

CONDOMINIUM OWNERSHIP ACT

AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Carol Spackman Moss

LONG TITLE

General Description:

This bill modifies the Condominium Ownership Act.

Highlighted Provisions:

This bill:

- ▶ expands the definition of unit to include a proposed unit that is not constructed within two years of the issuance of a certificate of occupancy for the first unit in a condominium project;
- ▶ clarifies the application of a previous amendment of the definition of unit;
- ▶ clarifies references in Section 57-8-36 to amendments enacted in 1975;
- ▶ addresses the application of amendments to the Condominium Ownership Act; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-3, as last amended by Chapter 265, Laws of Utah 2003

57-8-36, as last amended by Chapter 265, Laws of Utah 2003



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

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

30 **57-8-3. Definitions.**

31 As used in this chapter:

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

35 (2) "Association of unit owners" means all of the unit owners acting as a group in
36 accordance with the declaration and bylaws.

37 (3) "Building" means a building, containing units, and comprising a part of the
38 property.

39 (4) "Common areas and facilities" unless otherwise provided in the declaration or
40 lawful amendments to the declaration means:

41 (a) the land included within the condominium project, whether leasehold or in fee
42 simple;

43 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
44 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

45 (c) the basements, yards, gardens, parking areas, and storage spaces;

46 (d) the premises for lodging of janitors or persons in charge of the property;

47 (e) installations of central services such as power, light, gas, hot and cold water,
48 heating, refrigeration, air conditioning, and incinerating;

49 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
50 apparatus and installations existing for common use;

51 (g) such community and commercial facilities as may be provided for in the
52 declaration; and

53 (h) all other parts of the property necessary or convenient to its existence, maintenance,
54 and safety, or normally in common use.

55 (5) "Common expenses" means:

56 (a) all sums lawfully assessed against the unit owners;

57 (b) expenses of administration, maintenance, repair, or replacement of the common
58 areas and facilities;

59 (c) expenses agreed upon as common expenses by the association of unit owners; and

60 (d) expenses declared common expenses by this chapter, or by the declaration or the
61 bylaws.

62 (6) "Common profits," unless otherwise provided in the declaration or lawful
63 amendments to the declaration, means the balance of all income, rents, profits, and revenues
64 from the common areas and facilities remaining after the deduction of the common expenses.

65 (7) "Condominium" means the ownership of a single unit in a multiunit project
66 together with an undivided interest in common in the common areas and facilities of the
67 property.

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

70 (9) (a) "Condominium project" means a real estate condominium project; a plan or
71 project whereby two or more units, whether contained in existing or proposed apartments,
72 commercial or industrial buildings or structures, or otherwise, are separately offered or
73 proposed to be offered for sale.

74 (b) "Condominium project" also means the property when the context so requires.

75 (10) (a) "Condominium unit" means a unit together with the undivided interest in the
76 common areas and facilities appertaining to that unit. [~~Any~~]

77 (b) Unless the reference is specifically limited to a time period unit, any reference in
78 this chapter to a condominium unit includes [both]:

79 (i) a physical unit or proposed physical unit that meets the definition of unit in
80 Subsection (27) together with its appurtenant undivided interest in the common areas and
81 facilities; and

82 (ii) a time period unit together with its appurtenant undivided interest[~~; unless the~~
83 ~~reference is specifically limited to a time period unit~~].

84 (11) [~~"Contractible"~~] (a) Except as provided in Subsection (11)(b), "contractible
85 condominium" means a condominium project from which one or more portions of the land
86 within the project may be withdrawn in accordance with provisions of the declaration and of
87 this chapter.

88 (b) If the withdrawal or portions of land within the project can occur only by the
89 expiration or termination of one or more leases, [then] the condominium project is not a

90 contractible condominium [~~within the meaning of this chapter~~].

91 (12) "Convertible land" means a building site [~~which~~] that is a portion of the common
92 areas and facilities, described by metes and bounds, within which additional units or limited
93 common areas and facilities may be created in accordance with this chapter.

94 (13) "Convertible space" means a portion of the structure within the condominium
95 project[~~, which portion~~] that may be converted into one or more units or common areas and
96 facilities, including limited common areas and facilities [~~in accordance with this chapter~~].

