiration of the specified time limits.

154 (iii) The declaration shall contain a legal description by metes and bounds of all land that
155 may be added to the condominium project, which is known as additional land.

156 (iv) The declaration shall state:

157 (A) if any of the additional land is added to the condominium project, whether all of it or
158 any particular portion of it must be added;

159 (B) any limitations as to what portions may be added; or

160 (C) a statement that there are no such limitations.

161 (v) The declaration shall include a statement as to whether portions of the additional land
162 may be added to the condominium project at different times, together with any limitations fixing
163 the boundaries of those portions by legal descriptions setting forth the metes and bounds of these
164 lands and regulating the order in which they may be added to the condominium project.

165 (vi) The declaration shall include a statement of any limitations as to the locations of any
166 improvements that may be made on any portions of the additional land added to the condominium
167 project, or a statement that no assurances are made in that regard.

168 (vii) The declaration shall state the maximum number of units that may be created on the
169 additional land. If portions of the additional land may be added to the condominium project and
170 the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the declaration
171 shall also state the maximum number of units that may be created on each portion added to the
172 condominium project. If portions of the additional land may be added to the condominium project
173 and the boundaries of those portions are not fixed in accordance with Subsection (4)(a)(v), then
174 the declaration shall also state the maximum number of units per acre that may be created on any
175 portion added to the condominium project.

176 (viii) With respect to the additional land and to any portion of it that may be added to the
177 condominium project, the declaration shall state the maximum percentage of the aggregate land
178 and floor area of all units that may be created on it, the use of which will not or may not be
179 restricted exclusively to residential purposes. However, these statements need not be supplied if
180 none of the units on the land originally within the project are restricted exclusively to residential
181 use.

182 (ix) The declaration shall state the extent to which any structures erected on any portion

183 of the additional land added to the condominium project will be compatible with structures on the
184 land originally within the project in terms of quality of construction, the principal materials to be
185 used, and architectural style. The declaration may also state that no assurances are made in those
186 regards.

187 (x) The declaration shall describe all other improvements that will be made on any portion
188 of the additional land added to the condominium project, or it shall contain a statement of any
189 limitations as to what other improvements may be made on it. The declaration may also state that
190 no assurances are made in that regard.

191 (xi) The declaration shall contain a statement that any units created on any portion of the
192 additional land added to the condominium project will be substantially identical to the units on the
193 land originally within the project, or a statement of any limitations as to what types of units may
194 be created on it. The declaration may also contain a statement that no assurances are made in that
195 regard.

196 (xii) The declaration shall describe the declarant's reserved right, if any, to create limited
197 common areas and facilities within any portion of the additional land added to the condominium
198 project, in terms of the types, sizes, and maximum number of limited common areas within each
199 portion. The declaration may also state that no assurances are made in those regards.

200 (b) The record of survey map recorded with the declaration may provide or supplement
201 the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through (a)(xii).

202 (5) If the condominium project is a contractible condominium:

203 (a) (i) The declaration shall contain an explicit reservation of an option to contract the
204 condominium project.

205 (ii) The declaration shall contain a statement of any limitations on the option to contract,
206 including a statement as to whether the consent of any unit owners shall be required, and if so, a
207 statement as to the method by which this consent shall be ascertained. The declaration may also
208 contain a statement that there are no such limitations.

209 (iii) The declaration shall state the time limit, not exceeding seven years from the
210 recording of the declaration, upon which the option to contract the condominium project shall
211 expire, together with a statement of any circumstances which will terminate this option prior to
212 expiration of the specified time limit.

213 (b) (i) The declaration shall include a legal description by metes and bounds of all land that

214 may be withdrawn from the condominium project, which is known as withdrawable land.

215 (ii) The declaration shall include a statement as to whether portions of the withdrawable
216 land may be withdrawn from the condominium project at different times, together with any
217 limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and
218 bounds and regulating the order in which they may be withdrawn from the condominium project.

