

1 **HOMEOWNERS ASSOCIATION PROVISIONS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John W. Hickman**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill establishes limits on covenants, conditions, and restrictions for a condominium
10 project or a community association.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ limits prohibitions on changing the covenants, conditions, and restrictions
- 14 applicable to a condominium project or community association;
- 15 ▶ allows restrictions on changing the covenants, conditions, and restrictions on an
- 16 incomplete condominium project or community association; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **57-8-10**, as last amended by Chapter 265, Laws of Utah 2003

25 ENACTS:

26 **57-8a-208**, Utah Code Annotated 1953



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

29 Section 1. Section **57-8-10** is amended to read:

30 **57-8-10. Contents of declaration.**

31 (1) [~~Prior to~~] (a) Before the conveyance of any unit in a condominium project, a
32 declaration shall be recorded that contains the covenants, conditions, and restrictions relating to
33 the project that [~~shall be~~] are enforceable equitable servitudes, where reasonable, and [~~which~~
34 ~~shall~~] that run with the land.

35 (b) Unless otherwise provided, [~~these~~] servitudes under Subsection (1)(a) may be
36 enforced by any unit owner and [~~his~~] the unit owner's successors in interest.

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

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

40 (ii) The declaration shall contain a description of any buildings, [~~which states~~] stating:

41 (A) the number of storeys and basements[;];

42 (B) the number of units[;];

43 (C) the principal materials of which the building is or is to be constructed[;]; and

44 (D) a description of all other significant improvements contained or to be contained in
45 the project.

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

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

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

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

55 (c) The condominium plat recorded with the declaration may provide or supplement
56 the information required under Subsections (2)(a) and (b).

57 (d) (i) The declaration shall include the percentage or fraction of undivided interest in
58 the common areas and facilities appurtenant to each unit and its owner for all purposes,

59 including voting, derived and allocated in accordance with Subsection 57-8-7(2).

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

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

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

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

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

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

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

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

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

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

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

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

89 (v) The declaration shall describe all other improvements that may be made on each

90 area of convertible land within the condominium project.

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

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

97 (b) The condominium plat recorded with the declaration may provide or supplement
98 the information required under Subsection (3)(a).

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

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

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

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

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

112 (iv) The declaration shall state:

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

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

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

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

121 condominium project.

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

125 (vii) (A) The declaration shall state the maximum number of units that may be created
126 on the additional land.

127 (B) If portions of the additional land may be added to the condominium project and the
128 boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the declaration
129 shall also state the maximum number of units that may be created on each portion added to the
130 condominium project.

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

135 (viii) (A) With respect to the additional land and to any portion of it that may be added
136 to the condominium project, the declaration shall state the maximum percentage of the
137 aggregate land and floor area of all units that may be created on it, the use of which will not or
138 may not be restricted exclusively to residential purposes. [~~However, these~~]

139 (B) Notwithstanding Subsection (4)(a)(viii)(A), statements need not be supplied if
140 none of the units on the land originally within the project are restricted exclusively to
141 residential use.

142 (ix) (A) The declaration shall state the extent to which any structures erected on any
143 portion of the additional land added to the condominium project will be compatible with
144 structures on the land originally within the project in terms of quality of construction, the
145 principal materials to be used, and architectural style.

146 (B) The declaration may also state that no assurances are made in those regards.

147 (x) (A) The declaration shall describe all other improvements that will be made on any
148 portion of the additional land added to the condominium project, or it shall contain a statement
149 of any limitations as to what other improvements may be made on it.

150 (B) The declaration may also state that no assurances are made in that regard.

151 (xi) (A) The declaration shall contain a statement that any units created on any portion

152 of the additional land added to the condominium project will be substantially identical to the
153 units on the land originally within the project, or a statement of any limitations as to what types
154 of units may be created on it.

155 (B) The declaration may also contain a statement that no assurances are made in that
156 regard.

157 (xii) (A) The declaration shall describe the declarant's reserved right, if any, to create
158 limited common areas and facilities within any portion of the additional land added to the
159 condominium project, in terms of the types, sizes, and maximum number of limited common
160 areas within each portion.

161 (B) The declaration may also state that no assurances are made in those regards.

162 (b) The condominium plat recorded with the declaration may provide or supplement
163 the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through
164 (a)(xii).

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

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

168 (ii) (A) The declaration shall contain a statement of any limitations on the option to
169 contract, including a statement as to whether the consent of any unit owners shall be required,
170 and if so, a statement as to the method by which this consent shall be ascertained.

171 (B) The declaration may also contain a statement that there are no such limitations.

172 (iii) The declaration shall state the time limit, not exceeding seven years from the
173 recording of the declaration, upon which the option to contract the condominium project shall
174 expire, ~~[together with]~~ and a statement of any circumstances ~~[which]~~ that will terminate this
175 option ~~[prior to]~~ before expiration of the specified time limit.

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

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

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

186 (c) The condominium plat recorded with the declaration may provide or supplement
187 the information required under Subsection (5)(b).

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

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

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

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

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

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

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

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

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

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

211 (7) (a) (i) If the condominium project contains time period units, the declaration shall
212 also contain the location of each condominium unit in the calendar year. [~~This~~]

213 (ii) The information required by Subsection (7)(a)(i) shall be set out in a fourth column

214 of the exhibit or schedule referred to in Subsection 57-8-7(2), if the exhibit or schedule
215 accompanies the declaration.

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

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

220 (8) (a) The declaration, bylaws, and condominium plat shall be duly executed and
221 acknowledged by all of the owners and any lessees of the land which is made subject to this
222 chapter.

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

228 (9) (a) (i) A declaration may not require greater than two-thirds of the votes of the
229 owners in a completed condominium project to amend the declaration in a manner that changes
230 the covenants, conditions, and restrictions applicable to the condominium project.

231 (ii) A declaration may not prohibit changes to the covenants, conditions, and
232 restrictions after the time that the last of the units identified in the declaration is completed.

233 (b) Any change to the covenants, conditions, and restrictions in a declaration
234 extinguishes the previously effective covenants, conditions, and restrictions, and the previously
235 effective covenants, conditions, and restrictions do not burden any of the land in the
236 condominium project.

237 Section 2. Section **57-8a-208** is enacted to read:

238 **57-8a-208. Covenants, conditions, and restrictions.**

239 (1) (a) A declaration of covenants, conditions, and restrictions may not require greater
240 than two-thirds of the votes of the owners in an association to amend the declaration of
241 covenants, conditions, and restrictions.

242 (b) Notwithstanding Subsection (1)(a), if an association consists of property on which a
243 residential dwelling is to be constructed, but is not yet constructed, a declaration of covenants,
244 conditions, and restrictions may prohibit changes until the time that the last of the residential

245 dwelling identified in the association's governing documents is completed.
246 (2) Any change to the covenants, conditions, and restrictions extinguishes the
247 previously effective covenants, conditions, and restrictions, and the previously effective
248 covenants, conditions, and restrictions do not burden any of the land subject to the new
249 covenants, conditions, and restrictions.

Legislative Review Note

as of 1-26-06 11:32 AM

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 SB0090

Homeowners Association Provisions

31-Jan-06

5:12 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst