

1                   **RENTAL RESTRICTIONS ON CONDOMINIUMS**  
2                   **AND COMMON INTEREST COMMUNITIES**

3                                   2009 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Gage Froerer**

6                                   Senate Sponsor: Stephen H. Urquhart

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies the powers of an association of unit owners or association to create  
11                   rental restrictions.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ modifies the powers an association of unit owners or association to:
- 15                   • create reasonable restrictions on the number and terms of rental units or lots;
  - 16                   • include rental restrictions in the association of unit owners' recorded declaration  
17                   or association's recorded governing documents;
  - 18                   • include a hardship exemption in the rental restrictions;
  - 19                   • include a grandfather clause for existing rental units or lots; and
  - 20                   • create procedures to track the number of rental units or lots;
- 21                   ▶ creates notification procedures to lenders if a declaration is amended; and
- 22                   ▶ makes technical corrections.

23                   **Monies Appropriated in this Bill:**

24                   None

25                   **Other Special Clauses:**

26                   None

27                   **Utah Code Sections Affected:**

28                   AMENDS:

29                   **57-8-10**, as last amended by Laws of Utah 2003, Chapter 265

30 ENACTS:

31 **57-8-41**, Utah Code Annotated 1953

32 **57-8a-209**, Utah Code Annotated 1953

33 **57-8a-210**, Utah Code Annotated 1953

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

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

37 **57-8-10. Contents of declaration.**

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

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

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

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

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

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

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

55 (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or  
56 other apparatus intended to serve a single unit, but located outside the boundaries of the unit,  
57 shall constitute a limited common area and facility appertaining to that unit exclusively,

58 whether or not the declaration makes such a provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

116 (iv) The declaration shall state:

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

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

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

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

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

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

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

142 to residential use.

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

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

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

157 (xii) 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. The declaration may also state that no assurances are made in those  
161 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) 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. The  
171 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 a statement of any circumstances which will terminate this option prior to  
175 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 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  
190 or 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  
195 the unit owners in fee simple. If there is to be fee simple ownership, the declaration shall  
196 include:

197 (A) a description of the land or improvements, including without limitation, a legal

198 description by metes and bounds of the land; or

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

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

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

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

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

212 (7) (a) If the condominium project contains time period units, the declaration shall  
213 also contain the location of each condominium unit in the calendar year. This information  
214 shall be set out in a fourth column of the exhibit or schedule referred to in Subsection  
215 57-8-7(2), if the exhibit or schedule 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) As used in this section, "rentals" or "rental unit" means:

229 (i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is  
230 occupied by someone while no unit owner occupies the unit as the unit owner's primary  
231 residence; and

232 (ii) a unit owned by an entity or trust, regardless of who occupies the unit.

233 (b) (i) Subject to Subsections (9)(c), (f), and (g), an association of unit owners may:

234 (A) create restrictions on the number and term of rentals in a condominium project; or

235 (B) prohibit rentals in the condominium project.

236 (ii) An association of unit owners that creates a rental restriction or prohibition in  
237 accordance with Subsection (9)(b)(i) shall create the rental restriction or prohibition in a  
238 declaration or by amending the declaration.

239 (c) If an association of unit owners prohibits or imposes restrictions on the number  
240 and term of rentals, the restrictions shall include:

241 (i) a provision that requires a condominium project to exempt from the rental  
242 restrictions the following unit owner and the unit owner's unit:

243 (A) a unit owner in the military for the period of the unit owner's deployment;

244 (B) a unit occupied by a unit owner's parent, child, or sibling;

245 (C) a unit owner whose employer has relocated the unit owner for no less than two  
246 years; or

247 (D) a unit owned by a trust or other entity created for estate planning purposes if the  
248 trust or other estate planning entity was created for the estate of:

249 (I) a current resident of the unit; or

250 (II) the parent, child, or sibling of the current resident of the unit;

251 (ii) a provision allowing a unit owner who has a rental in the condominium project

252 before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the

253 county recorder of the county in which the condominium project is located to continue renting

254 until:

255 (A) the unit owner occupies the unit; or

256 (B) an officer, owner, member, trustee, beneficiary, director, or person holding a  
257 similar position of ownership or control of an entity or trust that holds an ownership interest in  
258 the unit, occupies the unit; and

259 (iii) a requirement that the association of unit owners create, by rule or resolution,  
260 procedures to:

261 (A) determine and track the number of rentals and units in the condominium project  
262 subject to the provisions described in Subsections (9)(c)(i) and (ii); and

263 (B) ensure consistent administration and enforcement of the rental restrictions.

264 (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the  
265 following occur:

266 (i) the conveyance, sale, or other transfer of a unit by deed;

267 (ii) the granting of a life estate in the unit; or

268 (iii) if the unit is owned by a limited liability company, corporation, partnership, or  
269 other business entity, the sale or transfer of more than 75% of the business entity's share,  
270 stock, membership interests, or partnership interests in a 12-month period.

271 (e) This section does not limit or affect residency age requirements for an association  
272 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42  
273 U.S.C. Sec. 3607.

274 (f) A declaration or amendment to a declaration recorded prior to transfer of the first  
275 unit from the initial declarant may prohibit or restrict rentals without providing for the  
276 exceptions, provisions, and procedures required under Subsection (9)(c).

277 (g) This section does not apply to:

278 (i) a condominium project containing a time period unit as defined in Section 57-8-3;

279 (ii) any other form of timeshare interest as defined in Section 57-19-2; or

280 (iii) a condominium project in which the initial declaration is recorded before May 12,  
281 2009.

282 (h) Notwithstanding this section, an association of unit owners may, upon unanimous  
283 approval by all unit owners, restrict or prohibit rentals without an exception described in  
284 Subsection (9)(c).

285 Section 2. Section **57-8-41** is enacted to read:

286 **57-8-41. Lender approval -- Declaration amendments and association action.**

287 (1) If a security holder's consent is a condition for amending a declaration or bylaw, or  
288 for an action of the association of unit owners or management committee, then, subject to  
289 Subsection (4), the security holder's consent is presumed if:

290 (a) written notice of the proposed amendment or action is sent by certified or  
291 registered mail to the security holder's address listed for receiving notice in the recorded trust  
292 deed or other recorded document evidencing the security interest;

293 (b) 60 days have passed after the day on which notice was mailed; and

294 (c) the person designated for receipt of the response in the notice has not received a  
295 written response from the security holder either consenting to or refusing to accept the  
296 amendment or action.

297 (2) The provisions of Subsection (1) shall apply to:

298 (a) an association of unit owners formed before and after May 12, 2009; and

299 (b) documents created and recorded before and after May 12, 2009.

300 (3) If, under Subsection (1), a security holder's address for receiving notice is not  
301 provided in the recorded documents evidencing the security interest, the association of unit  
302 owners:

303 (a) shall use reasonable efforts to find a mailing address for the security holder; and

304 (b) may send the notice to any address obtained under Subsection (3)(a).

305 (4) If a security holder responds in writing within 60 days after the day on which the  
306 notice is mailed under Subsection (1), indicating that the security interest has been assigned or  
307 conveyed to another person, without any recorded document evidencing such a conveyance,  
308 the association of unit owners:

309 (a) may not presume the security holder's consent under Subsection (1); and

310 (b) shall send a notice in accordance with Subsection (1) to the person assigned or  
311 conveyed the security interest.

312 (5) The association of unit owners shall:

313 (a) send a notice as described in Subsection (4)(b) to the person assigned or conveyed  
314 the interest at an address provided by the security holder under Subsection (4); or

315 (b) if no address is provided, shall use reasonable efforts to find a mailing address for,  
316 and send notice to, the person assigned or conveyed the interest.

317 Section 3. Section **57-8a-209** is enacted to read:

318 **57-8a-209. Rental Restrictions.**

319 (1) As used in this section, "rentals" or "rental lot" means:

320 (a) a lot owned by an individual not described in Subsection (1)(b) that is occupied by  
321 someone while no lot owner occupies the lot as the lot owner's primary residence; and

322 (b) a lot owned by an entity or trust, regardless of who occupies the lot.

323 (2) (a) Subject to Subsections (2)(b), (6), and (7), an association may:

324 (i) create restrictions on the number and term of rentals in an association; or

325 (ii) prohibit rentals in the association.

326 (b) An association that creates a rental restriction or prohibition in accordance with  
327 Subsection (1)(a)(i) shall create the rental restriction or prohibition in a recorded declaration of  
328 covenants, conditions, and restrictions, or by amending the recorded declaration of covenants,  
329 conditions, and restrictions.

330 (3) If an association prohibits or imposes restrictions on the number and term of  
331 rentals, the restrictions shall include:

332 (a) a provision that requires the association to exempt from the rental restrictions the  
333 following lot owner and the lot owner's lot:

334 (i) a lot owner in the military for the period of the lot owner's deployment;

335 (ii) a lot occupied by a lot owner's parent, child, or sibling;

336 (iii) a lot owner whose employer has relocated the lot owner for no less than two years;

337 or

338 (iv) a lot owned by a trust or other entity created for estate planning purposes if the  
339 trust or other estate planning entity was created for:  
340 (A) the estate of a current resident of the lot; or  
341 (B) the parent, child, or sibling of the current resident of the lot;  
342 (b) a provision allowing a lot owner who has a rental in the association before the time  
343 the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the  
344 county in which the association is located to continue renting until:  
345 (i) the lot owner occupies the lot; or  
346 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a  
347 similar position of ownership or control of an entity or trust that holds an ownership interest in  
348 the lot, occupies the lot; and  
349 (c) a requirement that the association create, by rule or resolution, procedures to:  
350 (i) determine and track the number of rentals and lots in the association subject to the  
351 provisions described in Subsections (3)(a) and (b); and  
352 (ii) ensure consistent administration and enforcement of the rental restrictions.  
353 (4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the  
354 following occur:  
355 (a) the conveyance, sale, or other transfer of a lot by deed;  
356 (b) the granting of a life estate in the lot; or  
357 (c) if the lot is owned by a limited liability company, corporation, partnership, or other  
358 business entity, the sale or transfer of more than 75% of the business entity's share, stock,  
359 membership interests, or partnership interests in a 12-month period.  
360 (5) This section does not limit or affect residency age requirements for an association  
361 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.  
362 3607.  
363 (6) The declaration of covenants, conditions, and restrictions or amendments to the  
364 declaration of covenants, conditions, and restrictions recorded prior to the transfer of the first  
365 lot from the initial declarant may prohibit or restrict rentals without providing for the

366 exceptions, provisions, and procedures required under Subsection (3)(a).

367 (7) This section does not apply to:

368 (a) an association containing a time period unit as defined in Section 57-8-3;

369 (b) any other form of timeshare interest as defined in Section 57-19-2; or

370 (c) an association in which the initial declaration of covenants, conditions, and  
371 restrictions is recorded before May 12, 2009.

372 (8) Notwithstanding this section, an association may, upon unanimous approval by all  
373 lot owners, restrict or prohibit rentals without an exception described in Subsection (3).

374 Section 4. Section **57-8a-210** is enacted to read:

375 **57-8a-210. Lender approval -- Declaration amendments and association action.**

376 (1) If a security holder's consent is a condition for amending a declaration or bylaw, or  
377 for an action of the association, then, subject to Subsection (4), the security holder's consent is  
378 presumed if:

379 (a) written notice of the proposed amendment or action is sent by certified or  
380 registered mail to the security holder's address listed for receiving notice in the recorded trust  
381 deed or other recorded document evidencing the security interest;

382 (b) 60 days have passed after the day on which notice was mailed; and

383 (c) the person designated for receipt of the response in the notice has not received a  
384 written response from the security holder either consenting to or refusing to accept the  
385 amendment or action.

386 (2) The provisions of Subsection (1) shall apply to:

387 (a) an association formed before and after May 12, 2009; and

388 (b) documents created and recorded before and after May 12, 2009.

389 (3) If, under Subsection (1), a security holder's address for receiving notice is not  
390 provided in the recorded documents evidencing the security interest, the association:

391 (a) shall use reasonable efforts to find a mailing address for the security holder; and

392 (b) may send the notice to any address obtained under Subsection (3)(a).

393 (4) If a security holder responds in writing within 60 days after the day on which a

394 notice is mailed under Subsection (1), indicating that the security interest has been assigned or  
395 conveyed to another person, without any recorded document evidencing such a conveyance,  
396 the association:

397 (a) may not presume the security holder's consent under Subsection (1); and

398 (b) shall send a notice in accordance with Subsection (1) to the person assigned or  
399 conveyed the security interest.

400 (5) The association shall:

401 (a) send a notice as described in Subsection (4)(b) to the person assigned or conveyed  
402 the interest at an address provided by the security holder under Subsection (4); or

403 (b) if no address is provided, shall use reasonable efforts to find a mailing address for,  
404 and send notice to, the person assigned or conveyed the interest.