219 (iii) The declaration shall include a legal description by metes and bounds of all of the land
220 within the condominium project to which the option to contract the project does not extend.

221 (c) The record of survey map recorded with the declaration may provide or supplement the
222 information required under Subsection (5)(b).

223 (6) (a) If the condominium project is a leasehold condominium, then with respect to any
224 ground lease or other leases the expiration or termination of which will or may terminate or
225 contract the condominium project:

226 (i) The declaration shall include recording information enabling the location of each lease
227 in the official records of the county recorder.

228 (ii) The declaration shall include the date upon which each lease is due to expire.

229 (iii) The declaration shall state whether any land or improvements will be owned by the
230 unit owners in fee simple. If there is to be fee simple ownership, the declaration shall include:

231 (A) a description of the land or improvements, including without limitation, a legal
232 description by metes and bounds of the land; or

233 (B) a statement of any rights the unit owners have to remove these improvements within
234 a reasonable time after the expiration or termination of the lease or leases involved, or a statement
235 that they shall have no such rights.

236 (iv) The declaration shall include a statement of the rights the unit owners have to extend
237 or renew any of the leases or to redeem or purchase any of the reversions, or a statement that they
238 have no such rights.

239 (b) After the recording of the declaration, no lessor who executed the declaration, and no
240 successor in interest to this lessor, has any right or power to terminate any part of the leasehold
241 interest of any unit owner who:

242 (i) makes timely payment of his share of the rent to the persons designated in the
243 declaration for the receipt of the rent; and

244 (ii) otherwise complies with all covenants which would entitle the lessor to terminate the

245 lease if they were violated.

246 (7) (a) If the condominium project contains time period units, the declaration shall also
247 contain the location of each condominium unit in the calendar year. This information shall be set
248 out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7[(1)](2), if the
249 exhibit or schedule accompanies the declaration.

250 (b) The declaration shall also put timeshare owners on notice that tax notices will be sent
251 to the management committee, not each timeshare owner.

252 (c) The time period units created with respect to any given physical unit shall be such that
253 the aggregate of the durations involved constitute a full calendar year.

254 (8) (a) The declaration, bylaws, and record of survey map shall be duly executed and
255 acknowledged by all of the owners and any lessees of the land which is made subject to this
256 chapter.

257 (b) As used in Subsection (8)(a), "owners and lessees" does not include, in their respective
258 capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder,
259 any person having an equitable interest under any contract for the sale or lease of a condominium
260 unit, or any lessee whose leasehold interest does not extend to any portion of the common areas
261 and facilities.

262 Section 4. Section **76-6-206** is amended to read:

263 **76-6-206. Criminal trespass.**

264 (1) For purposes of this section "enter" means intrusion of the entire body.

265 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
266 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204:

267 (a) he enters or remains unlawfully on property and:

268 (i) intends to cause annoyance or injury to any person or damage to any property, including
269 the use of graffiti as defined in Section 76-6-107;

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

271 (iii) is reckless as to whether his presence will cause fear for the safety of another; [or]

272 (b) knowing his entry or presence is unlawful, he enters or remains on property as to which
273 notice against entering is given by:

274 (i) personal communication to the actor by the owner or someone with apparent authority
275 to act for the owner;

- 276 (ii) fencing or other enclosure obviously designed to exclude intruders; or
- 277 (iii) posting of signs reasonably likely to come to the attention of intruders[.]; or
- 278 (c) he enters a condominium unit in violation of Subsection 57-8-7(7).
- 279 (3) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed
- 280 in a dwelling, in which event it is a class B misdemeanor.
- 281 (b) A violation of Subsection (2)(b) is an infraction.
- 282 (4) It is a defense to prosecution under this section that the:
- 283 (a) property was open to the public when the actor entered or remained; and
- 284 (b) actor's conduct did not substantially interfere with the owner's use of the property.

Legislative Review Note
as of 1-28-00 11:20 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel