

COMMON INTEREST OWNERSHIP AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts and repeals provisions relating to common interest ownership associations.

Highlighted Provisions:

This bill:

- ▶ enacts the Utah Common Interest Ownership Act; and
- ▶ repeals the Condominium Ownership Act and the Community Association Act.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-8b-101, Utah Code Annotated 1953

57-8b-102, Utah Code Annotated 1953

57-8b-103, Utah Code Annotated 1953

57-8b-104, Utah Code Annotated 1953

57-8b-105, Utah Code Annotated 1953

57-8b-106, Utah Code Annotated 1953

57-8b-107, Utah Code Annotated 1953



- 28 **57-8b-108**, Utah Code Annotated 1953
- 29 **57-8b-109**, Utah Code Annotated 1953
- 30 **57-8b-110**, Utah Code Annotated 1953
- 31 **57-8b-111**, Utah Code Annotated 1953
- 32 **57-8b-112**, Utah Code Annotated 1953
- 33 **57-8b-201**, Utah Code Annotated 1953
- 34 **57-8b-202**, Utah Code Annotated 1953
- 35 **57-8b-203**, Utah Code Annotated 1953
- 36 **57-8b-204**, Utah Code Annotated 1953
- 37 **57-8b-205**, Utah Code Annotated 1953
- 38 **57-8b-206**, Utah Code Annotated 1953
- 39 **57-8b-301**, Utah Code Annotated 1953
- 40 **57-8b-302**, Utah Code Annotated 1953
- 41 **57-8b-303**, Utah Code Annotated 1953
- 42 **57-8b-304**, Utah Code Annotated 1953
- 43 **57-8b-305**, Utah Code Annotated 1953
- 44 **57-8b-306**, Utah Code Annotated 1953
- 45 **57-8b-307**, Utah Code Annotated 1953
- 46 **57-8b-308**, Utah Code Annotated 1953
- 47 **57-8b-309**, Utah Code Annotated 1953
- 48 **57-8b-310**, Utah Code Annotated 1953
- 49 **57-8b-311**, Utah Code Annotated 1953
- 50 **57-8b-312**, Utah Code Annotated 1953
- 51 **57-8b-401**, Utah Code Annotated 1953
- 52 **57-8b-402**, Utah Code Annotated 1953
- 53 **57-8b-403**, Utah Code Annotated 1953
- 54 **57-8b-404**, Utah Code Annotated 1953
- 55 **57-8b-405**, Utah Code Annotated 1953
- 56 **57-8b-406**, Utah Code Annotated 1953
- 57 **57-8b-407**, Utah Code Annotated 1953
- 58 **57-8b-408**, Utah Code Annotated 1953

- 59 **57-8b-409**, Utah Code Annotated 1953
- 60 **57-8b-410**, Utah Code Annotated 1953
- 61 **57-8b-411**, Utah Code Annotated 1953
- 62 **57-8b-412**, Utah Code Annotated 1953
- 63 **57-8b-413**, Utah Code Annotated 1953
- 64 **57-8b-414**, Utah Code Annotated 1953
- 65 **57-8b-415**, Utah Code Annotated 1953
- 66 **57-8b-416**, Utah Code Annotated 1953
- 67 **57-8b-417**, Utah Code Annotated 1953
- 68 **57-8b-418**, Utah Code Annotated 1953
- 69 **57-8b-419**, Utah Code Annotated 1953
- 70 **57-8b-420**, Utah Code Annotated 1953
- 71 **57-8b-501**, Utah Code Annotated 1953
- 72 **57-8b-502**, Utah Code Annotated 1953
- 73 **57-8b-503**, Utah Code Annotated 1953
- 74 **57-8b-504**, Utah Code Annotated 1953
- 75 **57-8b-505**, Utah Code Annotated 1953
- 76 **57-8b-506**, Utah Code Annotated 1953
- 77 **57-8b-507**, Utah Code Annotated 1953
- 78 **57-8b-508**, Utah Code Annotated 1953
- 79 **57-8b-509**, Utah Code Annotated 1953
- 80 **57-8b-510**, Utah Code Annotated 1953
- 81 **57-8b-511**, Utah Code Annotated 1953
- 82 **57-8b-512**, Utah Code Annotated 1953
- 83 **57-8b-513**, Utah Code Annotated 1953
- 84 **57-8b-514**, Utah Code Annotated 1953
- 85 **57-8b-601**, Utah Code Annotated 1953
- 86 **57-8b-602**, Utah Code Annotated 1953
- 87 **57-8b-603**, Utah Code Annotated 1953
- 88 **57-8b-604**, Utah Code Annotated 1953
- 89 **57-8b-701**, Utah Code Annotated 1953

- 90 **57-8b-702**, Utah Code Annotated 1953
- 91 **57-8b-703**, Utah Code Annotated 1953
- 92 **57-8b-704**, Utah Code Annotated 1953
- 93 **57-8b-705**, Utah Code Annotated 1953
- 94 **57-8b-706**, Utah Code Annotated 1953
- 95 **57-8b-707**, Utah Code Annotated 1953
- 96 **57-8b-708**, Utah Code Annotated 1953
- 97 **57-8b-709**, Utah Code Annotated 1953
- 98 **57-8b-710**, Utah Code Annotated 1953
- 99 **57-8b-801**, Utah Code Annotated 1953
- 100 **57-8b-802**, Utah Code Annotated 1953
- 101 **57-8b-803**, Utah Code Annotated 1953
- 102 **57-8b-901**, Utah Code Annotated 1953
- 103 **57-8b-902**, Utah Code Annotated 1953
- 104 **57-8b-903**, Utah Code Annotated 1953
- 105 **57-8b-904**, Utah Code Annotated 1953
- 106 **57-8b-905**, Utah Code Annotated 1953
- 107 **57-8b-1001**, Utah Code Annotated 1953
- 108 **57-8b-1002**, Utah Code Annotated 1953
- 109 **57-8b-1003**, Utah Code Annotated 1953
- 110 **57-8b-1004**, Utah Code Annotated 1953
- 111 **57-8b-1005**, Utah Code Annotated 1953
- 112 **57-8b-1006**, Utah Code Annotated 1953
- 113 **57-8b-1007**, Utah Code Annotated 1953
- 114 **57-8b-1008**, Utah Code Annotated 1953
- 115 **57-8b-1009**, Utah Code Annotated 1953
- 116 **57-8b-1010**, Utah Code Annotated 1953
- 117 **57-8b-1011**, Utah Code Annotated 1953
- 118 **57-8b-1012**, Utah Code Annotated 1953
- 119 **57-8b-1013**, Utah Code Annotated 1953
- 120 **57-8b-1014**, Utah Code Annotated 1953

121 REPEALS:

- 122 **57-8-1**, as enacted by Laws of Utah 1963, Chapter 111
- 123 **57-8-2**, as enacted by Laws of Utah 1963, Chapter 111
- 124 **57-8-3**, as last amended by Laws of Utah 2008, Chapter 291
- 125 **57-8-4**, as enacted by Laws of Utah 1963, Chapter 111
- 126 **57-8-5**, as enacted by Laws of Utah 1963, Chapter 111
- 127 **57-8-6**, as last amended by Laws of Utah 1975, Chapter 173
- 128 **57-8-7**, as last amended by Laws of Utah 2003, Chapter 265
- 129 **57-8-7.2**, as enacted by Laws of Utah 2004, Chapter 290
- 130 **57-8-8**, as last amended by Laws of Utah 2000, Chapter 132
- 131 **57-8-9**, as enacted by Laws of Utah 1963, Chapter 111
- 132 **57-8-10**, as last amended by Laws of Utah 2009, Chapter 178
- 133 **57-8-11**, as last amended by Laws of Utah 2007, Chapter 268
- 134 **57-8-12**, as enacted by Laws of Utah 1963, Chapter 111
- 135 **57-8-13**, as last amended by Laws of Utah 2003, Chapter 265
- 136 **57-8-13.2**, as last amended by Laws of Utah 2003, Chapter 265
- 137 **57-8-13.4**, as enacted by Laws of Utah 1975, Chapter 173
- 138 **57-8-13.6**, as last amended by Laws of Utah 2003, Chapter 265
- 139 **57-8-13.8**, as last amended by Laws of Utah 1992, Chapter 12
- 140 **57-8-13.10**, as last amended by Laws of Utah 2003, Chapter 265
- 141 **57-8-13.12**, as enacted by Laws of Utah 1975, Chapter 173
- 142 **57-8-13.14**, as enacted by Laws of Utah 1975, Chapter 173
- 143 **57-8-14**, as last amended by Laws of Utah 2007, Chapter 268
- 144 **57-8-15**, as enacted by Laws of Utah 1963, Chapter 111
- 145 **57-8-16**, as last amended by Laws of Utah 1997, Chapter 230
- 146 **57-8-16.5**, as enacted by Laws of Utah 1975, Chapter 173
- 147 **57-8-17**, as enacted by Laws of Utah 1963, Chapter 111
- 148 **57-8-18**, as last amended by Laws of Utah 1975, Chapter 173
- 149 **57-8-19**, as enacted by Laws of Utah 1963, Chapter 111
- 150 **57-8-20**, as last amended by Laws of Utah 2003, Chapter 265
- 151 **57-8-21**, as last amended by Laws of Utah 2003, Chapter 265

152 **57-8-22**, as enacted by Laws of Utah 1963, Chapter 111
153 **57-8-23**, as enacted by Laws of Utah 1963, Chapter 111
154 **57-8-24**, as last amended by Laws of Utah 1975, Chapter 173
155 **57-8-25**, as enacted by Laws of Utah 1963, Chapter 111
156 **57-8-26**, as enacted by Laws of Utah 1963, Chapter 111
157 **57-8-27**, as last amended by Laws of Utah 2007, Chapters 268 and 329
158 **57-8-28**, as enacted by Laws of Utah 1963, Chapter 111
159 **57-8-29**, as last amended by Laws of Utah 2000, Chapter 99
160 **57-8-30**, as enacted by Laws of Utah 1963, Chapter 111
161 **57-8-31**, as enacted by Laws of Utah 1963, Chapter 111
162 **57-8-32**, as enacted by Laws of Utah 1963, Chapter 111
163 **57-8-32.5**, as enacted by Laws of Utah 1975, Chapter 173
164 **57-8-33**, as enacted by Laws of Utah 1963, Chapter 111
165 **57-8-34**, as enacted by Laws of Utah 1963, Chapter 111
166 **57-8-35**, as last amended by Laws of Utah 2005, Chapter 254
167 **57-8-36**, as last amended by Laws of Utah 2003, Chapter 265
168 **57-8-37**, as enacted by Laws of Utah 2001, Chapter 317
169 **57-8-38**, as last amended by Laws of Utah 2008, Chapter 3
170 **57-8-39**, as enacted by Laws of Utah 2007, Chapter 223
171 **57-8-40**, as enacted by Laws of Utah 2008, Chapter 291
172 **57-8a-101**, as enacted by Laws of Utah 2004, Chapter 153
173 **57-8a-102**, as enacted by Laws of Utah 2004, Chapter 153
174 **57-8a-103**, as enacted by Laws of Utah 2004, Chapter 153
175 **57-8a-104**, as enacted by Laws of Utah 2007, Chapter 223
176 **57-8a-201**, as enacted by Laws of Utah 2004, Chapter 153
177 **57-8a-202**, as enacted by Laws of Utah 2004, Chapter 153
178 **57-8a-203**, as enacted by Laws of Utah 2004, Chapter 153
179 **57-8a-204**, as enacted by Laws of Utah 2004, Chapter 153
180 **57-8a-205**, as enacted by Laws of Utah 2004, Chapter 153
181 **57-8a-206**, as enacted by Laws of Utah 2004, Chapter 153
182 **57-8a-207**, as enacted by Laws of Utah 2004, Chapter 153

183 **57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

184 **57-8a-209**, as enacted by Laws of Utah 2009, Chapter 178

185 **57-8a-210**, as enacted by Laws of Utah 2009, Chapter 178



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

188 Section 1. Section **57-8b-101** is enacted to read:

189 **Part 1. General Provisions**

190 **57-8b-101. Title.**

191 This chapter is known as the "Utah Common Interest Ownership Act."

192 Section 2. Section **57-8b-102** is enacted to read:

193 **57-8b-102. Definitions.**

194 As used in this chapter:

195 (1) "Allocated interests" means the following interests allocated to each unit:

196 (a) for a condominium:

197 (i) the undivided interest in the common elements;

198 (ii) the common expense liability; and

199 (iii) the voting interests in the association;

200 (b) for a cooperative:

201 (i) the common expense liability;

202 (ii) the ownership interest; and

203 (iii) the voting interests in the association; and

204 (c) for a planned community:

205 (i) the common expense liability; and

206 (ii) the voting interests in the association.