97 (14) (a) "Declarant" means all persons who execute the declaration or on whose behalf
98 the declaration is executed.

99 (b) From the time of the recordation of any amendment to the declaration expanding an
100 expandable condominium, [~~all persons~~] any person who [~~execute~~] executes that amendment or
101 on whose behalf that amendment is executed [~~shall also come within this definition. Any~~
102 ~~successors of the persons~~] is a declarant.

103 (c) A successor of a person referred to in this Subsection (14) who [~~come~~] comes to
104 stand in the same relation to the condominium project as [~~their predecessors also come within~~
105 ~~this definition~~] the person's predecessor is a declarant.

106 (15) "Declaration" means the instrument by which the property is submitted to the
107 provisions of this [~~act~~] chapter, as it from time to time may be lawfully amended.

108 (16) "Expandable condominium" means a condominium project to which additional
109 land or an interest in [~~it~~] additional land may be added in accordance with the declaration and
110 this chapter.

111 (17) (a) "Leasehold condominium" means a condominium project in all or any portion
112 of which each unit owner owns an estate for years in [~~his~~] the unit owner's unit, or in the land
113 upon which that unit is situated, or both, with all those leasehold interests to expire naturally at
114 the same time.

115 (b) A condominium project including leased land, or an interest in the land, upon
116 which no units are situated or to be situated is not a leasehold condominium within the
117 meaning of this chapter.

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

121 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the
122 declaration or lawful amendments to the declaration, means the owners of more than 50% in
123 the aggregate in interest of the undivided ownership of the common areas and facilities.

124 (20) "Management committee" means the committee as provided in the declaration
125 charged with and having the responsibility and authority to make and to enforce all of the
126 reasonable rules covering the operation and maintenance of the property.

127 (21) (a) "Par value" means a number of dollars or points assigned to each unit by the
128 declaration.

129 (b) Substantially identical units shall be assigned the same par value, but units located
130 at substantially different heights above the ground, or having substantially different views, or
131 having substantially different amenities or other characteristics that might result in differences
132 in market value, may be considered substantially identical within the meaning of this
133 Subsection (21).

134 (c) If par value is stated in terms of dollars, that statement may not be considered to
135 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
136 fair market transaction at a different figure may affect the par value of any unit, or any
137 undivided interest in the common areas and facilities, voting rights in the unit owners'
138 association, liability for common expenses, or right to common profits, assigned on the basis
139 thereof.

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

142 (23) "Property" means:

143 (a) the land, whether leasehold or in fee simple[-]; and

144 (b) the building, if any, all improvements and structures thereon, all easements, rights,
145 and appurtenances belonging thereto, and all articles of personal property intended for use in
146 connection therewith.

147 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
148 57, Chapter 3, Recording of Documents.

149 (25) (a) "Size" means the number of cubic feet, or the number of square feet of ground
150 or floor space, within each unit as computed by reference to the record of survey map and
151 rounded off to a whole number.

152 (b) Certain spaces within the units including attic, basement, or garage space may be
153 omitted from the calculation or be partially discounted by the use of a ratio[-] if the same basis
154 of calculation is employed for all units in the condominium project and if that basis is
155 described in the declaration.

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

159 (27) ["Unit"] (a) As the context may require, "unit" means either:

160 (i) a separate physical part of the property intended for any type of independent use,
161 including one or more rooms or spaces located in one or more floors or part or parts of floors in
162 a building; or

163 (ii) a time period unit[-, as the context may require].

164 (b) A convertible space shall be treated as a unit in accordance with Subsection
165 57-8-13.4(3).

166 (c) (i) A proposed condominium unit under an expandable condominium project, not
167 constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6
168 are met[-], except that a proposed condominium unit under an expandable condominium
169 project established by an instrument filed before July 1, 1994 that is not constructed is a unit on
170 July 1, 1996.

171 (ii) Notwithstanding Subsection (27)(c)(i), a unit owner who owns a unit that is not
172 constructed in a condominium project established by an instrument filed before July 1, 1994 is
173 not liable for a statutory assessment or statutory lien on that unit until May 2, 2005.

174 (iii) Nothing in Subsection (27)(c)(ii) affects any other equitable, contractual, or
175 common law right of any person.

