

CONDOMINIUM LAW AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

This act modifies the Real Estate Code. The act adds definitions. The act entitles the association of unit owners to recover all expenses incurred by the association in collecting unpaid assessments, attorneys' fees, and other fees associated with collection. The act provides that upon failure to pay an assessment, the association may terminate an owner's utility services and access and use of recreational facilities until payment is received unless an owner has requested an informal hearing to dispute the assessment. The act provides the association the opportunity to collect all future lease payments from a tenant who fails to pay any assessment for a period of more than 30 days. The act adds provisions for setting up an account for assessment funds paid to the association. The act indicates that funds received are to be disbursed to the association until the assessment is paid in full, after which any remaining funds will be paid to the unit owner. The act provides an arbitration provision. The act makes technical changes.

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

AMENDS:

57-8-3, as last amended by Chapter 116, Laws of Utah 1994

57-8-7, as last amended by Chapters 99 and 132, Laws of Utah 2000

57-8-10, as last amended by Chapter 132, Laws of Utah 2000

57-8-13, as last amended by Chapter 173, Laws of Utah 1975

57-8-13.2, as last amended by Chapter 39, Laws of Utah 1996

57-8-13.6, as enacted by Chapter 173, Laws of Utah 1975

57-8-13.10, as last amended by Chapter 12, Laws of Utah 1992

57-8-14, as enacted by Chapter 111, Laws of Utah 1963

57-8-20, as last amended by Chapter 3, Laws of Utah 1986

57-8-21, as enacted by Chapter 111, Laws of Utah 1963

57-8-27, as last amended by Chapter 84, Laws of Utah 1999

57-8-35, as last amended by Chapter 142, Laws of Utah 1997

57-8-36, as enacted by Chapter 173, Laws of Utah 1975

ENACTS:

57-8-38, Utah Code Annotated 1953

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

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

57-8-3. Definitions.

As used in this chapter:

(1) "Assessment" means any charge imposed by the association, including common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter.

~~[(1)]~~ (2) "Association of unit owners" means all of the unit owners acting as a group in accordance with the declaration and bylaws.

~~[(2)]~~ (3) "Building" means a building, containing units, and comprising a part of the property.

~~[(3)]~~ (4) "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.

~~[(4)]~~ (5) "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.

~~[(5)]~~ (6) "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.

~~[(6)]~~ (7) "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.

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

~~[(7)]~~ (9) "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.

~~[(8)]~~ (10) "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.

~~[(9)]~~ (11) "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.

~~[(10)]~~ (12) "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.

~~[(11)]~~ (13) "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~~[-but not limited to,]~~ limited common areas and facilities in accordance with this chapter.

~~[(12)]~~ (14) "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.

~~[(13)]~~ (15) "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.

~~[(14)]~~ (16) "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.

~~[(15)]~~ (17) "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.

~~[(16)]~~ (18) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

~~[(17)]~~ (19) "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.

~~[(18)]~~ (20) "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.

~~[(19)]~~ (21) "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~~[, but need not,]~~ be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.

~~[(20)]~~ (22) "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

~~[(21)]~~ (23) "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.

~~[(22)]~~ (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title 57, Chapter 3, Recording of Documents.

~~[(23)] "Record of survey map" means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.]~~

~~[(24)]~~ (25) "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~~[-without limitation,]~~ attic, basement, or garage space may~~[-but need not,]~~ 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.

~~[(25)]~~ (26) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a ~~[physical]~~ unit is separately owned and includes a timeshare estate as defined in Subsection 57-19-2(17).

~~[(26)]~~ (27) "Unit" means either a separate physical part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or a time period unit, as the context may require. A convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A proposed condominium unit under an expandable condominium project, not constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6 are met.

~~[(27)]~~ (28) "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.

