

1                                   **CONDOMINIUM OWNERSHIP ACT**

2   **AMENDMENTS**

3   2008 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Michael G. Waddoups**

6   House Sponsor: Gage Froerer

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8   **LONG TITLE**

9   **General Description:**

10           This bill addresses the organization of an association of unit owners in a condominium  
11 project into a nonprofit corporation or other entity.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ defines terms;
- 15           ▶ allows an association of unit owners to organize as a nonprofit corporation or other  
16 entity;
- 17           ▶ addresses the priority of any conflicting governing provisions in Title 57, Chapter 8,  
18 Condominium Ownership Act, Title 16, Chapter 6a, Utah Revised Nonprofit  
19 Corporation Act, other law, and other documents, bylaws, and rules;
- 20           ▶ addresses the application of provisions concerning organization as a nonprofit  
21 corporation to a previously organized entity; and
- 22           ▶ makes technical changes.

23   **Monies Appropriated in this Bill:**

24           None

25   **Other Special Clauses:**

26           None

27   **Utah Code Sections Affected:**

28   AMENDS:

29           **57-8-3**, as last amended by Laws of Utah 2003, Chapter 265

30 ENACTS:

31 **57-8-40**, Utah Code Annotated 1953

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

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

35 **57-8-3. Definitions.**

36 As used in this chapter:

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

40 (2) "Association of unit owners" means all of the unit owners:

41 (a) acting as a group in accordance with the declaration and bylaws[-]; or

42 (b) organized as a legal entity in accordance with the declaration.

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

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

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

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

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

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

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

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

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

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

60 (5) "Common expenses" means:

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

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

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

65 (d) expenses declared common expenses by this chapter, or by the declaration or the  
66 bylaws.

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

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

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

74 (9) "Condominium project" means a real estate condominium project; a plan or project  
75 whereby two or more units, whether contained in existing or proposed apartments, commercial  
76 or industrial buildings or structures, or otherwise, are separately offered or proposed to be  
77 offered for sale. Condominium project also means the property when the context so requires.

78 (10) "Condominium unit" means a unit together with the undivided interest in the  
79 common areas and facilities appertaining to that unit. Any reference in this chapter to a  
80 condominium unit includes both a physical unit together with its appurtenant undivided interest  
81 in the common areas and facilities and a time period unit together with its appurtenant undivided  
82 interest, unless the reference is specifically limited to a time period unit.

83 (11) "Contractible condominium" means a condominium project from which one or  
84 more portions of the land within the project may be withdrawn in accordance with provisions of  
85 the declaration and of this chapter. If the withdrawal can occur only by the expiration or

86 termination of one or more leases, then the condominium project is not a contractible  
87 condominium within the meaning of this chapter.

88 (12) "Convertible land" means a building site which is a portion of the common areas  
89 and facilities, described by metes and bounds, within which additional units or limited common  
90 areas and facilities may be created in accordance with this chapter.

91 (13) "Convertible space" means a portion of the structure within the condominium  
92 project, which portion may be converted into one or more units or common areas and facilities,  
93 including limited common areas and facilities in accordance with this chapter.

94 (14) "Declarant" means all persons who execute the declaration or on whose behalf the  
95 declaration is executed. From the time of the recordation of any amendment to the declaration  
96 expanding an expandable condominium, all persons who execute that amendment or on whose  
97 behalf that amendment is executed shall also come within this definition. Any successors of the  
98 persons referred to in this subsection who come to stand in the same relation to the  
99 condominium project as their predecessors also come within this definition.

100 (15) "Declaration" means the instrument by which the property is submitted to the  
101 provisions of this act, as it from time to time may be lawfully amended.

102 (16) "Expandable condominium" means a condominium project to which additional land  
103 or an interest in it may be added in accordance with the declaration and this chapter.

104 (17) "Leasehold condominium" means a condominium project in all or any portion of  
105 which each unit owner owns an estate for years in his unit, or in the land upon which that unit is  
106 situated, or both, with all those leasehold interests to expire naturally at the same time. A  
107 condominium project including leased land, or an interest in the land, upon which no units are  
108 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

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

112 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the  
113 declaration or lawful amendments to the declaration, means the owners of more than 50% in the

114 aggregate in interest of the undivided ownership of the common areas and facilities.

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

118 (21) "Par value" means a number of dollars or points assigned to each unit by the  
119 declaration. Substantially identical units shall be assigned the same par value, but units located  
120 at substantially different heights above the ground, or having substantially different views, or  
121 having substantially different amenities or other characteristics that might result in differences in  
122 market value, may be considered substantially identical within the meaning of this subsection. If  
123 par value is stated in terms of dollars, that statement may not be considered to reflect or control  
124 the sales price or fair market value of any unit, and no opinion, appraisal, or fair market  
125 transaction at a different figure may affect the par value of any unit, or any undivided interest in  
126 the common areas and facilities, voting rights in the unit owners' association, liability for  
127 common expenses, or right to common profits, assigned on the basis thereof.