176 (iv) If a unit owner has paid no statutory assessment under Subsection (27)(c)(ii), the
177 unit owner has no claim to voting rights in the unit owners' association, unless the voting rights
178 in the unit owners' association are otherwise provided for in the declaration or by contract.

179 (d) A proposed condominium unit shown on the initial declaration of a condominium
180 project that is not constructed is a unit two years after the date on which a certificate of
181 occupancy is issued for the first unit completed in the condominium project, except that in the
182 case of any condominium project established by an initial declaration filed for record before

183 May 2, 2005, a proposed condominium unit that is not constructed is a unit no sooner than May
184 2, 2007.

185 (28) "Unit number" means the number, letter, or combination of numbers and letters
186 designating the unit in the declaration and in the record of survey map.

187 (29) "Unit owner" means:

188 (a) the person or persons owning a unit in fee simple and an undivided interest in the
189 fee simple estate of the common areas and facilities in the percentage specified and established
190 in the declaration; or[;]

191 (b) in the case of a leasehold condominium project, the person or persons whose
192 leasehold interest or interests in the condominium unit extend for the entire balance of the
193 unexpired term or terms.

194 Section 2. Section **57-8-36** is amended to read:

195 **57-8-36. Existing projects -- Effect of statutory amendments.**

196 [~~Any condominium project established by instruments filed for record prior to the~~
197 ~~effective date of the foregoing amendments to the Condominium Ownership Act (hereinafter~~
198 ~~referred to as an "existing project")]~~

199 (1) As used in this section:

200 (a) "1975 amendments" means Chapter 173, Laws of Utah 1975.

201 (b) "Existing project" means any condominium project established by instruments filed
202 for record before July 1, 1975, and the rights and obligations of all parties interested in any
203 such existing project shall, to the extent that the declaration, bylaws, and condominium plat
204 concerning the existing project are inconsistent with the provisions of [~~these amendments~~] the
205 1975 amendments, be governed and controlled by the provisions of [~~the Condominium~~
206 ~~Ownership Act~~] this chapter as [~~they~~] it existed [~~prior to these~~] before the 1975 amendments
207 and by the terms of the existing project's declaration, bylaws, and condominium plat to the
208 extent that [~~these~~] the terms are consistent with applicable law other than [~~these~~] the 1975
209 amendments.

210 (2) Any existing project containing or purporting to contain time period units,
211 convertible land, or convertible space, any existing project [~~which~~] that is or purports to be a
212 contractible, expandable, or leasehold condominium, the validity of any such project, and the
213 validity and enforceability of any provisions concerning time period units, convertible land,

214 convertible space, withdrawable land, additional land, or leased land [~~which~~] that are set forth
215 in an existing project's declaration, bylaws, or condominium plat[;]:

216 (a) shall be governed by applicable law in effect prior to [~~these~~] the 1975 amendments,
217 including principles relating to reasonableness, certainty, and constructive and actual notice[;
218 ~~shall~~];

219 (b) are not necessarily [~~be~~] ineffective or defeated in whole or in part because the
220 project or provision in question does not comply or substantially comply with [~~those~~] the
221 requirements of the [~~foregoing~~] 1975 amendments [~~which~~] that would have been applicable
222 had the instruments creating the project been recorded after [~~the effective date of these~~
223 ~~amendments, but~~] July 1, 1975; and

224 (c) shall, in any event, be valid, effective, and enforceable if the project or provision in
225 question either substantially complies with those requirements of the [~~foregoing~~] 1975
226 amendments [~~which~~] that relate to the subject at issue or employs an arrangement [~~which~~] that
227 substantially achieves the same policy as underlies [~~those~~] the requirements of the [~~foregoing~~]
228 1975 amendments [~~which~~] that relate to the subject at issue.

229 (3) A condominium project established by an instrument filed for record on or after
230 July 1, 1975 is subject to an amendment of this chapter enacted after July 1, 1975, unless the
231 amendment expressly states that the amendment does not apply to a project filed for record
232 before the effective date of the amendment.

Legislative Review Note
as of 2-10-05 12:09 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0296

Condominium Ownership Act Amendments

14-Feb-05

12:40 PM

State Impact

No fiscal impact.

Individual and Business Impact

Individual and business impacts are enforced by private right of action.

Office of the Legislative Fiscal Analyst