~~[(28)]~~ (29) "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 2. 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 24 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 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 convertible space depicted on the [~~record of survey map~~] condominium plat shall be allocated an undivided interest in the common areas and facilities proportionate to the size of the space vis-a-vis the aggregate size of all units so depicted, while the remaining undivided interest in the common areas and facilities shall be allocated equally among the other units so depicted. The undivided interest in the common areas and facilities allocated in accordance with this Subsection (2) shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal undivided interest in the common areas and facilities is allocated to each unit, the declaration may simply state that fact and need not express the fraction or percentage so allocated. Otherwise, the undivided interest allocated to each unit shall be reflected by a table in the declaration, or by an exhibit or schedule accompanying the declaration and recorded simultaneously with it, containing columns. The first column shall identify the units, listing them serially or grouping them together in the case of units to which identical undivided interests are allocated. Corresponding figures in the second and third columns shall set forth the respective sizes or par values of those units and the fraction or percentage of undivided interest in the common areas and facilities allocated thereto.

(3) Except as otherwise expressly provided by this act, the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of two-thirds of the unit owners expressed in an amended declaration duly recorded. The undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains and shall be considered to be conveyed or encumbered or released from liens with the unit even though such interest is not

expressly mentioned or described in the conveyance or other instrument. A time period unit may not be further divided into shorter time periods by a conveyance or disclaimer.

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

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

(6) The necessary work of maintenance, repair, and replacement of the common areas and facilities and the making of any additions or improvements thereon shall be carried out only as provided in this act or in the declaration or bylaws.

(7) The manager or management committee shall have the right to have access to each unit:

(a) from time to time during reasonable hours and after reasonable notice to the occupant of the unit being entered, as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities; or

(b) for making emergency repairs necessary to prevent damage to the common areas and facilities or to another unit or units, provided that a reasonable effort is made to provide notice to the occupant of the unit prior to entry.

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

57-8-10. Contents of declaration.

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

(2) (a) For every condominium project:

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

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

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

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

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

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

(c) The [~~record of survey map~~] condominium plat recorded with the declaration may provide or supplement the information required under Subsections (2)(a) and (b).

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

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

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

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

(iv) The declaration shall describe the method by which it may be amended consistent

with this chapter.

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

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

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

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

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

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

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

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

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

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

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

maximum number of the limited common areas within each convertible land.

(b) The [~~record of survey map~~] condominium plat recorded with the declaration may provide or supplement the information required under Subsection (3)(a).

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

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

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

(ii) The declaration shall include a time limit, not exceeding seven years from the date of the recording of the declaration, upon which the option to expand the condominium project shall expire, together with a statement of any circumstances which will terminate the option prior to expiration of the specified time limits.

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

(iv) The declaration shall state:

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

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

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

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

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

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

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

(ix) The declaration shall state the extent to which any structures erected on any portion of the additional land added to the condominium project will be compatible with structures on the land originally within the project in terms of quality of construction, the principal materials to be used, and architectural style. The declaration may also state that no assurances are made in those regards.

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

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

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

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

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

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

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

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

(b) (i) The declaration shall include a legal description by metes and bounds of all land that may be withdrawn from the condominium project, which is known as withdrawable land.

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

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

(c) The [~~record of survey map~~] condominium plat recorded with the declaration may

provide or supplement the information required under Subsection (5)(b).

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

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

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

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

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

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

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

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

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

(ii) otherwise complies with all covenants which would entitle the lessor to terminate the lease if they were violated.

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

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

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

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

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

Section 4. Section **57-8-13** is amended to read:

57-8-13. Condominium plat to be recorded.

(1) (a) Simultaneously with the recording of the declaration there shall be recorded a standard size, original linen (21" x 31") [~~record of survey map~~] condominium plat with 6-1/4" x 1-1/2" recording information block, which map shall be made by a registered Utah land surveyor and shall set forth:

[~~(a)~~] (i) a description of the surface of the land included within the project, including all angular and linear data along the exterior boundaries of the property;

[~~(b)~~] (ii) the linear measurement and location, with reference to the exterior boundaries, of the building or buildings, if any, located or to be located on the property other than within the boundaries of any convertible lands;

[~~(c)~~] (iii) diagrammatic floor plans of the building or buildings, if any, built or to be built on the property, other than within the boundaries of any convertible lands, in sufficient detail to identify each convertible space and physical unit contained within a building, including its identifying number or symbol, the official datum elevations of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished

interior surfaces of the perimeter walls, and the lateral extensions, of every such convertible space and unit;

~~[(d)]~~ (iv) a description or delineation of the boundaries of any unit or convertible space not contained or to be contained in a building or whose boundaries are not to be coextensive with walls, ceilings, or floors within a building, other than units located within the boundaries of any convertible lands, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

