

COUNTY RECORDER AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dennis E. Stowell

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions relating to county recorders and documents submitted to county recorders for recording.

Highlighted Provisions:

This bill:

- ▶ clarifies that a document relating to parcels designated as a community area is to be treated the same as a document relating to a parcel designated as a common area;
- ▶ eliminates a requirement that fidelity bonds be recorded;
- ▶ modifies procedures and requirements applicable to the recording of documents;
- ▶ modifies procedures applicable to a subdivision plat that includes a public utility easement;
- ▶ provides an affidavit form for the termination on an interest in real estate; and
- ▶ makes permissible rather than mandatory a county recorder's refusal to accept for recording a document that fails to comply with applicable requirements.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **10-9a-606**, as renumbered and amended by Chapter 254, Laws of Utah 2005
- 29 **17-16-11**, as repealed and reenacted by Chapter 211, Laws of Utah 2003
- 30 **17-21-12**, as last amended by Chapter 85, Laws of Utah 1999
- 31 **17-27a-606**, as renumbered and amended by Chapter 254, Laws of Utah 2005
- 32 **54-3-27**, as enacted by Chapter 64, Laws of Utah 2004
- 33 **57-1-5.1**, as last amended by Chapter 38, Laws of Utah 2006
- 34 **57-3-105**, as last amended by Chapter 320, Laws of Utah 2000
- 35 **57-3-106**, as last amended by Chapters 241 and 370, Laws of Utah 2001
- 36 **57-8-11**, as enacted by Chapter 111, Laws of Utah 1963
- 37 **57-8-14**, as last amended by Chapter 265, Laws of Utah 2003
- 38 **57-8-27**, as last amended by Chapter 265, Laws of Utah 2003

39 REPEALS:

- 40 **17-21-13**, as last amended by Chapter 241, Laws of Utah 2001



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

43 Section 1. Section **10-9a-606** is amended to read:

44 **10-9a-606. Common or community area parcels on a plat -- No separate**
45 **ownership -- Ownership interest equally divided among other parcels on plat and**
46 **included in description of other parcels.**

47 (1) A parcel designated as common or community area on a plat recorded in
48 compliance with this part may not be separately owned or conveyed independent of the other
49 parcels created by the plat.

50 (2) The ownership interest in a parcel described in Subsection (1) shall:

51 (a) for purposes of assessment, be divided equally among all parcels created by the
52 plat, unless a different division of interest for assessment purposes is indicated on the plat or an
53 accompanying recorded document; and

54 (b) be considered to be included in the description of each instrument describing a
55 parcel on the plat by its identifying plat number, even if the common or community area
56 interest is not explicitly stated in the instrument.

57 Section 2. Section **17-16-11** is amended to read:

58 **17-16-11. Fidelity bonds and theft or crime insurance.**

59 (1) As used in this section, "county officials" means:
60 (a) the members of the county legislative body;
61 (b) the county executive;
62 (c) the county clerk;
63 (d) the county auditor;
64 (e) the county sheriff;
65 (f) the county attorney;
66 (g) in a county that is within a prosecution district, the district attorney;
67 (h) the county recorder;
68 (i) the county assessor;
69 (j) the county surveyor;
70 (k) each justice court judge and constable within the county;
71 (l) the county treasurer; and
72 (m) each deputy or assistant of those listed in Subsections (1)(a) through (l) for whom
73 the county legislative body determines a general fidelity bond or theft or crime insurance
74 should be acquired.

75 (2) (a) The legislative body of each county shall prescribe the amount of each general
76 fidelity bond or of theft or crime insurance to be acquired for county officials, except the
77 county treasurer, before the county officials, except the county treasurer, may discharge the
78 duties of their respective offices.

79 (b) The State Money Management Council created in Section 51-7-16 shall prescribe
80 the amount of a general fidelity bond or theft or crime insurance to be acquired for the county
81 treasurer before the county treasurer may discharge the duties of that office.

82 (c) A county legislative body may acquire a fidelity bond or theft or crime insurance on
83 all county officials as a group rather than individually.

84 (3) (a) The county legislative body shall approve the premium for each fidelity bond
85 before the bond may be filed [~~and recorded~~].

86 (b) The cost of each fidelity bond and theft or crime insurance policy shall be paid
87 from county funds.

88 (4) Each fidelity bond shall be [~~recorded in the office of the county recorder and a copy~~
89 ~~of it~~] filed and maintained in the office of the county clerk.

90 (5) (a) The district attorney of each multicounty prosecution district shall:

91 (i) execute a fidelity bond or acquire theft or crime insurance in the amount specified in
92 the interlocal agreement that created the prosecution district; and

93 (ii) ~~[record]~~ file each fidelity bond ~~[with the county recorder and file a copy of it]~~ with
94 the county clerk as specified in the interlocal agreement.

95 (b) The cost of each fidelity bond or theft or crime insurance policy under Subsection
96 (5)(a) shall be paid as specified in the interlocal agreement that created the prosecution district.

97 Section 3. Section **17-21-12** is amended to read:

98 **17-21-12. Recording procedures -- Endorsements of entry number required on**
99 **documents.**

100 ~~[When any instrument authorized by law to be recorded]~~ (1) If a document is accepted
101 by the recorder's office for recording, the recorder shall:

102 ~~[(1)]~~ (a) endorse upon ~~[it its proper]~~ the first page of the document an entry number[;]
103 and the time when [it] the document was received, noting the year, month, day, hour, and
104 minute of its reception, and the amount of fees for recording it; and

105 ~~[(2)]~~ (b) record the ~~[instrument]~~ document during office hours in the order it was
106 accepted~~[- together with the acknowledgments, proofs, and certificates written upon or attached~~
107 ~~to it, with the plats, surveys, schedules and other papers annexed to it].~~

108 (2) Each county recorder shall place an entry number or a book and page reference on
109 each page of a document that the recorder accepts for recording only if the original document
110 or a copy of the document is kept as a public record under Section 17-21-3.

111 (3) (a) A county recorder may, but is not required to, endorse each document that the
112 recorder accepts for recording with a book and page reference.

113 (b) If a county recorder elects not to endorse a document with a book and page
114 reference, the book and page reference may be omitted:

115 (i) in each index required by statute; and

116 (ii) on each document presented for recording that is required to recite recording data.

117 (4) If a document that a county recorder accepts for recording indicates the name and
118 address of the person to whom the document should be returned after recording, the county
119 recorder shall return the document to that person at the address indicated.

120 Section 4. Section **17-27a-606** is amended to read:

121 **17-27a-606. Common or community area parcels on a plat -- No separate**
122 **ownership -- Ownership interest equally divided among other parcels on plat and**
123 **included in description of other parcels.**

124 (1) A parcel designated as common or community area on a plat recorded in
125 compliance with this part may not be separately owned or conveyed independent of the other
126 parcels created by the plat.

127 (2) The ownership interest in a parcel described in Subsection (1) shall:

128 (a) for purposes of assessment, be divided equally among all parcels created by the
129 plat, unless a different division of interest for assessment purposes is indicated on the plat or an
130 accompanying recorded document; and

131 (b) be considered to be included in the description of each instrument describing a
132 parcel on the plat by its identifying plat number, even if the common or community area
133 interest is not explicitly stated in the instrument.

134 Section 5. Section **54-3-27** is amended to read:

135 **54-3-27. Public utility easement.**

136 (1) As used in this section, "public utility easement" means the area on a recorded plat
137 map or other recorded document that is dedicated to the use and installation of public utility
138 facilities.

139 (2) (a) A public utility easement provides a public utility with:

140 (i) the right to install, maintain, operate, repair, remove, replace, or relocate public
141 utility facilities; and

142 (ii) the rights of ingress and egress within the public utility easement for public utility
143 employees, contractors, and agents.

144 (b) Notwithstanding Subsection (3), a public utility shall restore or repair, at the
145 expense of the public utility, any fence, grass, soil, shrubbery, bushes, flowers, other low level
146 vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or
147 displaced from the exercise of the easement rights described in Subsection (2)(a).

148 (3) Except as provided in Subsection (2)(b), if a property owner places improvements
149 to land that interfere with the easement rights described in Subsection (2)(a), the property
150 owner shall bear the risk of loss or damage to those improvements resulting from the exercise
151 of the easement rights described in Subsection (2)(a).

152 (4) (a) Except as provided in Subsection (4)(b), a public utility easement is
153 nonexclusive and may be used by more than one public utility.

154 (b) Notwithstanding Subsection (4)(a), a public utility may not:

155 (i) interfere with any facility of another public utility within the public utility easement;

156 or

157 (ii) infringe on the legally required distances of separation between public utility
158 facilities required by federal, state, or local law.