207 (2) "Applicable county recorder" means the recorder of the county in which the real
208 estate that is the subject of the instrument being submitted for recording is located.

209 (3) "Assessment" means:

210 (a) any charge that the association imposes on or levies against a unit owner; or

211 (b) any charge that the declaration imposes on or levies against a unit.

212 (4) "Association" means an organization established under Section 57-8b-501
213 comprised of the owners of units within a common interest community.

214 (5) "Board" means the body, however denominated, designated in an association's
215 governing documents to act on behalf of the association.

216 (6) "Board resolution" means policies and procedures established by the board under
217 Section 57-8b-507 for internal governance of the board and the association.

218 (7) "Bylaws" means the document, however denominated, adopted under Section
219 57-8b-416 that contains the procedures for conduct of an association's affairs, regardless of the
220 legal form of the entity that constitutes the association.

221 (8) "Common elements":

222 (a) means:

223 (i) (A) for a condominium or cooperative, all portions of the condominium or
224 cooperative, respectively, other than the units; and

225 (B) for a planned community, all real estate in the planned community that is owned or
226 leased by an association; and

227 (ii) for each common interest community, any other interest in real estate for the
228 benefit of the unit owners that is subject to the declaration, including all property that the
229 association has an obligation to repair or maintain; and

230 (b) includes:

231 (i) areas and facilities for the common use or benefit of the unit owners;

232 (ii) furnishings used for the common benefit of the unit owners; and

233 (iii) areas and items that the association has the responsibility to repair or maintain
234 under this chapter or the declaration.

235 (9) "Common expense liability" means the liability for:

236 (a) common expenses; or

237 (b) limited common expenses allocated to a unit under Section 57-8b-802.

238 (10) "Common expenses" means an association's:

239 (a) allocations to reserves;

240 (b) expenditures; and

241 (c) financial liabilities.

242 (11) "Common interest community" means real estate that is:

243 (a) described in a declaration; and

244 (b) subject to:

- 245 (i) a common easement;
- 246 (ii) a common servitude;
- 247 (iii) a common maintenance obligation; or
- 248 (iv) any other form of common or interdependent relationship necessary for the
- 249 administration of the property.
- 250 (12) "Condominium" means, a common interest community in which:
- 251 (a) portions of the real estate are designated for ownership solely by the owners of
- 252 those portions; and
- 253 (b) the undivided interests in the common elements are vested in the unit owners.
- 254 (13) "Contractible common interest community":
- 255 (a) means a common interest community from which one or more portions may be
- 256 withdrawn in accordance with the declaration and this chapter; and
- 257 (b) does not include a common interest community from which one or more portions
- 258 may be contracted by the expiration or termination of one or more leases.
- 259 (14) "Convertible land" means real estate:
- 260 (a) that is:
- 261 (i) described by metes and bounds; and
- 262 (ii) a portion of the common elements; and
- 263 (b) within which additional units or limited common areas and facilities may be created
- 264 under this chapter.
- 265 (15) "Convertible space" means a portion of the structure in a condominium or
- 266 cooperative that may, as provided in this chapter and a declaration, be converted into:
- 267 (a) one or more units;
- 268 (b) common elements; or
- 269 (c) limited common elements.
- 270 (16) "Cooperative" means a common interest community in which the real estate is
- 271 owned by an association, each member of which is entitled, by virtue of the member's
- 272 ownership interest in the association, to exclusive possession of a unit.
- 273 (17) "Declarant" means a person who executes a declaration and submits it for
- 274 recording in a county recorder's office.
- 275 (18) "Declaration":

276 (a) means an instrument, however denominated, that:
277 (i) creates a common interest community;
278 (ii) creates one or more covenants, conditions, restrictions, or easements related to the
279 real estate that is the subject of the instrument; and
280 (iii) affects all units; and
281 (b) includes each amendment and supplement to the instrument.
282 (19) "Delimiting lease" means a lease the expiration or termination of which terminates
283 or reduces the size of a common interest community.
284 (20) "Design guidelines" means:
285 (a) guidelines and standards governing the common elements and other property within
286 a common interest community, including guidelines and standards relating to:
287 (i) architecture;
288 (ii) design;
289 (iii) aesthetics;
290 (iv) landscape; and
291 (v) construction; and
292 (b) procedures related to compliance with guidelines and standards described in
293 Subsection (20)(a), promulgated by the:
294 (i) declarant, if promulgated during the period of declarant control; or
295 (ii) association, if not promulgated by the declarant.
296 (21) "Dwelling" means a structure in a planned community that is intended for human
297 occupancy.
298 (22) "Expandable common interest community" means a common interest community
299 to which additional real estate or an interest in additional real estate may be added as provided
300 in the declaration and this chapter.
301 (23) "Governing documents":
302 (a) means collectively:
303 (i) the plat;
304 (ii) the declaration;
305 (iii) the association's organizational articles, if applicable;
306 (iv) the bylaws;

307 (v) the design guidelines;
308 (vi) association rules; and
309 (vii) any written instrument through which the association exercises powers or
310 manages, maintains, or otherwise affects the property under the association's jurisdiction; and

311 (b) includes each amendment or supplement to any of the documents listed in
312 Subsection (23)(a).

313 (24) "Identifying number" means a symbol or address that identifies a unit in a
314 common interest community.

315 (25) "Judicial foreclosure" means a foreclosure of a unit:

316 (a) for the nonpayment of an assessment; and

317 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
318 property; and

319 (ii) as provided in Part 10, Collection of Assessments.

320 (26) "Leasehold common interest community" means:

321 (a) a common interest community that is subject to a delimiting lease, if all of the
322 common interest community is subject to the lease; or

323 (b) that portion of a common interest community that is subject to a delimiting lease, if
324 some but not all of the common interest community is subject to the lease.

325 (27) "Limited common element" means a portion of the common elements allocated by
326 the declaration for the exclusive use of one or more but fewer than all of the units.

327 (28) "Master association" means a nonprofit corporation, unincorporated association,
328 or other entity, regardless of whether it is also an association, that is authorized under a
329 declaration to exercise the powers of an association:

330 (a) on behalf of two or more common interest communities; or

331 (b) for the benefit of the unit owners of two or more common interest communities.

332 (29) "Nonjudicial foreclosure" means the sale of a unit:

333 (a) for the nonpayment of an assessment; and

334 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
335 57-1-34; and

336 (ii) as provided in Part 10, Collection of Assessments.

337 (30) "Nonresidential common interest community" means a common interest

338 community in which all units are restricted exclusively to nonresidential purposes.

339 (31) "Period of declarant control" means the period described in Subsection
340 57-8b-507(3).

341 (32) "Person" includes any legal or commercial entity.

342 (33) "Planned community" means a common interest community that is not a
343 condominium or a cooperative.

344 (34) "Plat" means a map or other graphical representation of real estate and units.

345 (35) "Preexisting common interest community" means a common interest community
346 that was created before May 11, 2010.

347 (36) "Property" means:

348 (a) a common interest community; and

349 (b) all interests appertaining to the common interest community.

350 (37) "Proprietary lease" means an agreement with an association entitling a member to
351 exclusive possession of a unit in a cooperative.

352 (38) "Purchaser":

353 (a) means a person, other than a declarant, who, through a voluntary transfer, acquires a
354 legal or equitable interest in a unit; and

355 (b) does not include a person who acquires:

356 (i) a leasehold interest, including a renewal option, of less than 20 years; or

357 (ii) an interest as security for an obligation.

358 (39) "Real estate":

359 (a) means:

360 (i) a leasehold or other estate or interest in, over, or under land, including:

361 (A) structures;

362 (B) fixtures; and

363 (C) other improvements; and

364 (ii) interests that by custom, usage, or law pass with a conveyance of land though not
365 described in the contract of sale or instrument of conveyance; and

366 (b) includes:

367 (i) parcels with or without upper or lower boundaries; and

368 (ii) spaces that may be filled with air or water.

369 (40) "Record" means information that is:
370 (a) (i) inscribed on a tangible medium; or
371 (ii) stored in an electronic or other medium; and
372 (b) retrievable in a perceivable format.
373 (41) "Residential purposes" means use for dwelling or recreational purposes or both.
374 (42) "Rule" means any rule, procedure, or regulation of an association that does not
375 appear in the declaration or bylaws and that governs the conduct of the persons or property
376 within the common interest community adopted under Sections 57-8b-420 and 57-8b-421.
377 (43) "Security interest":
378 (a) means an interest in real estate or personal property, created by contract or
379 conveyance, that secures payment or performance of an obligation; and
380 (b) includes:
381 (i) a lien created by a mortgage;
382 (ii) a deed of trust or trust deed;
383 (iii) a security deed;
384 (iv) a contract for deed;
385 (v) a land sales contract;
386 (vi) a lease intended as security;
387 (vii) an assignment of lease or rents intended as security;
388 (viii) a pledge of an ownership interest in an association; and
389 (ix) any other consensual lien or title retention contract intended as security for an
390 obligation.
391 (44) "Special declarant rights" means rights reserved for the benefit of a declarant to:
392 (a) (i) complete improvements indicated on a plat and plan filed with the declaration;
393 or
394 (ii) in a cooperative, complete improvements described in sales materials for the
395 cooperative property;
396 (b) exercise any development right reserved in the declaration;
397 (c) use an easement through the common elements for the purpose of making
398 improvements within the common interest community or within real estate that may be added
399 to the common interest community;

400 (d) make the common interest community subject to a master association if the right is
401 reserved in the declaration;

402 (e) merge or consolidate a common interest community with another common interest
403 community of the same form of ownership;

404 (f) appoint or remove from an association or master association, during a period of
405 declarant control, any officer or board member;

406 (g) control any construction or design review committee or process;

407 (h) attend meetings of the association or master association and, except during an
408 executive session, the board; or

409 (i) have access to the records of the association to the same extent as a unit owner.

410 (45) "Taxing entity" has the same meaning as defined in Section 59-2-102.

411 (46) "Time period unit":

412 (a) means an annually recurring period specified in the declaration for which a unit is
413 separately owned; and

414 (b) includes a timeshare estate.

415 (47) "Timeshare estate" has the same meaning as defined in Section 57-19-2.

416 (48) "Timeshare interest" has the same meaning as defined in Section 57-19-2.

417 (49) "Unit" means the portion of a common interest community designated for separate
418 ownership or occupancy, the boundary of which is described in the declaration.

419 (50) "Unit owner":

420 (a) means:

421 (i) a person, including a declarant, who owns a unit;

422 (ii) a lessee of a unit in a leasehold common interest community whose lease expires
423 simultaneously with any lease the expiration or termination of which will remove the unit from
424 the common interest community;

425 (iii) in a condominium or planned community, the declarant if the unit is created by a
426 declaration; or

427 (iv) in a cooperative, the declarant;

428 (A) if the unit is one to which allocated interests have been allocated; and

429 (B) until the unit is conveyed to another person; and

430 (b) does not include a person having an interest in a unit solely as a security for an

431 obligation.

432 Section 3. Section **57-8b-103** is enacted to read:

433 **57-8b-103. Variation from or waiver of provisions of chapter limited --**

434 **Limitations on declarant.**

435 (1) Except as expressly provided in this chapter, the provisions of and rights conferred
436 by this chapter may not be:

437 (a) varied by agreement; or

438 (b) waived.

439 (2) Except as provided in Subsection 57-8b-204(3), a declarant may not evade the
440 limitations or prohibitions of this chapter by:

441 (a) acting under a power of attorney; or

442 (b) using any other device.

443 Section 4. Section **57-8b-104** is enacted to read:

444 **57-8b-104. Chapter supplemental to other law -- Resolving conflicting provisions.**

445 (1) The provisions of this chapter are in addition and supplemental to all other
446 provisions of law, statutory or judicially declared.

447 (2) A conflict involving application of provisions of this chapter, other statute, and
448 governing documents shall be resolved by applying those provisions in the following order of
449 priority:

450 (a) this chapter;

451 (b) other statute;

452 (c) a recorded plat, to the extent that it accurately reflects what is actually constructed;

453 (d) the declaration;

454 (e) the bylaws;

455 (f) the association rules; and

456 (g) any other term or provision governing an association.

457 Section 5. Section **57-8b-105** is enacted to read:

458 **57-8b-105. Property may be resubmitted to provisions of chapter.**

459 A property removed from the provisions of this chapter may be subsequently
460 resubmitted to this chapter by the recording of a declaration that:

461 (1) complies with this chapter; and

462 (2) is signed by all persons holding an interest in the property to be subjected to this
463 chapter.

464 Section 6. Section **57-8b-106** is enacted to read:

465 **57-8b-106. Other tax exemption -- Taxation of timeshare interest or estate.**

466 (1) This chapter does not prohibit or deny any tax exemption that otherwise exists on
467 real property or the ownership of the property.

468 (2) (a) A timeshare interest and timeshare estate:

469 (i) may not be taxed separately; and

470 (ii) shall be valued, assessed, and taxed at the unit level.

471 (b) For purposes of ad valorem taxation and subject to Subsection (2)(c), the value of a
472 timeshare interest and timeshare estate shall be determined by valuing the real property interest.

473 (c) For purposes of ad valorem taxation, the value of an intangible property right is
474 excluded, as it relates to a timeshare interest and timeshare estate, if the value arises from:

475 (i) the acquisition, operation, ownership, or use of a timeshare interest or timeshare
476 estate;

477 (ii) the fees and costs associated with a sale of a timeshare interest and timeshare estate
478 that exceed those fees and costs normally incurred in the sale of other similar properties; or

479 (iii) the fees and costs associated with the operation, ownership, and use of timeshare
480 interests and timeshare estates, vacation exchange rights, vacation conveniences and services,
481 club memberships, and any other intangible rights and benefits available to a timeshare unit
482 owner.

483 (d) (i) This section may not be construed to require the assessment of any real property
484 interest associated with a timeshare interest or timeshare estate at less than its fair market
485 value.

486 (ii) A notice given to a board of a common interest community of timeshare interests or
487 timeshare estates is legally sufficient for notice of:

488 (A) assessment;

489 (B) delinquency;

490 (C) sale; or

491 (D) any other purpose required by law.

492 Section 7. Section **57-8b-107** is enacted to read:

493 **57-8b-107. Limit on building code and land use provisions -- Interaction of this**
494 **chapter with other law.**

495 (1) A building code may not impose a requirement upon a structure in a common
496 interest community that it would not impose upon a physically identical structure that is under
497 a different form of ownership.

498 (2) (a) The condominium or cooperative form of ownership may not be prohibited by a
499 zoning, subdivision, or other land use law, ordinance, or regulation.

500 (b) A zoning, subdivision, or other land use law, ordinance, or regulation may not
501 impose a requirement upon a condominium or cooperative that it would not impose upon a
502 physically identical development that is under a different form of ownership.

503 (3) Except as provided in Subsections (1) and (2), the provisions of this chapter do not
504 invalidate or modify any provision of:

505 (a) a building code; or

506 (b) a zoning, subdivision, or other land use law, ordinance, rule, or regulation
507 governing the use of real estate.

508 (4) For purposes of Title 10, Chapter 9a, Municipal Land Use, Development, and
509 Management Act, and Title 17, Chapter 27a, County Land Use, Development, and
510 Management Act, as applicable:

511 (a) a common interest community is a subdivision; and

512 (b) a plat or supplement to a plat prepared under this chapter is a subdivision map or
513 plat.

514 (5) (a) Nothing in this chapter may be interpreted to state or imply that a common
515 interest community, unit, association, unit owner, or board is exempt from:

516 (i) a zoning ordinance;

517 (ii) a building code;

518 (iii) a sanitary code; or

519 (iv) a similar development regulation.

520 (b) No common interest community or use within property or a unit may be permitted
521 unless the common interest community or use complies with the ordinances, codes, and
522 regulations stated in Subsection (5)(a).

523 Section 8. Section **57-8b-108** is enacted to read:

524 **57-8b-108. Fair and reasonable notice.**

525 Unless otherwise required or permitted by the declaration, bylaws, or this chapter,
526 notice provided by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit
527 Corporation Act, constitutes fair and reasonable notice.

528 Section 9. Section **57-8b-109** is enacted to read:

529 **57-8b-109. Physical boundary of building or unit presumed to be accurate.**

530 The physical boundary of a building or unit constructed or reconstructed in substantial
531 accordance with a plat is conclusively presumed to be the accurate boundary, regardless of:

532 (1) any settling or lateral movement of the building or unit; or

533 (2) a minor variance between a boundary shown on the plat and the actual boundary of
534 the building or unit.

535 Section 10. Section **57-8b-110** is enacted to read:

536 **57-8b-110. Certain liability not affected by easement.**

537 An easement may not relieve a person acting with willful misconduct, including a unit
538 owner or declarant, of liability for failure to adhere:

539 (1) to a plat and plan; or

540 (2) in a cooperative, to a representation in the public offering statement.

541 Section 11. Section **57-8b-111** is enacted to read:

542 **57-8b-111. No effect on provision relating to defective design or construction.**

543 Nothing in this chapter may be construed to affect Section 78B-4-513.

544 Section 12. Section **57-8b-112** is enacted to read:

545 **57-8b-112. Severability.**

546 If any provision of this chapter, or the application of any provision to any person or
547 circumstance, is held invalid, the remainder of this chapter shall be given effect without the
548 invalid provision or application.

549 Section 13. Section **57-8b-201** is enacted to read:

550 **Part 2. Applicability of Chapter and Prior Law**

551 **57-8b-201. Application of chapter to common interest community.**

552 (1) Except as otherwise provided in Subsection (2) and Section 57-8b-513, this chapter
553 applies to each common interest community created on or after May 11, 2010.

554 (2) This chapter applies to a common interest community created before May 11, 2010,

555 if the common interest community elects to adopt the provisions of this chapter in their entirety
556 by the highest number of votes required for the association to take action under the
557 association's governing documents.

558 Section 14. Section **57-8b-202** is enacted to read:

559 **57-8b-202. Application of chapter to cooperative.**

560 (1) Only Sections 57-8b-107 and 57-8b-710 apply to a cooperative created on or after
561 May 11, 2010, if the cooperative:

562 (a) contains no more than 10 units; and

563 (b) is not subject to any development rights reserved to the declarant.

564 (2) Notwithstanding Subsection (1), a cooperative described in Subsection (1) is
565 subject to all the provisions of this chapter if the declaration of the cooperative so provides.

566 Section 15. Section **57-8b-203** is enacted to read:

567 **57-8b-203. Application of chapter to planned community.**

568 This chapter does not apply to a planned community created on or after May 11, 2010,
569 if the planned community:

570 (1) consists of no more than two units;

571 (2) is not subject to a reservation of any development rights; and

572 (3) has no common elements.

573 Section 16. Section **57-8b-204** is enacted to read:

574 **57-8b-204. Application of chapter to nonresidential common interest community.**

575 (1) Except as provided in Subsection (4), this section applies only to a nonresidential
576 common interest community.

577 (2) (a) A nonresidential common interest community is subject to:

578 (i) Section 57-8b-107; and

579 (ii) if provided in the declaration:

580 (A) all other provisions of this chapter;

581 (B) (I) all other provisions of Part 1, General Provisions;

582 (II) Part 2, Applicability of Chapter and Prior Law; and

583 (III) Part 3, Common Interest Community; or

584 (C) Section 57-8b-701.

585 (b) Except as provided in Subsection (2)(a), a nonresidential common interest

586 community is not subject to this chapter.

587 (3) If the declaration provides that the nonresidential common interest community is
588 subject to this chapter, the declaration may, notwithstanding Section 57-8b-103, also require a
589 purchaser of a unit to execute a proxy, power of attorney, or similar device in favor of the
590 declarant regarding matters enumerated in the proxy, power of attorney, or similar device.

591 (4) (a) As used in this Subsection (4), "mixed common interest community" means a
592 common interest community that contains:

593 (i) one or more units that are restricted exclusively to nonresidential purposes; and

594 (ii) one or more other units that may be used for residential purposes.

595 (b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), a mixed common interest
596 community is not subject to this chapter.

597 (ii) A mixed common interest community is subject to this chapter to the same extent
598 that any common interest community is subject to this chapter if the units in the mixed
599 common interest community that may be used for residential purposes would constitute a
600 common interest community in the absence of the units that are restricted exclusively to
601 nonresidential purposes.

602 (iii) A declaration of a mixed common interest community may subject the mixed
603 common interest community to this chapter as provided in Subsections (2) and (3).

604 Section 17. Section **57-8b-205** is enacted to read:

605 **57-8b-205. Prior law governs preexisting common interest communities --**
606 **Exceptions -- Validity of declarant or preexisting common interest community action**
607 **under this chapter.**

608 (1) Except as provided in Subsections (2) and (3) and Section 57-8b-204, the
609 applicable law in effect before May 11, 2010 governs:

610 (a) a preexisting common interest community, including any of the following created
611 before May 11, 2010:

612 (i) an expandable common interest community;

613 (ii) a contractible common interest community;

614 (iii) a leasehold common interest community; and

615 (iv) a common interest community, the declaration, bylaws, or plat of which provide
616 for:

617 (A) time period units;
618 (B) convertible land;
619 (C) convertible space; or
620 (D) development rights reserved to the declarant; and
621 (b) the rights and obligations of any person with an interest in a common interest
622 community described in Subsection (1)(a).
623 (2) (a) Subject to Subsection (2)(b), a preexisting common interest community is
624 governed by:
625 (i) Section 57-8b-102;
626 (ii) Section 57-8b-107;
627 (iii) Section 57-8b-309;
628 (iv) Section 57-8b-403;
629 (v) Section 57-8b-701;
630 (vi) Section 57-8b-702;
631 (vii) Section 57-8b-710; and
632 (viii) Part 4, Governing Documents.
633 (b) Subsection (2)(a):
634 (i) applies only with respect to an event and circumstance occurring on or after May 11,
635 2010; and
636 (ii) does not invalidate an existing provision of a preexisting common interest
637 community's declaration, bylaws, plat, or plan.
638 (3) An action of a declarant or preexisting common interest community taken under
639 this chapter is valid, effective, and enforceable if:
640 (a) the declarant or preexisting common interest community substantially complies
641 with the applicable requirements of this chapter; or
642 (b) the action substantially achieves the policy that underlies the applicable
643 requirements of this chapter.
644 Section 18. Section **57-8b-206** is enacted to read:
645 **57-8b-206. Amendment of governing documents to achieve a result permitted by**
646 **this chapter.**
647 (1) Regardless of what the applicable law before May 11, 2010 provided, a preexisting

648 common interest community may amend any of its governing documents to achieve a result
649 permitted by this chapter by:

650 (a) complying with the amendment procedures and requirements specified in the
651 instrument being amended; or

652 (b) complying with the amendment procedures and requirements of this chapter, if the
653 instrument being amended does not contain amendment procedures and requirements.

654 (2) If an amendment adopted under Subsection (1) grants a right, power, or privilege
655 permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter
656 also apply.

657 Section 19. Section **57-8b-301** is enacted to read:

658 **Part 3. Common Interest Community**

659 **57-8b-301. Establishment of common interest community.**

660 Except as provided in Part 2, Applicability of Chapter and Prior Law, if real estate is
661 subjected to a common easement, common servitude, common maintenance obligation for the
662 benefit of the real estate, or any form of common or interdependent relationship necessary for
663 the administration of the real estate:

664 (1) the owner of the real estate shall establish the real estate as:

665 (a) a condominium;

666 (b) a cooperative; or

667 (c) a planned community; and

668 (2) the real estate is subject to the provisions of this chapter.

669 Section 20. Section **57-8b-302** is enacted to read:

670 **57-8b-302. Cost-sharing agreements between common interest communities or**
671 **with owner of other real estate.**

672 (1) A separate common interest community is not created by an agreement:

673 (a) (i) between two or more associations; or

674 (ii) between a common interest community and the owner of real estate that is not part
675 of the common interest community; and

676 (b) to share the costs of real estate taxes, insurance premiums, services, maintenance or
677 improvements of real estate, or other activities specified in the agreement.