~~[(e)]~~ (v) a distinguishing number or other symbol for every physical unit identified on the ~~[record of survey map]~~ condominium plat;

~~[(f)]~~ (vi) to the extent feasible, the location and dimensions of all easements appurtenant to the land included within the project;

~~[(g)]~~ (vii) the label "convertible space" for each such space, if any;

~~[(h)]~~ (viii) the location and dimensions of any convertible lands within the condominium project, with each such convertible land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;

~~[(i)]~~ (ix) the location and dimensions of any withdrawable lands, with each such withdrawable land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;

~~[(j)]~~ (x) if with respect to any portion or portions, but less than all, of the land included within the project the unit owners are to own only an estate for years, the location and dimensions of any such portion, with each labeled as a leased land, and if there be more than one such land, with each labeled with a different letter or number; and

~~[(k)]~~ (xi) any encroachments by or on any portion of the condominium project.

(b) Each such ~~[record of survey map]~~ condominium plat shall be certified as to its accuracy and compliance with the provisions of this Subsection (1) by the land surveyor who prepared or who supervised the preparation of the same and shall be executed and acknowledged as provided in Subsection 57-8-10(8).

(2) When converting all or any portion of any convertible land or when adding additional

land to an expandable condominium, the declarant shall record a new or supplemental [~~record of survey map~~] condominium plat which shall contain the information necessary to comply with the requirements of Subsection (1) of this section. In any case where less than all of a convertible land is being converted, the [~~record of survey map~~] condominium plat shall show the location and dimensions of the remaining portion or portions of the land in addition to otherwise meeting such requirements.

(3) When converting all or any portion of any convertible space into one or more units or limited common areas and facilities, the declarant shall record, with regard to the structure or portion of it constituting that convertible space, a supplemental [~~record of survey map~~] condominium plat showing the location and dimensions of the vertical and horizontal boundaries of each unit formed out of this space. The supplemental map shall be certified as to its accuracy and compliance with this Subsection (3) by the land surveyor who prepared or who supervised the preparation of it.

(4) In interpreting the [~~record of survey map~~] condominium plat or any deed or other instrument affecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the [~~record of survey map~~] condominium plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the [~~record of survey map~~] condominium plat, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the [~~record of survey map~~] condominium plat and those of the building or unit.

Section 5. Section **57-8-13.2** is amended to read:

57-8-13.2. Conversion of convertible land -- Amendment to declaration --

Limitations.

(1) The declarant may convert all or any portion of any convertible land into one or more units or limited common areas and facilities subject to any restrictions and limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under Subsection (2) of this section and Subsection 57-8-13(2).

(2) Simultaneously with the recording of the [~~record of survey map~~] condominium plat pursuant to Subsection 57-8-13(2), the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection 57-8-13.10(2). The amendment shall describe or delineate the limited common areas and facilities formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(3) All convertible lands shall be deemed part of the common areas and facilities except for such portions of them as are converted in accordance with this section. No such conversions shall occur after five years from the recordation of the declaration, or such shorter period of time as the declaration may specify, unless three-fourths of unit owners vote in favor of converting the land after the time period has expired.

Section 6. Section **57-8-13.6** is amended to read:

57-8-13.6. Expansion of project.

A condominium project may be expanded under the provisions of the declaration and of this act. Any such expansion shall be deemed to have occurred at the time of the recordation of the [~~record of survey map~~] condominium plat under Subsection 57-8-13(2), together with an amendment to the declaration, duly executed and acknowledged by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium project. The amendment shall contain a legal description by metes and bounds of the land added to the condominium project and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection 57-8-13.10(2).

Section 7. Section **57-8-13.10** is amended to read:

57-8-13.10. Condominiums containing convertible land -- Expandable condominiums -- Allocation of interests in common areas and facilities.

(1) If a condominium project contains any convertible land or is an expandable condominium, then the declaration may not allocate undivided interests in the common areas and facilities on the basis of par value unless the declaration:

(a) prohibits the creation of any units not substantially identical to the units depicted on the ~~[record of survey map]~~ condominium plat recorded pursuant to Subsection 57-8-13(1); or

(b) prohibits the creation of any units not described under Subsection 57-8-10(3)(a)(vii) in the case of convertible land, Subsection 57-8-10(4)(a)(xi) in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every unit that may be created.