159 (5) A subdivision plat that includes a public utility easement may not be [recorded]
160 approved by a county or municipality unless the subdivider has provided the [~~municipality or~~]
161 county [with] or municipality proof that the subdivider has, as a courtesy, previously notified
162 each public utility [as identified by the municipality or county as holding an interest in the
163 public utility easement has, as a courtesy, been notified at least 14 calendar days prior to
164 recording] that is anticipated to provide service to the subdivision.

165 Section 6. Section **57-1-5.1** is amended to read:

166 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

167 (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional
168 interest in real estate may be terminated by an affidavit that:

169 (a) meets the requirements of Subsection (2) [which shall be]; and

170 (b) is recorded in the office of the recorder of the county in which the affected property
171 is located.

172 (2) Each affidavit required by Subsection (1) shall:

173 (a) cite the interest which is being terminated;

174 (b) contain a legal description of the real property that is affected;

175 (c) reference the entry number and the book and page of the instrument creating the
176 interest to be terminated; and

177 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the
178 death certificate or other document witnessing the death.

179 (3) The affidavit required by Subsection (1) may be in substantially the following form:

180 "Affidavit

181 State of Utah _____)

182 _____) ss

183 County of _____)

184 I, (name of affiant), being of legal age and being first duly sworn, depose and state as
185 follows:

186 (The name of the deceased person), the decedent in the attached certificate of death or
187 other document witnessing death is the same person as (the name of the deceased person)
188 named as a party in the document dated (date of document) as entry _____ in book _____,
189 page _____ in the records of the (name of county) County Recorder.

190 This affidavit is given to terminate the decedent's interest in the property described
191 above.

192 Dated this _____ day of _____, _____.

193 _____
194 (Signature of affiant)

195 Subscribed to and sworn before me this _____ day of _____,
196 _____.

197 _____
198 Notary public"

199 Section 7. Section 57-3-105 is amended to read:

200 **57-3-105. Legal description of real property and names and addresses required in**
201 **documents.**

202 (1) Except as otherwise provided by statute, a person may not present a document for
203 recording unless it complies with the requirements of this section.

204 [(+) (2) A document executed after July 1, 1983, is entitled to be recorded in the office
205 of [any county] the recorder of the county in which the property described in the document is
206 located only if the document contains a legal description of the real property affected.

207 [(2)] (3) (a) A document [affecting] conveying title to real property presented for
208 recording after July 1, 1981, is entitled to be recorded in the office of [any county] the recorder
209 of the county in which the property described in the document is located only if the document
210 contains the names and mailing addresses of the grantees in addition to the legal description
211 required under Subsection [(+)] (2).

212 (b) The address of the management committee may be used as the mailing address of a
213 grantee as required in Subsection [(2)] (3)(a) if the interest conveyed is a timeshare interest as

214 defined by Section 57-19-2.

215 ~~[(3) Each]~~ (4) A county recorder ~~[shall]~~ may refuse to accept a document for recording
216 if ~~[it]~~ the document does not conform to the requirements ~~[under]~~ of this section.

217 ~~[(4)]~~ (5) Notwithstanding Subsections ~~[(1)];~~ (2), ~~[and]~~ (3), and (4), a master form, as
218 defined in Section 57-3-201, that does not meet the requirements of Subsections ~~[(1) and]~~ (2)
219 and (3) is entitled to be recorded in the office of ~~[any county]~~ the recorder of the county in
220 which the property described in the master form is located if it complies with Part 2, Master
221 Mortgage and Trust Deeds.

222 Section 8. Section **57-3-106** is amended to read:

223 **57-3-106. Original documents required -- Captions -- Legibility.**

224 (1) (a) Unless otherwise provided, documents presented for recording in the office of
225 the county recorder shall:

226 (i) be originals; ~~[and]~~

227 (ii) contain a brief caption stating the nature of the document~~[-];~~ and

228 (iii) contain a legal description of the property as required under Section 57-3-105.

229 (b) If a document is a master form, as defined in Section 57-3-201, the caption required
230 by Subsection (1)(a)(ii) shall state that the document is a master form.

231 (2) A court judgment or an abstract of a court judgment presented for recording in the
232 office of the county recorder in compliance with Section 78-22-1 shall:

233 (a) be an original or certified copy; and

234 (b) include the information identifying the judgment debtor as referred to in Subsection
235 78-22-1.5(4) either:

236 (i) in the judgment or abstract of judgment; or

237 (ii) as a separate information statement of the judgment creditor as referred to in
238 Subsection 78-22-1.5(5).