678 (2) An agreement described in Subsection (1) between two or more associations may

679 not unreasonably allocate costs between the associations if the declarants of the common
680 interest communities to which the associations relate are affiliated.

681 (3) The association of a common interest community that enters an agreement
682 described in Subsection (1) with the owner of real estate that is not part of the common interest
683 community shall include in the common interest community's periodic budget any assessment
684 against a unit in the common interest community required by the agreement.

685 (4) The seller of a unit shall disclose in a sales agreement the existence of any
686 agreement described in Subsection (1) between the common interest community and the owner
687 of real estate that is not part of the common interest community.

688 Section 21. Section **57-8b-303** is enacted to read:

689 **57-8b-303. Common interest community not created by cost-sharing covenant**
690 **between owners of separate property.**

691 Unless the owners otherwise agree, a common interest community is not created by a
692 covenant that requires the owners of separately owned parcels or real estate to share costs or
693 other obligations associated with:

694 (1) a party wall;

695 (2) a driveway;

696 (3) a well; or

697 (4) other similar use property.

698 Section 22. Section **57-8b-304** is enacted to read:

699 **57-8b-304. Liens against common interest community after declaration is**
700 **recorded prohibited -- Exceptions -- Removal of lien by paying proportionate share.**

701 (1) (a) Except as provided in this section, a lien may not arise or be effective against
702 the real estate constituting a common interest community:

703 (i) after a declaration is recorded; and

704 (ii) while the real estate constituting a common interest community remains subject to
705 this chapter.

706 (b) During the period described in Subsection (1)(a), a lien or encumbrance may arise
707 or be created:

708 (i) in a condominium or cooperative, only against each unit and the percentage of
709 undivided interest in the common elements appurtenant to each unit in a manner similar to a

710 lien or encumbrance against a separate parcel of real property subject to individual ownership;
711 and

712 (ii) in a planned community;

713 (A) against a unit;

714 (B) against the common elements not including a unit; and

715 (C) in a manner similar to a lien or encumbrance against a separate parcel of real
716 property subject to individual ownership.

717 (c) (i) Labor performed or materials furnished with the consent or at the request of a
718 unit owner may not be the basis for a lien against the unit of another unit owner who did not
719 expressly consent to or request the labor or materials.

720 (ii) Except in a planned community with attached dwelling units, a condominium, or a
721 cooperative, a unit owner is considered to have given express consent to labor performed or
722 materials furnished if the labor is performed or materials furnished for emergency repairs.

723 (d) If, in accordance with this chapter, a declaration, or bylaws, the board of a planned
724 community with attached dwelling units, a condominium, or a cooperative authorizes labor
725 performed or materials furnished for the common elements, the board's authorization:

726 (i) is considered the express consent of all unit owners; and

727 (ii) may be the basis for a lien against:

728 (A) in a condominium or cooperative, a unit; and

729 (B) in a planned community with attached dwelling units, a lien against the unit to
730 which the improved common element is affixed.

731 (2) (a) If there is an effective lien against two or more units in a planned community
732 with attached dwelling units, a condominium, or a cooperative, a unit owner of a separate unit
733 may, by paying the fractional or proportional amount attributable to the unit owner's affected
734 unit, remove from the lien:

735 (i) the unit owner's unit; and

736 (ii) the unit owner's percentage of undivided interests.

737 (b) A unit owner's individual payment under Subsection (2)(a) shall be computed by
738 reference to the percentages appearing in the declaration.

739 (c) If a unit owner pays, discharges, or satisfies a payment under Subsection (2)(a), the
740 lien shall be cleared from:

741 (i) the unit owner's unit; and
742 (ii) the percentage of undivided interest in the common elements appurtenant to or
743 affixed to the unit.

744 (d) If a unit owner provides only partial payment, discharge, or satisfaction, the unit
745 owner may not prevent a lienor from enforcing the lienor's rights against:

746 (i) the unit; and
747 (ii) the percentage of undivided interest in the common elements appurtenant to or
748 affixed to the unit.

749 Section 23. Section **57-8b-305** is enacted to read:

750 **57-8b-305. Expansion of common interest community.**

751 (1) A common interest community may be expanded as provided in the declaration and
752 this chapter.

753 (2) An expansion of a common interest community occurs when:

754 (a) a new or supplemental plat under Subsection 57-8b-415(4) that includes the
755 expansion is recorded in the office of each applicable county recorder; and

756 (b) an amendment to the declaration is:

757 (i) executed and acknowledged by:

758 (A) the declarant; and

759 (B) all of the owners and lessees of the additional real estate added to the property; and

760 (ii) recorded in the office of each applicable county recorder.

761 (3) An amendment under Subsection (2)(b) shall:

762 (a) contain a description, by metes and bounds, of the real estate added to the property;

763 and

764 (b) reallocate undivided interests in the common elements in accordance with Section
765 57-8b-318.

766 Section 24. Section **57-8b-306** is enacted to read:

767 **57-8b-306. Contraction of common interest community -- Withdrawal of real**
768 **estate.**

769 (1) A common interest community may be contracted as provided in the declaration
770 and this chapter.

771 (2) (a) A contraction of a common interest community occurs when an amendment to

772 the declaration is:

773 (i) executed by the declarant; and

774 (ii) recorded in the office of the applicable county recorder.

775 (b) An amendment under Subsection (2)(a) shall contain a legal description, by metes

776 and bounds, of the real estate withdrawn from the property.

777 (3) A portion of real estate subject to being withdrawn from the property may not be
778 withdrawn after a unit on that portion is conveyed if that portion is described under Subsection
779 57-8b-401(3).

780 (4) No portion of the real estate may be withdrawn after the first conveyance of a unit
781 in the common interest community if no portion of the real estate was described as being
782 susceptible to being withdrawn from the property.

783 Section 25. Section **57-8b-307** is enacted to read:

784 **57-8b-307. Limitation on allocation of interests in common interest community**
785 **containing convertible land or that is expandable -- Effect of conversion of all convertible**
786 **space into common elements -- Effect of withdrawal on allocated interests in withdrawn**
787 **unit's common element.**

788 (1) If a common interest community contains convertible land or is expandable, the
789 declaration may not allocate interests under Section 57-8b-802 unless:

790 (a) the declaration:

791 (i) prohibits the creation of a unit not substantially identical to the units depicted on the
792 plat recorded under Section 57-8b-415; or

793 (ii) (A) in the case of convertible land, prohibits the creation of a unit not described in
794 Subsection 57-8b-401(3)(d); or

795 (B) in the case of additional real estate, prohibits the creation of a unit not described in
796 Subsection 57-8b-401(3); and

797 (b) the original declaration contains a statement of the allocated interests to be assigned
798 to every unit that is created.

799 (2) Interests in a common element may not be allocated to a unit to be created within
800 convertible land or additional real estate until the declarant:

801 (a) submits for recording in the office of each applicable county recorder a new or
802 supplemental plat under Subsection 57-8b-415(4) depicting interests in the common elements

803 allocated to a unit to be created in convertible land; and

804 (b) (i) executes an amendment or supplement to the declaration that reallocates
805 allocated interests in the common elements so that the units depicted on the supplemental plat
806 are allocated interests in the common elements on the same basis as the units depicted on the
807 plat that was recorded with the declaration under Section 57-8b-415; and

808 (ii) at the same time that a new or supplemental plat under Subsection (2)(a) is
809 submitted for recording, submits the declaration amendment or supplement to the office of
810 each applicable county recorder for recording.

811 (3) If all of a convertible space is converted into common elements, including limited
812 common elements:

813 (a) an allocated interest in common elements appertaining to the convertible space
814 appertains to the remaining units;

815 (b) the allocated interest in the common area is allocated among the remaining units in
816 proportion to the remaining units' allocated interests in the common elements; and

817 (c) an association or board principal officer, or another officer specified in a
818 declaration, shall immediately prepare, execute, and submit for recording to the office of each
819 applicable county recorder a declaration amendment reflecting the reallocation of allocated
820 interest produced by the conversion of convertible space.

821 (4) (a) An allocated interest in a common element appertaining to a withdrawn unit
822 appertains to the units remaining after the withdrawal if:

823 (i) the expiration or termination of a delimiting lease of a leasehold common interest
824 community causes a contraction of the property that reduces the number of units; or

825 (ii) the withdrawal of real estate from a contractible common interest community
826 causes a contraction of the property that reduces the number of units.

827 (b) The allocated interest described in Subsection (4)(a) is allocated among the
828 remaining units in proportion to the remaining units' allocated interests in the common
829 elements.

830 (c) (i) Immediately after the occurrence of an event described in Subsection (4)(a)(i) or
831 (ii), a principal association or board officer, or another officer specified in a declaration, shall
832 prepare, execute, and submit for recording in the office of each applicable county recorder a
833 declaration amendment reflecting the reallocation of undivided interests produced by the

834 reduction of units described in Subsection (4)(a).

835 Section 26. Section **57-8b-308** is enacted to read:

836 **57-8b-308. Limitations on withdrawal from common interest community.**

837 (1) Real estate may not be withdrawn from a common interest community after a unit
838 has been conveyed to a purchaser if:

839 (a) a declaration provides that all of the real estate is subject to a right of withdrawal;

840 and

841 (b) the declaration does not describe separate portions of real estate subject to the right
842 of withdrawal.

843 (2) Real estate may not be withdrawn from a common interest community after a unit
844 in a portion subject to withdrawal has been conveyed to a purchaser if:

845 (a) a declaration provides that the portion of the real estate is subject to a right of
846 withdrawal; and

847 (b) the portion is subject to withdrawal.

848 Section 27. Section **57-8b-309** is enacted to read:

849 **57-8b-309. Consolidation of common interest communities -- Agreement to**
850 **consolidate -- Recording required -- Effect of consolidation.**

851 (1) Two or more common interest communities of the same form of ownership may be
852 consolidated into a single common interest community as provided in this section.

853 (2) An agreement between two or more common interest communities to consolidate
854 into a single common interest community:

855 (a) is not effective unless it is approved by the unit owners of each of the consolidating
856 common interest communities, in the percentage of allocated unit owner votes required by each
857 common interest community to terminate that common interest community;

858 (b) shall be prepared, executed, and certified by the president of the association of each
859 of the consolidating common interest communities; and

860 (c) shall provide for the reallocation of the allocated interests in the resultant
861 association by stating:

862 (i) the reallocations of the allocated interests in the resultant common interest
863 community or the formulas used to reallocate the allocated interests; or

864 (ii) (A) the percentage of overall allocated interests of the resultant common interest

865 community that are allocated to all of the units comprising each of the consolidating common
866 interest communities; and

867 (B) that the portion of the percentages allocated to each unit formerly comprising a part
868 of a consolidating common interest community is equal to the percentages of allocated interests
869 allocated to the unit by the declaration of the consolidating common interest community.

870 (3) An agreement under Subsection (2) is not effective until it is recorded in the office
871 of each applicable county recorder.

872 (4) Unless otherwise provided in the consolidation agreement, the common interest
873 community resulting from the consolidation under this section:

874 (a) is the legal successor for all purposes of all of the consolidating common interest
875 communities; and

876 (b) (i) the operations and activities of all associations of the consolidating common
877 interest communities shall be consolidated into a single association; and

878 (ii) the association resulting from the consolidation holds all powers, rights,
879 obligations, assets, and liabilities of all consolidating associations.

880 Section 28. Section **57-8b-310** is enacted to read:

881 **57-8b-310. Conveying or encumbering portions of common interest community --**
882 **Effect of conveyance or encumbrance -- Limitations on application of section.**

883 (1) As used in this section, "required percentage" means:

884 (a) except as provided in Subsection (1)(b), 80%; or

885 (b) (i) a percentage larger than 80% if the larger percentage is specified in the
886 declaration; or

887 (ii) a percentage smaller than 80%, if:

888 (A) the smaller percentage is specified in the declaration; and

889 (B) the common interest community is a nonresidential common interest community.

890 (2) (a) An association for a condominium or planned community may convey portions
891 of the common elements or subject portions of the common elements to a security interest if
892 ratified by:

893 (i) persons entitled to cast at least the required percentage of allocated votes in the
894 association, including persons entitled to cast at least the required percentage of votes allocated
895 to units not owned by a declarant; and

896 (ii) the unit owners of all units to which any limited common element is allocated.

897 (b) (i) Subject to Subsection (2)(b)(ii), the proceeds of a sale of common elements
898 under this Subsection (2) are an asset of the association.