(2) (a) Interests in the common areas and facilities may not be allocated to any units to be created within any convertible land or within any additional land until a ~~[record of survey map]~~ condominium plat depicting the same is recorded pursuant to Subsection 57-8-13(2).

(b) Simultaneously with the recording of the supplemental ~~[record of survey map]~~ condominium plat required under Subsection (2)(a), the declarant shall execute and record an amendment to the declaration which reallocates undivided interests in the common areas and facilities so that the units depicted on the supplemental ~~[record of survey map]~~ condominium plat shall be allocated undivided interests in the common areas and facilities on the same basis as the units depicted on the ~~[record of survey map]~~ condominium plat that was recorded simultaneously with the declaration pursuant to Subsection 57-8-13(1).

(3) If all of a convertible space is converted into common areas and facilities, including limited common areas and facilities, then the undivided interest in the common areas and facilities appertaining to the convertible space shall afterward appertain to the remaining units and shall be allocated among them in proportion to their undivided interests in the common areas and facilities. The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration, shall immediately prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interest produced by the conversion.

(4) (a) If the expiration or termination of any lease of a leasehold condominium causes a contraction of the condominium project which reduces the number of units, or if the withdrawal of withdrawable land of a contractible condominium causes a contraction of the condominium project which reduces the number of units, the undivided interest in the common areas and

facilities appertaining to any units so withdrawn shall afterward appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common areas and facilities.

(b) The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration shall immediately prepare, execute, and record an amendment to the declaration, reflecting the reallocation of undivided interests produced by the reduction of units.

Section 8. Section **57-8-14** is amended to read:

57-8-14. Legal description of units.

Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as designated in the declaration or as shown on the [~~record of survey map~~] condominium plat, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of ownership in the common areas and facilities even though the same is not expressly mentioned or described.

Section 9. Section **57-8-20** is amended to read:

57-8-20. Lien for nonpayment of common expenses.

(1) Every unit owner shall pay his proportionate share of the common expenses. Payment shall be in the amounts and at the times determined by the management committee in accordance with the terms of the declaration or the bylaws.

(2) (a) [~~The amount of common expenses assessed~~] An assessment levied against each unit is a debt of the owner at the time the assessment is made and is collectible as such.

(b) The association is entitled to recover all expenses incurred by the association in collecting any unpaid assessment, including reasonable attorneys' fees, whether an action is brought against an owner under Subsection (3), or whether a suit to foreclose the lien upon the unit is instituted under Subsection (4).

(3) Suit to recover a money judgment for any unpaid [common expenses] assessment is maintainable without foreclosing or waiving the lien securing it. The prevailing party in the

action is entitled to recover its costs of suit and reasonable attorneys' fees. [Hf]

~~(4) (a) Subject to Subsection 57-8-37(6), if any unit owner fails or refuses to [make any payment of the common expenses]~~ pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the manager or management committee it is a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

~~[(a)]~~ (i) tax and special assessment liens on the unit in favor of any assessing unit or special improvement district; and

~~[(b)]~~ (ii) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

~~[(3) The manager or management committee shall, upon the written request of any unit owner or any encumbrancer or prospective encumbrancer of a unit, and upon payment of a reasonable fee not to exceed \$10, issue to the requesting person or persons, a written statement setting forth the unpaid common expenses with respect to the unit covered by the request. This written statement of indebtedness is conclusive upon the remaining unit owners and upon the manager and management committee in favor of all persons who rely on the written statement in good faith. Unless the manager or management committee complies with the request for a statement of indebtedness within ten days, all unpaid common expenses which became due prior to the date such request was made are subordinate to the lien held by the person requesting the statement. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to the unit and upon payment the encumbrancer has a lien on the unit for the amounts paid of the same rank as the lien of his encumbrance.]~~

~~[(4)]~~ (b) The lien for nonpayment of ~~[common expenses]~~ an assessment may be enforced by sale or foreclosure of the unit owner's interest by the manager or management committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law.

(c) In any foreclosure or sale, the unit owner shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. If so provided in the declaration or bylaws, in the

case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

~~[(5)]~~ (d) Unless otherwise provided in the declaration, the manager or management committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey the unit.