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

130 (23) "Property" means the land, whether leasehold or in fee simple, the building, if any,  
131 all improvements and structures thereon, all easements, rights, and appurtenances belonging  
132 thereto, and all articles of personal property intended for use in connection therewith.

133 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title  
134 57, Chapter 3, Recording of Documents.

135 (25) "Size" means the number of cubic feet, or the number of square feet of ground or  
136 floor space, within each unit as computed by reference to the record of survey map and rounded  
137 off to a whole number. Certain spaces within the units including attic, basement, or garage  
138 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the  
139 same basis of calculation is employed for all units in the condominium project and if that basis is  
140 described in the declaration.

141 (26) "Time period unit" means an annually recurring part or parts of a year specified in

142 the declaration as a period for which a unit is separately owned and includes a timeshare estate  
143 as defined in Subsection 57-19-2(17).

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

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

152 (29) "Unit owner" means the person or persons owning a unit in fee simple and an  
153 undivided interest in the fee simple estate of the common areas and facilities in the percentage  
154 specified and established in the declaration or, in the case of a leasehold condominium project,  
155 the person or persons whose leasehold interest or interests in the condominium unit extend for  
156 the entire balance of the unexpired term or terms.

157 Section 2. Section **57-8-40** is enacted to read:

158 **57-8-40. Organization of an association of unit owners under other law -- Priority**  
159 **-- Reorganization.**

160 (1) As used in this section, "organizational documents" means the documents related to  
161 the formation or operation of a legal entity formed by the management committee or the  
162 declarant.

163 (2) If permitted, required, or acknowledged by the declaration, the management  
164 committee may organize an association of unit owners into a nonprofit corporation in  
165 accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or other entity  
166 organized under other law.

167 (3) Organizational documents for a nonprofit corporation or other entity formed in  
168 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and  
169 obligations found in the declaration and any of the association's bylaws recorded at the time of

170 the formation of a nonprofit corporation or other entity under Subsection (2).

171 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the  
172 organizational documents of an entity formed in accordance with Subsection (2) may include  
173 any additional indemnification and liability limitation provision for the management committee  
174 members and officers of the association that is permitted by the chapter under which the  
175 association is organized for board members, directors, and officers, or similar persons in a  
176 position of control.

177 (5) In the event of a conflict between this chapter's provisions, a statute under which the  
178 association of unit owners is organized, documents concerning the organization of the  
179 association of unit owners as a nonprofit corporation or other entity, the declaration, the  
180 bylaws, and association rules, the following order prevails:

181 (a) this chapter controls over a conflicting provision found in any of the sources listed in  
182 Subsections (5)(b) through (f);

183 (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law  
184 under which an entity is organized controls over a conflicting provision in any of the sources  
185 listed in Subsections (5)(c) through (f);

186 (c) an organizational document filed in accordance with Title 16, Chapter 6a, Utah  
187 Revised Nonprofit Corporation Act, or any other law under which an entity is organized  
188 controls over a conflicting provision in any of the sources listed in Subsections (5)(d) through  
189 (f);

190 (d) the declaration controls over a conflicting provision in any of the sources listed in  
191 Subsections (5)(e) or (f);

192 (e) the bylaws control over a conflicting provision in association rules; and

193 (f) the association rules yield to a conflicting provision in any of the sources listed in  
194 Subsection (5)(a) through (e).

195 (6) Immediately upon the legal formation of an entity in compliance with this section,  
196 the association and unit owners are subject to any right, obligation, procedure, and remedy  
197 applicable to that entity.

198           (7) (a) A form "articles of incorporation" or similar organizational document attached  
199 to a declaration may be modified by the management committee for filing or re-filing if the  
200 modified version is otherwise consistent with this section's provisions.

201           (b) An organizational document attached to a declaration that is filed and concerns the  
202 organization of an entity may be amended in accordance with its own terms or any applicable  
203 law, notwithstanding the fact that the organizational document might be recorded.

204           (c) Except for amended bylaws, an initial or amended organizational document properly  
205 filed with the state does not need to be recorded.

206           (8) This section applies to the reorganization of an association of unit owners  
207 previously organized if the entity's status is terminated or dissolved without the possibility of  
208 reinstatement.

209           (9) (a) This section applies to all condominium projects, whether established before or  
210 after May 5, 2008.

211           (b) This section does not validate or invalidate the organization of an association that  
212 occurred before May 5, 2008, whether or not the association was otherwise in compliance with  
213 this section.