899 (ii) An association that sells limited common elements under Subsection (2)(a) shall
900 equitably distribute the proceeds from the sale among the unit owners of units to which the
901 limited common elements were allocated.

902 (3) (a) An association for a cooperative may convey part of the cooperative or subject
903 some or all of the cooperative to a security interest if ratified by:

904 (i) persons entitled to cast at least the required percentage of the allocated votes in the
905 association, including at least the required percentage of votes allocated to units not owned by a
906 declarant; and

907 (ii) if fewer than all of the units or limited common elements are to be conveyed or
908 subjected to a security interest, all unit owners of:

909 (A) the affected units; or

910 (B) the units to which those limited common elements are allocated.

911 (b) The proceeds of a sale under Subsection (3)(a) are an asset of the association.

912 (c) A purported conveyance or other voluntary transfer of an entire cooperative, unless
913 made under Section 57-8b-311, is void.

914 (4) The board president of an association for a condominium or planned community
915 that executes an agreement conveying common elements or subjecting the common elements to
916 a security interest, and the board president of an association for a cooperative that executes an
917 agreement conveying any part of the cooperative or subjecting some or all of the cooperative to
918 a security interest, shall:

919 (a) execute a certificate evidencing the agreement, stating that the agreement was
920 approved by persons entitled to cast at least the required percentage of the allocated votes in the
921 association; and

922 (b) submit the certificate for recording to the office of each applicable county recorder.

923 (5) (a) An association shall submit for recording to the office of each applicable county
924 recorder:

925 (i) each agreement described in Subsection (4); and

926 (ii) each ratification of the agreement.

927 (b) An agreement described in Subsection (4) and a ratification of the agreement are
928 not effective until recorded in the office of each applicable county recorder.

929 (c) An agreement described in Subsection (4) shall specify a date after which the
930 agreement becomes void unless recorded before that date.

931 (d) An agreement described in Subsection (4) and a certificate described in Subsection
932 (4)(a) are presumed valid unless challenged within one year after they are recorded.

933 (6) (a) An association, on behalf of the unit owners, may contract to convey an interest
934 in a common interest community as provided in Subsection (2).

935 (b) A contract under Subsection (6)(a) is not enforceable against the association until
936 ratified in accordance with Subsection (2).

937 (c) An association that enters a contract under Subsection (6)(a) that is ratified as
938 provided in Subsection (2) has the necessary and appropriate power to effect the conveyance or
939 encumbrance, including the power to execute a deed or other instrument.

940 (7) Unless made pursuant to Section 10-9a-608 or 17-27a-608, as applicable, any
941 purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common
942 elements or of any other part of a cooperative is void.

943 (8) A conveyance or encumbrance of common elements or of a cooperative under this
944 section does not deprive a unit owner of the rights of access and support.

945 (9) Unless the declaration otherwise provides and except as provided in Section
946 57-8b-420, if the holders of first security interests on 80% of the units subject to security
947 interests on the day that the unit owners' agreement described in Subsection (4) is recorded
948 consent in writing:

949 (a) a conveyance of common elements under this section terminates:

950 (i) the undivided interests in the common elements allocated to the units; and

951 (ii) the security interests in the undivided interests described in Subsection (9)(a)(i)
952 held by all persons holding security interests in the units; and

953 (b) an encumbrance of common elements under this section has priority over all
954 preexisting encumbrances on the undivided interests in the common elements held by all
955 persons holding security interests in the units.

956 (10) (a) Subject to Subsection (10)(c), the following may be recorded at any time
957 before the date that the agreement described in Subsection (4) becomes void:

958 (i) the consent of first security interest holders on units described in Subsection (9); or
959 (ii) a certificate of the secretary affirming that association has received the consents
960 described in Subsection (10)(a)(i).

961 (b) A consent or certificate described in Subsection (10)(a) is valid from the date the
962 consent or certificate is recorded for purposes of calculating the percentage of consenting first
963 security interest holders, regardless of later sales or encumbrances on the units.

964 (c) If the required percentage of first security interest holders consent under Subsection
965 (10)(a), a conveyance or encumbrance of common elements may not affect interests that:

966 (i) have priority over the declaration; or

967 (ii) are created by the association after the declaration was recorded.

968 (11) An association for a cooperative may acquire, hold, encumber, or convey a
969 proprietary lease without complying with this section.

970 (12) (a) This section does not prohibit the assignment of an association's right to collect
971 common assessments as security for an obligation.

972 (b) A board may collect common assessments as a security for an obligation under
973 Section 57-8b-1001.

974 Section 29. Section **57-8b-311** is enacted to read:

975 **57-8b-311. Termination of common interest community -- Termination**
976 **agreements -- Sale of real estate -- Proceeds from sale following termination -- Creditors**
977 **and lienholders of association -- Valuation of unit owner interests -- Common interest**
978 **community not terminated by foreclosure or enforcement of lien.**

979 (1) (a) Subject to the provisions of this section, a common interest community is
980 terminated if unit owners of units allocated at least 80% of the allocated unit owner votes in the
981 association agree to terminate, unless:

982 (i) the declaration provides otherwise;

983 (ii) all the units are taken by eminent domain; or

984 (iii) for a cooperative, the entire cooperative is foreclosed to satisfy a security interest
985 that has priority over the declaration.

986 (b) In a nonresidential common interest community, the declaration may specify a
987 lower percentage than 80% for the percentage of unit owners required to agree to a termination
988 of the common interest community.

989 (2) (a) An agreement to terminate a common interest community:

990 (i) shall:

991 (A) be executed:

992 (I) in the same manner as a deed; and

993 (II) by the unit owners of units allocated at least 80% of the allocated unit owner votes
994 in the association; and

995 (B) (I) specify a date by which the agreement is required to be recorded; and

996 (II) provide that the agreement is void if it is not recorded by that date; and

997 (ii) is not effective until it is recorded in the office of each applicable county recorder.

998 (b) An association shall submit a termination agreement under this section to the office
999 of each applicable county recorder for recording.

1000 (3) (a) A termination agreement may require all of the common elements and units of a
1001 common interest community to be sold following termination, if the common interest
1002 community includes only units with horizontal boundaries that are described in the declaration.

1003 (b) A termination agreement under Subsection (3)(a) that requires common elements
1004 and units to be sold shall set the minimum terms for a sale of real estate in the common interest
1005 community.

1006 (4) (a) A termination agreement for a common interest community containing one or
1007 more units not having horizontal boundaries described in the declaration may provide for the
1008 sale of the common elements.

1009 (b) A termination agreement under Subsection (4)(a) may not require that the units be
1010 sold following termination, unless:

1011 (i) the declaration as originally recorded requires that all the units be sold following
1012 termination; or

1013 (ii) all the unit owners consent.

1014 (5) (a) Subject to Subsection (5)(b), the association, on behalf of the unit owners, may
1015 contract for the sale of real estate in a common interest community.

1016 (b) A contract under Subsection (5)(a) is not binding on the unit owners until approved
1017 by the unit owners of units allocated at least 80% of the allocated unit owner votes in the
1018 association.

1019 (c) (i) Title to real estate to be sold after termination of a common interest community

1020 vests in the association as trustee for the holders of all interests in the units.

1021 (ii) After title to real estate vests under Subsection (5)(c)(i), the association has the
1022 power to effect the sale of the real estate as provided in this section.

1023 (d) Until a sale of real estate under this section is concluded and the proceeds are
1024 distributed, the association continues in existence and maintains all powers the association had
1025 before termination.

1026 (e) Proceeds from the sale of real property or personal property under this section shall
1027 be distributed:

1028 (i) to unit owners and lien holders as their interests appear:

1029 (A) for real property, in the records of the county in which the property is situated; and

1030 (B) for personal property, in the records of the Department of Commerce; and

1031 (ii) in accordance with Subsections (8), (9), and (10).

1032 (f) (i) Unless otherwise specified in the termination agreement, a unit owner, including
1033 the unit owner's successor in interest, has an exclusive right to occupy the real estate that
1034 formerly constituted the unit as long as the association holds title to the real estate as provided
1035 in this Subsection (5).

1036 (ii) During the occupancy period described in Subsection (5)(f)(i), a unit owner,
1037 including a unit owner's successor in interest, remains liable for all assessments and other
1038 obligations that this chapter or the declaration imposes on unit owners.

1039 (6) (a) If the real estate constituting the common interest community is not sold
1040 following termination:

1041 (i) in the case of a condominium or planned community, title to the common elements
1042 vests in the unit owners as tenants in common in proportion to the unit owners' interests under
1043 Subsection (10);

1044 (ii) in a common interest community containing only units with horizontal boundaries
1045 described in the declaration, title to all the real estate in the common interest community vests
1046 in the unit owners as tenants in common in proportion to the unit owners' interests under
1047 Subsection (10); and

1048 (iii) a lien on a unit shifts and encumbers the resulting tenant-in-common property
1049 according to a unit owner's tenant-in-common interest in the property in the priority that the
1050 lien would have under state law.

1051 (b) While the tenancy in common under Subsection (6)(a) exists, a unit owner,
1052 including the unit owner's successor in interest, has an exclusive right to occupy the portion of
1053 the real estate that formerly constituted the unit.

1054 (7) Following termination of a common interest community, the association shall hold
1055 proceeds from any sale of real estate and proceeds from any sale of the association's personal
1056 property assets as trustee for:

1057 (a) the unit owners; and

1058 (b) the holder of a lien described in Subsection (6)(a)(iii).

1059 (8) (a) Following the termination of a condominium or planned community, a creditor
1060 of the association holding a lien on a unit may enforce the lien in the same manner as any lien
1061 holder, if the lien was recorded before termination.

1062 (b) An association creditor, other than a creditor described in Subsection (8)(a), shall
1063 be treated as if the creditor had perfected a lien on the units immediately before termination.

1064 (9) (a) In a cooperative, a declaration may provide that all association creditors have
1065 priority over any interests of the unit owners and creditors of the unit owners.

1066 (b) If a declaration contains a provision described in Subsection (9)(a):

1067 (i) an association creditor holding a lien on the cooperative that was recorded before
1068 termination may enforce the lien:

1069 (A) after termination; and

1070 (B) in the same manner as any lien holder; and

1071 (ii) an association creditor, other than a creditor described in Subsection (9)(a), shall be
1072 treated as if the creditor had perfected a lien immediately before termination.

1073 (c) If a declaration does not contain a provision described in Subsection (9)(a):

1074 (i) a lien that was perfected against the association before termination shall be, upon
1075 termination, a lien against a unit owner's interest in the unit as of the date that the lien was
1076 perfected;

1077 (ii) a lien, other than a lien described in Subsection (9)(c)(i), shall be treated upon
1078 termination as if the lien had been perfected immediately before termination;

1079 (iii) the amount of a lien described in Subsection (9)(c)(i) or (ii) against each of the
1080 unit owner's interest is proportionate to the ratio that a unit's common expense liability bears to
1081 the common expense liability of all units;

1082 (iv) a unit owner creditor's lien that was perfected before termination continues as a
1083 lien against the unit owner's unit as of the date that the lien was perfected; and
1084 (v) the association assets shall be distributed to all unit owners and all lien holders in
1085 the order described in Subsections (9)(b)(i) through (iv).
1086 (d) An association creditor is not entitled to payment from a unit owner in excess of the
1087 lien against the unit owner's interest.
1088 (10) (a) (i) Subject to Subsection (10)(b), the respective interests of the unit owner
1089 referred to in Subsections (5) through (9) are the fair market value, as determined by one or
1090 more independent appraisers selected by the association, of:
1091 (A) the unit owner's unit;
1092 (B) allocated interests; and
1093 (C) any limited common elements immediately before termination of the common
1094 interest community.
1095 (ii) (A) The association shall distribute the independent appraiser's decision described
1096 in Subsection (10)(a)(i) to the unit owners.
1097 (B) An independent appraiser's decision is final unless the unit owners of units
1098 allocated at least 25% of the allocated unit owner votes of the association disapprove the
1099 independent appraiser's decision within 45 days after the association distributes the decision to
1100 the unit owners.
1101 (iii) A unit owner's proportionate interest is determined by dividing the fair market
1102 value of the unit owner's unit and allocated interests by the total fair market value of all units
1103 and allocated interests of all units.
1104 (b) If a unit or limited common element is destroyed to the extent that the unit or
1105 limited common element may not be appraised to determine the fair market value of the unit or
1106 limited common element before the destruction, a unit owner's interest is:
1107 (i) in a condominium, the unit owner's respective common element interest
1108 immediately before termination;
1109 (ii) in a cooperative, the unit owner's respective ownership interest immediately before
1110 the termination; and
1111 (iii) in a planned community, a unit owner's respective common expense liability
1112 immediately before the termination.