(5) (a) When authorized in the declaration or bylaws, if the owner fails or refuses to pay any assessment when due, the management committee may, after giving notice and an opportunity to be heard in accordance with Subsection (5)(b):

(i) terminate an owner's right to receive utility services paid as a common expense; and

(ii) terminate an owner's right of access and use of recreational facilities.

(b) Before terminating utility services or right of access and use of recreational facilities under Subsection (5)(a), the manager or management committee shall give written notice to the unit owner in the manner provided in the declaration, bylaws, or association rules. The notice shall state:

(i) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(ii) the amount of the assessment due, including any interest or late payment fee; and

(iii) the right to request a hearing under Subsection (5)(c).

(c) A unit owner who is given notice under Subsection (5)(b) may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received.

(i) The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

(ii) If a hearing is requested, utility services or right of access and use or recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

(d) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the unit.

(e) The remedies provided in this Subsection (5) shall only apply to residential condominium units.

(6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee, upon compliance with this Subsection (6)(a), may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid.

(b) The manager or management committee must give the unit owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(i) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(ii) state the amount of the assessment due, including any interest or late payment fee;

(iii) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(iv) provide the requirements and rights described in Subsections (6)(b) through (f).

(c) If the unit owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant to Subsection (6)(d). A copy of the notice must be mailed to the unit owner. The notice provided to the tenant must state:

(i) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the management committee's intent to collect all lease payments due to the association pursuant to Subsection (6)(a);

(ii) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(iii) payment by the tenant to the association in compliance with this Subsection (6) will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

(d) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.

(e) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the unit owner.

(f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive occupancy of a unit by any person or persons, other than the unit owner, for which the unit owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

(7) (a) The manager or management committee shall, upon the written request of any unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement indicating any unpaid assessments with respect to the unit covered by the request. This written statement of unpaid assessments is conclusive upon the remaining unit owners and upon the manager and management committee in favor of all persons who rely on the written statement in good faith.

(b) Unless the manager or management committee complies with the request for a statement of any unpaid assessments within ten days, all unpaid assessments which became due prior to the date the request was made are subordinate to the lien held by the person requesting the statement.

(8) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due with respect to the unit. Upon payment, the encumbrancer has a lien on the unit for the amounts paid.

(9) Remedies provided in this section, by law, or in equity are not considered to be mutually exclusive.

Section 10. Section **57-8-21** is amended to read:

57-8-21. Acquisition through tax deed or foreclosure of liens.

In the event any person shall acquire, through foreclosure, exercise of power of sale, or other enforcement of any lien, or by tax deed, the interest of any unit owner, the interest acquired shall be subject to all the provisions of this act and to the covenants, conditions and restrictions contained in the declaration, the ~~[record of survey map]~~ condominium plat, the bylaws, the house rules, or any deed affecting the interest then in force.

Section 11. Section **57-8-27** is amended to read:

57-8-27. Separate taxation.

(1) Each unit and its percentage of undivided interest in the common areas and facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.

(2) In the event any of the interests in real property made subject to this chapter by the declaration are leasehold interests, if the lease creating these interests is of record in the office of the county recorder, if the balance of the term remaining under the lease is at least 40 years at the time the leasehold interest is made subject to this chapter, if units are situated or are to be situated on or within the real property covered by the lease, and if the lease provides that the lessee shall pay all taxes and assessments imposed by governmental authority, then until ten years prior to the date that the leasehold is to expire or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be levied against the owner of the lessee's interest. If the owner of the reversion under the lease has executed the declaration and ~~[record of survey map]~~ condominium plat, until ten years prior to

the date that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be separately levied against the unit owners having an interest in the lease, with each unit owner for taxation purposes being considered the owner of a parcel consisting of his undivided condominium interest in the fee of the real property affected by the lease.

(3) No forfeiture or sale of the improvements or the property as a whole for delinquent real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an individual unit if the real estate taxes or duly levied share of the assessments and charges on the individual unit are currently paid.

(4) Any exemption from taxes that may exist on real property or the ownership of the property may not be denied by virtue of the submission of the property to this chapter.