239 (3) Judgments, abstracts of judgments, and separate information statements of the
240 judgment creditor do not require an acknowledgment or a legal description to be recorded.

241 (4) A foreign judgment or an abstract of a foreign judgment recorded in the office of a
242 county recorder shall include the affidavit as required in Section 78-22a-3.

243 (5) Any document recorded in the office of the county recorder to release or assign a
244 judgment lien shall include:

245 (a) the name of any judgment creditor, debtor, assignor, or assignee;

246 (b) the date of recording; and

247 (c) the entry number of the instrument creating the judgment lien.

248 (6) Documents presented for recording shall also be sufficiently legible for the recorder
249 to make certified copies.

250 (7) (a) A document which is of record in the office of the appropriate county recorder
251 in compliance with this chapter may not be recorded again in that same county recorder's office
252 unless the original document has been reexecuted by all parties who executed the document.

253 Unless exempt by statute, original documents which are reexecuted must also contain the
254 appropriate acknowledgment, proof of execution, jurat or other notarial certification for all
255 parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public
256 Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording
257 shall contain a brief statement explaining the reason for rerecording.

258 (b) A county recorder may refuse to accept a document for rerecording if that
259 document does not conform to the requirements of this section.

260 (c) This Subsection (7) applies only to documents executed after July 1, 1998.

261 (8) Minor typographical or clerical errors in a document of record may be corrected by
262 the recording of an affidavit or other appropriate instrument.

263 Section 9. Section **57-8-11** is amended to read:

264 **57-8-11. Contents of deeds of units.**

265 [~~Deeds~~] Each deed of units shall include [~~the following particulars~~]:

266 (1) [~~A~~] a description of the land as provided in Section 57-8-10, including the book and
267 page or entry number and date of recording of the declaration[-];

268 (2) [~~The~~] the unit number of the unit and any other data necessary for its proper
269 identification[-];

270 (3) [~~The~~] percentage of undivided interest appertaining to the unit in the common or
271 community areas and facilities[-]; and

272 (4) [~~Any~~] any further particulars [~~which~~] that the grantor and grantee [~~may deem~~]
273 consider desirable to set forth consistent with the declaration and this [~~aet~~] chapter.

274 Section 10. Section **57-8-14** is amended to read:

275 **57-8-14. Legal description of units.**

276 [Every] (1) A deed, lease, mortgage, or other instrument may legally describe a unit by
277 its identifying number or symbol as designated in the declaration or as shown on the
278 condominium plat~~[, and every such]~~.

279 (2) Each description under Subsection (1) shall be ~~[deemed]~~ considered:

280 (a) to be good and sufficient for all purposes~~[;]~~; and ~~[shall be deemed]~~

281 (b) to convey, transfer, encumber or otherwise affect the unit owner's corresponding
282 percentage of ownership in the common or community areas and facilities even though the
283 ~~[same]~~ percentage of ownership is not expressly mentioned or described.

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

285 **57-8-27. Separate taxation.**

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

292 (2) In the event any of the interests in real property made subject to this chapter by the
293 declaration are leasehold interests, if the lease creating these interests is of record in the office
294 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
295 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
296 situated on or within the real property covered by the lease, and if the lease provides that the
297 lessee shall pay all taxes and assessments imposed by governmental authority, then until ten
298 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever
299 first occurs, all taxes and assessments on the real property covered by the lease shall be levied
300 against the owner of the lessee's interest. If the owner of the reversion under the lease has
301 executed the declaration and condominium plat, until ten years prior to the date that the
302 leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and
303 assessments on the real property covered by the lease shall be separately levied against the unit
304 owners having an interest in the lease, with each unit owner for taxation purposes being
305 considered the owner of a parcel consisting of his undivided condominium interest in the fee of
306 the real property affected by the lease.

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

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

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

328 Section 12. **Repealer.**

329 This bill repeals:

330 Section 17-21-13, **Endorsement of book and page -- Return of instrument.**

Legislative Review Note
as of 1-23-07 11:49 AM

Office of Legislative Research and General Counsel

S.B. 71 - County Recorder Amendments

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/29/2007, 11:48:29 AM, Lead Analyst: Wardrop, T.

Office of the Legislative Fiscal Analyst