- 1113 (11) (a) (i) Except as provided in Subsection (11)(b):
1114 (A) the foreclosure or enforcement of a lien or encumbrance against the entire common
1115 interest community does not terminate the common interest community;
1116 (B) foreclosure or enforcement of a lien or encumbrance against a portion of a common
1117 interest community, other than withdrawable real estate, does not withdraw that portion from
1118 the common interest community; and
1119 (C) subject to Subsection (11)(a)(ii), foreclosure or enforcement of a lien or
1120 encumbrance against withdrawable real estate, or against common elements that the association
1121 has subjected to a security interest under Section 57-8b-310, does not withdraw the real estate
1122 from the common interest community.
1123 (ii) A person taking title to withdrawable real estate or common elements through a
1124 foreclosure or lien or encumbrance enforcement described in Subsection (11)(a)(i)(C) may
1125 require the association to adopt a declaration amendment and plat amendment that exclude the
1126 real estate from the common interest community.
1127 (b) A person foreclosing a lien or encumbrance against real estate comprising a portion
1128 of a common interest community may, upon foreclosure, record an instrument that excludes the
1129 real estate from the common interest community if the foreclosed lien or encumbrance:
1130 (i) has priority over the declaration; and
1131 (ii) has not previously been partially released.
1132 Section 30. Section **57-8b-312** is enacted to read:
1133 **57-8b-312. Master planned community.**
1134 (1) A declaration for a common interest community may state that the community is a
1135 master planned community if:
1136 (a) a declarant has reserved a development right to create at least 500 units that may be
1137 used for residential purposes; and
1138 (b) the declarant owns or controls, at the time the declarant reserves the development
1139 right:
1140 (i) in a planned community, more than 50 acres that may be used to construct units; or
1141 (ii) in a condominium or cooperative, enough real estate under then current zoning and
1142 land use regulations to build the units.
1143 (2) A declaration that meets the requirements of Subsection (1):

1144 (a) may state a maximum number of units to be created; and
 1145 (b) need not contain any of the information required by Subsections 57-8b-401(3)(e)
 1146 through (r) until the declaration is amended under Subsection (3).

1147 (3) When a declarant conveys a unit in a master planned community to a purchaser, the
 1148 declarant shall amend the declaration to contain:

1149 (a) a description of:

1150 (i) the unit; and

1151 (ii) all portions of the master planned community in which any other units have been
 1152 conveyed to a purchaser; and

1153 (b) all the information required by Subsections 57-8b-401(3)(e) through (r) with
 1154 respect to the real estate described in Subsection (3)(a).

1155 (4) (a) In a master planned community, this chapter applies to:

1156 (i) a unit that:

1157 (A) has been declared; or

1158 (B) is being offered for sale; and

1159 (ii) any other real estate described under Subsection (3).

1160 (b) Real estate that may become but is not yet part of the master planned community is
 1161 not subject to this chapter.

1162 (5) Limitations in this chapter on the addition of unspecified real estate under Section
 1163 57-8b-602 do not apply to a master planned community.

1164 (6) The period of declarant control of an association for a master planned community
 1165 terminates:

1166 (a) as specified in the declaration; or

1167 (b) if not specified in the declaration, when the declarant voluntarily surrenders all
 1168 rights to control the activities of the association:

1169 (i) in a recorded instrument; and

1170 (ii) after giving written notice to all unit owners.

1171 Section 31. Section **57-8b-401** is enacted to read:

1172 **Part 4. Governing Documents**

1173 **57-8b-401. Declaration and plat required -- Requirements relating to declaration.**

1174 (1) (a) A unit in a common interest community may not be conveyed until after a

- 1175 declaration and plat relating to the real estate containing the unit are recorded.
- 1176 (b) A declarant shall execute a declaration to create a common interest community
1177 under this chapter in the same manner as a deed.
- 1178 (2) Each covenant, condition, restriction, or easement contained in a declaration is an
1179 enforceable equitable servitude that runs with the real estate.
- 1180 (3) A declaration under Subsection (1) shall contain:
- 1181 (a) the name of:
- 1182 (i) the common interest community; and
- 1183 (ii) the association;
- 1184 (b) a statement that the common interest community is:
- 1185 (i) a condominium;
- 1186 (ii) a cooperative; or
- 1187 (iii) a planned community;
- 1188 (c) the name of each county in which any part of the common interest community is
1189 located;
- 1190 (d) a legal description of the real estate included in the common interest community;
- 1191 (e) for a condominium, a statement of the maximum number of units that a declarant
1192 reserves the right to create;
- 1193 (f) a reference to the plat recorded simultaneously with the declaration under Section
1194 57-8b-415;
- 1195 (g) a description of limited common elements that are in addition to those identified on
1196 the plat or in Subsections 57-8b-702(3) and (5);
- 1197 (h) for a planned community, a description of the real estate that:
- 1198 (i) is or is required to become common elements; and
- 1199 (ii) is not part of the unit;
- 1200 (i) subject to Subsection (4):
- 1201 (i) a description of real estate, except real estate subject to development rights, that
1202 may be allocated subsequently as limited common elements; and
- 1203 (ii) a statement that those limited common elements may be allocated as provided in
1204 Subsection (3)(i)(i);
- 1205 (j) (i) a description of any development rights reserved to the declarant;

1206 (ii) a description of other special declarant rights reserved by the declarant;
1207 (iii) a legal description of the real estate that is subject to the declarant rights described
1208 under Subsections (3)(j)(i) and (ii); and
1209 (iv) any conditions or limitations under which the rights described in Subsections
1210 (3)(j)(i) and (ii) may be exercised or will lapse;
1211 (k) (i) for a condominium or planned community, a description of the boundary of each
1212 unit created by the declaration, including the unit's identifying number; or
1213 (ii) for a cooperative, a description, which may be by plats or plans, for each unit
1214 created by the declaration, including the unit's:
1215 (A) identifying number;
1216 (B) size or number of rooms; and
1217 (C) location within a building, if the unit is within a building containing more than one
1218 unit;
1219 (l) an allocation to each unit of the allocated interests in the manner described in
1220 Section 57-8b-412 and the method and manner of allocating assessments;
1221 (m) any restrictions on alienation of a unit, including any restrictions on leasing that
1222 exceed a leasing restriction that a board imposes under Sections 57-8b-417 and 57-8b-418;
1223 (n) recording data for recorded easements and licenses that:
1224 (i) are appurtenant to the common interest community;
1225 (ii) are included in the common interest community; or
1226 (iii) affect or may affect any portion of the common interest community through a
1227 reservation in the declaration;
1228 (o) all matters required by Sections 57-8b-419 and 57-8b-802;
1229 (p) the method of amending the declaration and the percentage of voting rights required
1230 to approve an amendment in accordance with Section 57-8b-413;
1231 (q) a statement, except as provided in Title 10, Chapter 9a, Municipal Land Use,
1232 Development, and Management Act, and Title 17, Chapter 27a, County Land Use,
1233 Development, and Management Act, describing an association's authority to:
1234 (i) grant an interest affecting the common elements of the common interest community,
1235 including:
1236 (A) a lease;

1237 (B) an easement;
 1238 (C) a right-of-way; and
 1239 (D) another similar interest; and
 1240 (ii) consent to vacate a roadway within or adjacent to the property; and
 1241 (r) (i) a statement of:
 1242 (A) an association's authority to adopt and enforce design guidelines; and
 1243 (B) the method for adopting procedures to enforce the design guidelines, including:
 1244 (I) a reasonable time period in which the association is required to act after an
 1245 application is submitted; and
 1246 (II) the consequences for the association's failure to act; or
 1247 (ii) if there are no design guidelines, a statement that there are no design guidelines
 1248 applicable to the property.
 1249 (4) The declaration for a condominium need not contain a description of limited
 1250 common elements that are described in Subsections 57-8b-702(3) and (5).
 1251 Section 32. Section **57-8b-402** is enacted to read:
 1252 **57-8b-402. Recording of declaration and deed conveying real estate to association**
 1253 **-- Deed for planned community.**
 1254 (1) (a) A declarant executing a declaration shall submit the declaration to each
 1255 applicable county recorder for recording.
 1256 (b) The applicable county recorder shall index the declaration:
 1257 (i) in the grantee's index in the name of:
 1258 (A) the common interest community; and
 1259 (B) the association; and
 1260 (ii) in the grantor's index in the name of each person executing the declaration.
 1261 (2) A declarant who executes a declaration creating a cooperative shall simultaneously
 1262 submit for recording in the office of the applicable county recorder:
 1263 (a) the declaration; and
 1264 (b) a deed conveying to an association the real estate that is subject to the declaration.
 1265 (3) (a) At the time provided in Subsection (3)(b), a declarant of a declaration creating a
 1266 planned community shall submit for recording to the applicable county recorder a deed
 1267 conveying to an association the real estate comprising the common elements that are not part of

1268 the unit.

1269 (b) A deed under Subsection (3)(a) shall be submitted for recording:

1270 (i) upon termination of the special declarant rights; or

1271 (ii) at the time provided in the declaration, if the declaration provides an earlier time.

1272 (c) If a declarant fails to submit a deed under Subsection (3)(a) to each applicable

1273 county recorder for recording at the time provided in Subsection (3)(b), the common elements

1274 are considered automatically conveyed to the association as if a deed had been executed and

1275 recorded.

1276 Section 33. Section **57-8b-403** is enacted to read:

1277 **57-8b-403. Severability of declaration provisions -- Governing documents not**
1278 **defeated by rule against perpetuities -- Resolving conflicts in applying law and governing**
1279 **documents -- Title not affected by insubstantial defect in declaration.**

1280 (1) All provisions of a declaration are severable.

1281 (2) The rule against perpetuities may not defeat a provision of a governing document.

1282 (3) (a) A declaration that fails to comply with this chapter does not render a title to a

1283 unit and common elements unmarketable or otherwise affect the title if the failure is

1284 insubstantial.

1285 (b) This chapter does not affect whether a substantial failure impairs marketability.

1286 Section 34. Section **57-8b-404** is enacted to read:

1287 **57-8b-404. Limits on declaration.**

1288 The declaration may not:

1289 (1) allow the association to give more favorable treatment to a declarant than to any

1290 other person, except to the extent of special declarant rights reserved in the declaration; or

1291 (2) limit the association from commencing litigation against any person.

1292 Section 35. Section **57-8b-405** is enacted to read:

1293 **57-8b-405. Planned community -- Declaration requirements for a planned**
1294 **community containing convertible land.**

1295 (1) A planned community may include a condominium or cooperative within its
1296 boundary.

1297 (2) The declaration for a planned community that contains convertible land shall:

1298 (a) contain a legal description, by metes and bounds, of each area of the convertible

- 1299 land;
- 1300 (b) state that:
- 1301 (i) a unit and dwelling unit created within convertible land will be substantially
- 1302 identical to the units and dwelling units on other portions of the land; or
- 1303 (ii) there are no assurances that a new unit and dwelling unit will be substantially
- 1304 identical to the units and dwelling units on other portions of land;
- 1305 (c) include a statement indicating:
- 1306 (i) whether portions of the additional land may be added to the planned community at
- 1307 different times;
- 1308 (ii) any limitations fixing metes and bounds, or a distance radius from the first phase,
- 1309 of the additional lands; and
- 1310 (iii) whether or not there will be any particular order in which the additional land may
- 1311 be added to the planned community; and
- 1312 (d) if applicable, describe the declarant's reserved right to create limited common
- 1313 elements within the convertible land.