(5) Timeshare interests and timeshare estates, as defined in Subsection 57-19-2(17), may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, vacation conveniences and services, club memberships, and any other intangible rights and benefits available to a timeshare unit owner. Nothing in this section shall be construed as requiring the assessment of any real property interest associated with a timeshare interest or timeshare estate at less than its fair market value. Notice of assessment, delinquency, sale, or any other purpose required by law is considered sufficient for all purposes if the notice is given to the management committee.

Section 12. Section **57-8-35** is amended to read:

57-8-35. Effect of other laws -- Compliance with ordinances and codes -- Approval

of projects by municipality or county.

(1) The provisions of this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail: provided further, for purposes of Sections 10-9-805, 10-9-811, and 17-27-804 and provisions of similar import and any law or ordinance adopted pursuant thereto, a condominium project shall be considered to be a subdivision, and a [~~record of survey map~~] condominium plat or supplement thereto prepared pursuant to this chapter shall be considered to be a subdivision map or plat, only with respect to:

(a) such real property or improvements, if any, as are intended to be dedicated to the use of the public in connection with the creation of the condominium project or portion thereof concerned; and

(b) those units, if any, included in the condominium project or portion thereof concerned which are not contained in existing or proposed buildings.

(2) Nothing in this chapter shall be interpreted to state or imply that a condominium project, unit, association or unit owners, or management committee is exempt by this chapter from compliance with the zoning ordinance, building and sanitary codes, and similar development regulations which have been adopted by a municipality or county. No condominium project or any use within said project or any unit or parcel or parcel of land indicated as a separate unit or any structure within said project shall be permitted which is not in compliance with said ordinances and codes.

(3) From and after the time a municipality or county shall have established a planning commission, no condominium project or any [~~record of survey map~~] condominium plat, declaration, or other material as required for recordation under this chapter shall be recorded in the office of the county recorder unless and until the following mentioned attributes of said condominium project shall have been approved by the municipality or county in which it is located. In order to more fully avail itself of this power, the legislative body of a municipality or county may provide by ordinance for the approval of condominium projects proposed within its

limits. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project.

(4) Any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:

(a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and

(b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accomplishment by bond or other appropriate means. No declaration or ~~[record of survey map]~~ condominium plat shall be recorded in the office of the county recorder until a final approval has been granted.

Section 13. Section **57-8-36** is amended to read:

57-8-36. Existing projects -- Effect of statutory amendments.

Any condominium project established by instruments filed for record prior to the effective date of the foregoing amendments to the Condominium Ownership Act (hereinafter referred to as an "existing project") and the rights and obligations of all parties interested in any such existing project shall, to the extent that the declaration, bylaws, and ~~[record of survey map]~~ condominium plat concerning the existing project are inconsistent with the provisions of these amendments, be governed and controlled by the provisions of the Condominium Ownership Act as they existed prior to these amendments and by the terms of the existing project's declaration, bylaws, and ~~[record of survey map]~~ condominium plat to the extent that these terms are consistent with applicable law other than these amendments. Any existing project containing or purporting to contain time period units, convertible land, or convertible space, any existing project which is or purports to be a contractible, expandable, or leasehold condominium, the

validity of any such project, and the validity and enforceability of any provisions concerning time period units, convertible land, convertible space, withdrawable land, additional land, or leased land which are set forth in an existing project's declaration, bylaws, or [~~record of survey map~~] condominium plat, shall be governed by applicable law in effect prior to these amendments, including principles relating to reasonableness, certainty, and constructive and actual notice, shall not necessarily be ineffective or defeated in whole or in part because the project or provision in question does not comply or substantially comply with those requirements of the foregoing amendments which would have been applicable had the instruments creating the project been recorded after the effective date of these amendments, but shall, in any event, be valid, effective, and enforceable if the project or provision in question either substantially complies with those requirements of the foregoing amendments which relate to the subject at issue or employs an arrangement which substantially achieves the same policy as underlies those requirements of the foregoing amendments which relate to the subject at issue.

Section 14. Section **57-8-38** is enacted to read:

57-8-38. Arbitration.

The declaration, bylaws, or association rules may provide that disputes between the parties shall be submitted to arbitration pursuant to Title 78, Chapter 31a, Utah Arbitration Act.