1314 Section 36. Section **57-8b-406** is enacted to read:

1315 **57-8b-406. Declaration requirements for a condominium or cooperative**
1316 **containing convertible land.**

1317 (1) The declaration for a condominium or cooperative that contains convertible land or
1318 convertible space shall state:

1319 (a) the maximum number of units that may be created within the convertible land or
1320 convertible space;

1321 (b) except as provided in Subsection (2):

1322 (i) the maximum percentage of the aggregate land and floor area of all units that may
1323 be created; and

1324 (ii) the aggregate land and floor area as described under Subsection (1)(b)(i) that will
1325 not or may not be restricted exclusively to residential purposes;

1326 (c) requirements that a structure erected on convertible land or within convertible space
1327 must meet in terms of the structure's compatibility with structures on other portions of the
1328 property, including requirements relating to:

1329 (i) construction quality;

1330 (ii) principal materials; and
 1331 (iii) architectural style; and
 1332 (d) if applicable, the declarant's reserved right to create limited common elements
 1333 within any convertible land or convertible space, including any right to determine the type,
 1334 size, and maximum number of the limited common elements.

1335 (2) Subsection (1)(b) does not apply to a declaration for a condominium if no unit on
 1336 other portions of the land within the condominium is restricted exclusively to residential use.

1337 Section 37. Section **57-8b-407** is enacted to read:

1338 **57-8b-407. Declaration requirements for an expandable common interest**
 1339 **community -- Plat may provide some of required information.**

1340 (1) A declaration for an expandable common interest community shall:

1341 (a) contain an explicit reservation of an option to expand the common interest
 1342 community;

1343 (b) (i) include a statement:

1344 (A) of any limitations on the option to expand, including whether a unit owner's
 1345 consent is required; and

1346 (B) describing how the unit owner may consent, if a unit owner's consent is required;

1347 or

1348 (ii) include a statement that there are no limitations on the option to expand;

1349 (c) except as provided in Section 57-8b-312, include:

1350 (i) a time limit not exceeding 15 years from the date of the first recording of the
 1351 declaration when the option to expand the common interest community expires; and

1352 (ii) a statement of any circumstances that will terminate the option to expand prior to
 1353 expiration of the time limit described in Subsection (1)(c)(i);

1354 (d) contain a legal description, by metes and bounds, of additional land;

1355 (e) state:

1356 (i) whether all or a particular portion of additional land must be added; and

1357 (ii) (A) any limitations on what portions of additional land may be added; or

1358 (B) that there are no limitations on what portions of additional land may be added;

1359 (f) state:

1360 (i) whether portions of the additional land may be added to the common interest

1361 community at different times; and
1362 (ii) any limitations fixing the boundaries of the portions of additional land by a
1363 description setting forth the metes and bounds and regulating the order in which the portions of
1364 additional land may be added to the common interest community;
1365 (g) state:
1366 (i) any limitations on the location of an improvement that may be made on a portion of
1367 the additional land; or
1368 (ii) that no assurances are made with respect to limitations on the location of an
1369 improvement on a portion of the additional land;
1370 (h) state:
1371 (i) the extent to which a structure erected on a portion of the additional land is required
1372 to be compatible with structures on the land originally within the property in terms of:
1373 (A) the quality of construction;
1374 (B) the principal materials to be used; and
1375 (C) the architectural style; or
1376 (ii) that no assurances with respect to compatibility, as described in Subsection
1377 (1)(h)(i), are made;
1378 (i) if applicable:
1379 (i) describe the declarant's reserved right to create limited common elements within any
1380 portion of the additional land; or
1381 (ii) state that no assurances are made with respect to a declarant's right to create limited
1382 common elements within any portion of the additional land;
1383 (j) (i) describe all other improvements that will be made on any portion of the
1384 additional land added to the common interest community; or
1385 (ii) state:
1386 (A) any limitations as to what other improvements may be made on the additional land;
1387 or
1388 (B) that no assurances are made with respect to limitations as to what other
1389 improvements may be made on the additional land;
1390 (k) contain a statement:
1391 (i) (A) that any units or structures on units created on any portion of the additional land

1392 added to the common interest community will be substantially identical to the units or
1393 structures on units on the land originally within the property; or
1394 (B) as to what types of units or structures on the units may be created; or
1395 (ii) that no assurances are made with respect to the matters described in Subsection
1396 (1)(k)(i); and
1397 (l) for a condominium or cooperative:
1398 (i) state the maximum number of units that may be created on the additional land;
1399 (ii) state the maximum number of units that may be created on each portion of
1400 additional land, if:
1401 (A) portions of the additional land may be added to the condominium or cooperative;
1402 and
1403 (B) the boundaries of the portions of additional land are fixed in accordance with
1404 Subsection (1)(f);
1405 (iii) state the maximum number of units per acre that may be created on a portion
1406 added to the condominium or cooperative, if:
1407 (A) portions of the additional land may be added; and
1408 (B) the boundaries of the portions of additional land are not fixed in accordance with
1409 Subsection (1)(f);
1410 (iv) state the maximum percentage of the aggregate land and floor area of all units that
1411 may be created on additional land or a portion of additional land that will not or may not be
1412 restricted exclusively to residential use, unless none of the units on the land originally within
1413 the condominium or cooperative are restricted exclusively to residential use;
1414 (v) state:
1415 (A) requirements that a structure erected on additional land must meet in terms of the
1416 structure's compatibility with structures on land originally within the condominium project,
1417 including requirements relating to:
1418 (I) construction quality;
1419 (II) principal materials; and
1420 (III) architectural style; or
1421 (B) that no assurances of compatibility, as described in Subsection (1)(l)(v)(A), are
1422 made;

- 1423 (vi) state:
- 1424 (A) (I) that a unit created on a portion of the additional land shall be substantially
- 1425 identical to the units on the land originally within the project; or
- 1426 (II) any limitations as to what types of units may be created on a portion of the
- 1427 additional land; or
- 1428 (B) that no assurances are made limiting the type of unit that may be created on a
- 1429 portion of additional land;
- 1430 (vii) if applicable:
- 1431 (A) describe the declarant's reserved right to create limited common areas and facilities
- 1432 within any portion of the additional land, including any right to determine the type, size, and
- 1433 maximum number of limited common areas within each portion; or
- 1434 (B) state that no assurances are made with respect to a declarant's right to create limited
- 1435 common areas and facilities within any portion of the additional land; and
- 1436 (viii) (A) describe the types and sizes of limited common elements within each portion
- 1437 of the additional land; or
- 1438 (B) contain a statement that no assurances are made with respect to the types and sizes
- 1439 of limited common elements within each portion of the additional land.
- 1440 (2) The plat recorded with the declaration may provide or supplement the information
- 1441 required under Subsections (1)(g), (k), and (l).
- 1442 Section 38. Section **57-8b-408** is enacted to read:
- 1443 **57-8b-408. Declaration requirements for a contractible common interest**
- 1444 **community -- Plat may provide some of required information.**
- 1445 (1) A declaration for a contractible common interest community shall:
- 1446 (a) contain an explicit reservation of an option to contract the common interest
- 1447 community;
- 1448 (b) (i) state any limitations on the option to contract, including:
- 1449 (A) whether a unit owner's consent is required; and
- 1450 (B) how the unit owner may consent, if the owner's consent is required; or
- 1451 (ii) state that there are no limitations on the option to contract;
- 1452 (c) state:
- 1453 (i) a time limit not exceeding 15 years from the date of the recording of the declaration

1454 when the option to contract the common interest community expires; and
1455 (ii) any circumstances that will terminate the option to contract prior to expiration of
1456 the time limit described in Subsection (1)(c)(i);
1457 (d) include a description, by metes and bounds, of all the real estate that is susceptible
1458 to being withdrawn from the property;
1459 (e) state:
1460 (i) whether portions of the real estate described in Subsection (1)(d) may be withdrawn
1461 from the common interest community at different times; and
1462 (ii) any limitations fixing the boundaries of portions of the real estate that is susceptible
1463 to being withdrawn from the property by:
1464 (A) describing the metes and bounds of those portions; and
1465 (B) regulating the order in which those portions may be withdrawn from the common
1466 interest community; and
1467 (f) include a description, by metes and bounds, of all real estate within the common
1468 interest community to which the option to contract does not extend.
1469 (2) The plat recorded with the declaration may provide or supplement the information
1470 required under Subsections (1)(d), (e), and (f).

1471 Section 39. Section **57-8b-409** is enacted to read:

1472 **57-8b-409. Declaration requirements for a common interest community**
1473 **containing time period units.**

1474 (1) A declaration for a common interest community that contains time period units
1475 shall:

1476 (a) contain the location of each unit in the calendar year, set out in a fourth column of
1477 the exhibit or schedule to the declaration, if an exhibit or schedule accompanies the
1478 declaration; and

1479 (b) put timeshare owners on notice that tax notices will be sent to the management
1480 committee, not each timeshare owner.

1481 (2) The aggregate of the durations of time period units created with respect to any unit
1482 shall total a full calendar year.

1483 Section 40. Section **57-8b-410** is enacted to read:

1484 **57-8b-410. Permissible declaration content.**

- 1485 A declaration may contain any other matter the declarant considers appropriate,
1486 including:
- 1487 (1) a restriction on the use of a unit;
 - 1488 (2) the number of persons that may occupy a unit;
 - 1489 (3) qualifications for a person to occupy a unit;
 - 1490 (4) (a) some or all of the design guidelines; and
 - 1491 (b) a statement prohibiting the design guidelines set forth in the declaration from being
1492 amended or supplemented unless the declaration is amended; and
 - 1493 (5) a statement of:
 - 1494 (a) the initial rules;
 - 1495 (b) the initial rules that may be amended, altered, or repealed only by a declaration
1496 amendment; and
 - 1497 (c) the initial rules that may be amended, altered, and repealed under Sections
1498 57-8b-417 and 57-8b-418.
- 1499 Section 41. Section **57-8b-411** is enacted to read:
- 1500 **57-8b-411. Declaration, bylaws, and plat to be executed and acknowledged by**
1501 **owners and lessees.**
- 1502 (1) As used in this section, "owner and lessee" does not include:
 - 1503 (a) a mortgagee;
 - 1504 (b) a trustee or beneficiary under a deed of trust;
 - 1505 (c) a lien holder;
 - 1506 (d) a person with an equitable interest under a contract for the sale or lease of a unit; or
 - 1507 (e) a lessee whose leasehold interest does not extend to any portion of the common
1508 elements.
 - 1509 (2) Each owner and lessee of real estate that is made subject to this chapter shall
1510 execute and acknowledge the declaration, bylaws, and condominium plat.
- 1511 Section 42. Section **57-8b-412** is enacted to read:
- 1512 **57-8b-412. Allocations under a declaration -- Allocation formulas -- Transfer of**
1513 **common elements in a condominium or an ownership interest in a cooperative.**
- 1514 (1) A declaration shall allocate to each unit:
 - 1515 (a) in a condominium:

1516 (i) a fraction or percentage of undivided interests in the common elements and in the
1517 common expenses of the association; and
1518 (ii) a portion of the voting interests in the association;
1519 (b) in a cooperative:
1520 (i) an ownership interest in the association;
1521 (ii) a fraction or percentage of the common expenses of the association; and
1522 (iii) a portion of the voting interests in the association; and
1523 (c) in a planned community:
1524 (i) a fraction or percentage of the common expenses of the association; and
1525 (ii) a portion of the voting interests in the association.
1526 (2) (a) A declaration shall state the formulas used to allocate interests under Subsection
1527 (1).
1528 (b) An allocation may not discriminate in favor of a unit owned by a declarant.
1529 (3) If a unit may be added to or withdrawn from a common interest community, a
1530 declaration shall state the formulas used to reallocate the allocated interests among all units
1531 included in the common interest community after the unit is added or withdrawn.
1532 (4) (a) Subject to Subsection (4)(c), the declaration may provide that vote and common
1533 expense allocations to a unit vary according to variations among factors specified in the
1534 declaration, which may include variations based on:
1535 (i) substantial differences in the units' height above the ground;
1536 (ii) substantial differences in the units' views; or
1537 (iii) substantial differences in the units' amenities or other characteristics that might
1538 result in differences in market value.
1539 (b) The declaration may provide that the factors listed in Subsection (4)(a)(i), (ii), and
1540 (iii) be considered substantial differences requiring a variation in the vote allocation under
1541 Subsection (4)(a):
1542 (i) for cumulative voting, for the purpose of electing members of the board; and
1543 (ii) for class voting on specified issues affecting a class, if necessary to protect a valid
1544 class interest.
1545 (c) The declaration shall assign substantially identical units the same vote and common
1546 expense allocations.

1547 (d) (i) A declarant may not use cumulative or class voting to avoid a limitation that this
1548 chapter imposes on a declarant.

1549 (ii) The ownership of units by a declarant may not constitute the basis for creating a
1550 separate class of units.

1551 (5) (a) Except for minor rounding variations, the sum of the common expense
1552 liabilities shall equal:

1553 (i) one, if stated as a fraction; or

1554 (ii) 100%, if stated as a percentage.

1555 (b) Except for minor rounding variations, the sum of a condominium undivided
1556 interests in the common elements allocated at any time to all the units shall equal:

1557 (i) one, if stated as a fraction; or

1558 (ii) 100%, if stated as a percentage.

1559 (c) If there is a discrepancy between an allocated interest and the result derived from
1560 application of the formula stated in a declaration as required in Subsection 2(a), the allocated
1561 interest prevails.

1562 (6) In a condominium:

1563 (a) the common elements are not subject to partition; and

1564 (b) a voluntary or involuntary transfer, whether by a conveyance, an encumbrance, a
1565 judicial sale, or otherwise, of an undivided interest in the common elements is void if made
1566 without the unit to which the interest is allocated.

1567 (7) In a cooperative, a voluntary or involuntary transfer, whether by a purported
1568 conveyance, an encumbrance, a judicial sale, or otherwise, of an ownership interest in an
1569 association is void if made without the possessory interest in the unit with the related interest.

1570 Section 43. Section **57-8b-413** is enacted to read:

1571 **57-8b-413. Amending a declaration -- Recording of amendment.**

1572 (1) Except as provided in Subsections (3), (4), (5), (6), (7), and (8) and Section
1573 57-8b-708, amending a declaration requires:

1574 (a) a vote or agreement of unit owners allocated at least 67% of the allocated unit
1575 owner votes in the association; or

1576 (b) if required in the declaration, a vote or agreement of unit owners allocated a larger
1577 percentage of votes.

1578 (2) Except for a nonresidential common interest community, the declaration may not
1579 allow less than 67% of the allocated unit owner votes in the association to amend a declaration.

1580 (3) A declarant may amend a declaration, including a plat, without the consent of the
1581 association if the amendment results from the declarant's exercise of:

1582 (a) a development right reserved under the declaration; or

1583 (b) a development right under Section 57-8b-326.

1584 (4) An association may amend a declaration, including a plat, without the consent of
1585 unit owners if the amendment results from application of:

1586 (a) Subsection 57-8b-419(4)(d);

1587 (b) Subsection 57-8b-706(1);

1588 (c) Section 57-8b-707;

1589 (d) Section 57-8b-710; or

1590 (e) Subsection 57-8b-802(3).

1591 (5) Unit owners specified in the following subsections may amend a declaration,
1592 including a plat, if the amendment results from application of:

1593 (a) Subsection 57-8b-706(1)(a);

1594 (b) Subsection 57-8b-707(2); or

1595 (c) Subsection 57-8b-802(2).

1596 (6) Unless expressly permitted in this chapter or approved by the unanimous consent of
1597 all unit owners, a declaration amendment may not:

1598 (a) create or increase a special declarant right;

1599 (b) increase the number of units;

1600 (c) change the boundary of a unit;

1601 (d) change the allocated interests of a unit; or

1602 (e) change the allocation of common expenses.

1603 (7) If a declaration requires the vote or agreement of more than 67% of the allocated
1604 unit owner votes in the association to adopt a declaration amendment, a proposed declaration
1605 amendment is approved if:

1606 (a) (i) the unit owners of units allocated 67% of the allocated unit owner votes in the
1607 association vote for or agree to the proposed amendment;

1608 (ii) no unit owner votes against the proposed amendment; and

1609 (iii) (A) the association delivers notice of the proposed amendment to unit owners who
1610 hold votes in the association but have not voted for or agreed to the proposed amendment; and

1611 (B) 30 days after delivering notice under Subsection (7)(a)(iii)(A), the association has
1612 not received a written objection to the proposed amendment; or

1613 (b) (i) the unit owners of units allocated 67% of the allocated unit owner votes in the
1614 association agree to or vote for the proposed amendment with at least one unit owner objecting
1615 to the proposed amendment; and

1616 (ii) (A) an action is filed against all objecting unit owners; and

1617 (B) a court finds that the objecting unit owners do not have a unique minority interest,
1618 different from the interest of the other unit owners, that the voting requirement of the
1619 declaration was intended to protect.

1620 (8) (a) Unit owners entitled to cast at least 51% of the allocated unit owner votes in the
1621 association, including 51% of the votes allocated to units not owned by a declarant, may amend
1622 the declaration to extend a time limit applicable to a reserved development right or to create an
1623 additional development right.

1624 (b) (i) Except as provided in Subsection (8)(b)(ii), an agreement under Subsection
1625 (8)(a) is effective 45 days after the day that a declaration amendment reflecting the agreement
1626 is recorded.

1627 (ii) (A) If a person holding the affected special declarant right, or a security interest in
1628 the right, records a written objection within the 45-day period under Subsection (8)(b)(i), the
1629 amendment is void.

1630 (B) If a person holding the affected special declarant right, or a security interest in the
1631 right, consents in writing at the time the amendment is recorded, the amendment is effective
1632 when recorded.

1633 (c) A provision in the declaration creating a special declarant right may not be
1634 amended without a declarant's consent if the provision has not expired.

1635 (9) A declaration amendment or supplemental declaration amendment is conclusively
1636 presumed to have been regularly adopted in compliance with all applicable requirements and
1637 procedures unless:

1638 (a) an action is brought within three years after the date on which the amendment was
1639 recorded challenging the amendment; or

1640 (b) the recorded amendment indicates on its face that the amendment received fewer
1641 votes than those required for approval.

1642 (10) This section does not prevent an additional amendment of an amended or
1643 supplemental declaration or plat.

1644 (11) (a) An association shall submit a declaration amendment for recording in the
1645 office of each applicable county recorder.

1646 (b) An applicable county recorder shall index a declaration amendment, except a
1647 declaration amendment under Section 57-8b-706:

1648 (i) in the grantee's index in the name of:

1649 (A) the common interest community; and

1650 (B) the association; and

1651 (ii) in the grantor's index in the name of the parties executing the amendment.

1652 (12) A declaration amendment is effective upon being recorded.

1653 (13) A declaration amendment shall be prepared, executed, recorded, and certified on
1654 behalf of the association by:

1655 (a) a designated association officer; or

1656 (b) if there is no designated association officer, the president of the association.

1657 Section 44. Section **57-8b-414** is enacted to read:

1658 **57-8b-414. Proof of notice for declaration amendment.**

1659 An association proposing an amendment to a declaration shall provide proof that the
1660 association sent notice of the proposed amendment to a unit owner at the last known available
1661 address.

1662 Section 45. Section **57-8b-415** is enacted to read:

1663 **57-8b-415. Plat required to be recorded with declaration -- Plat requirements --**
1664 **New or supplemental plat.**

1665 (1) (a) Simultaneously with submitting a declaration for recording, the declarant shall
1666 submit a plat to the office of each applicable county recorder for recording, in accordance with,
1667 as applicable, Section 10-9a-603 or 17-27a-603.

1668 (b) The plat in Subsection (1)(a) shall:

1669 (i) be a standard size, original linen measuring 21" x 31";

1670 (ii) include a 6 1/4" x 1 1/2" recording information block;

- 1671 (iii) be made by a registered Utah land surveyor;
- 1672 (iv) describe the surface of the real estate included within the property, including all
- 1673 angular and linear data along the exterior boundary of the property;
- 1674 (v) include, except within the boundary of any convertible land, the linear
- 1675 measurement and location, with reference to the exterior boundary, of:
- 1676 (A) in a condominium, a condominium building;
- 1677 (B) in a cooperative, a building owned by the association; and
- 1678 (C) in a planned community, a structure in which common walls attach units together;
- 1679 (vi) in a condominium, include a diagrammatic floor plan of a building built or to be
- 1680 built on the property, other than within the boundary of any convertible land, in sufficient detail
- 1681 to identify each convertible space and physical unit contained within a building, including:
- 1682 (A) the building's identifying number or symbol;
- 1683 (B) the official datum elevations of the finished or unfinished interior surfaces of the
- 1684 floors and ceilings;
- 1685 (C) the linear measurements of the finished or unfinished interior surfaces of the
- 1686 perimeter walls; and
- 1687 (D) the lateral extensions;
- 1688 (vii) in a condominium, include a description or delineation of the boundary of a unit
- 1689 or convertible space:
- 1690 (A) not contained or to be contained in a building; or
- 1691 (B) with a boundary that is not coextensive with walls, ceilings, or floors within a
- 1692 building, excluding a unit located within the boundary of any convertible land, including:
- 1693 (I) the horizontal, upper, and lower boundaries; and
- 1694 (II) the vertical, lateral, or perimetric boundary;
- 1695 (viii) include a distinguishing number or other symbol for every physical unit identified
- 1696 on the plat;
- 1697 (ix) to the extent feasible, describe the location and dimensions of all easements
- 1698 appurtenant to the real estate included within the property;
- 1699 (x) identify a convertible space with the label "convertible space";
- 1700 (xi) (A) include the location and dimensions of convertible land within the project;
- 1701 (B) identify a convertible land with the label "convertible land"; and

1702 (C) if there is more than one convertible land, label each convertible land with an
1703 identifying letter or number;

1704 (xii) (A) include the location and dimensions of the real estate that is susceptible to
1705 being withdrawn from the property, with each portion of real estate being labeled as
1706 contractible land or contractible space, as the case may require; and

1707 (B) if there is more than one portion of real estate or space, label each with a different
1708 letter or number;

1709 (xiii) (A) show the location and dimensions of a structure allocated as a limited
1710 common element, including:

1711 (I) a porch;

1712 (II) a deck;

1713 (III) a balcony;

1714 (IV) a garage; or

1715 (V) a patio; and

1716 (B) show or contain a narrative description of any other limited common elements;

1717 (xiv) if there is a portion of real estate included in the property that the unit owners are
1718 to own only as an estate for years and the portion is less than all of the real estate in the
1719 property:

1720 (A) describe the location and dimensions of the portion or portions of real estate;

1721 (B) label the portion of real estate described as leased real estate; and

1722 (C) if there is more than one leased real estate, label each leased real estate with an
1723 identifying letter or number; and

1724 (xv) identify any encroachment by or on any portion of the property.

1725 (3) A plat described in Subsection (2) shall be:

1726 (a) certified for accuracy and compliance with the provisions of Subsection (2) by the
1727 land surveyor who prepared or supervised the preparation of the plat; and

1728 (b) executed and acknowledged.

1729 (4) (a) A declarant shall submit a new or supplemental plat that complies with
1730 Subsections (1), (2), and (3) for recording in the office of each applicable county recorder if the
1731 declarant:

1732 (i) converts all or a portion of convertible land; or

- 1733 (ii) adds additional real estate to an expandable common interest community.
1734 (b) If less than all convertible land is being converted, the plat shall:
1735 (i) show the location and dimensions of the remaining portion of the convertible land
1736 not being converted; and
1737 (ii) meet the requirements of this section.
1738 (5) (a) If a declarant converts all or a portion of convertible space into one or more
1739 units or limited common elements, the declarant shall, in addition to complying with
1740 Subsection (4), submit for recording in the office of each applicable county recorder a
1741 supplemental plat showing the location and dimensions of the vertical and horizontal
1742 boundaries of each unit formed out of:
1743 (i) the structure; or
1744 (ii) a portion of the structure constituting the convertible space.
1745 (b) The land surveyor who prepared or supervised the preparation of a supplemental
1746 plat under Subsection (5)(a) shall certify the supplemental plat for accuracy and compliance
1747 with applicable requirements.
1748 Section 46. Section **57-8b-416** is enacted to read:
1749 **57-8b-416. Association bylaws -- Recording required -- Bylaw requirements and**
1750 **limitations.**
1751 (1) An association shall file its bylaws for recording in the office of each applicable
1752 county recorder no later than the date of the first unit sale.
1753 (2) An association's bylaws shall state:
1754 (a) the number of board members;
1755 (b) the title of each of the association's officers;
1756 (c) the manner and method of officer election by the board or, if the declaration
1757 requires, by the unit owners;
1758 (d) (i) the board member and officer:
1759 (A) qualifications;
1760 (B) powers and duties; and
1761 (C) terms of office;
1762 (i) the method for removing a board member or officer; and
1763 (ii) the method for filling a board member or officer vacancy;

1764 (e) the powers that the board or officers may delegate to other persons or to a managing
1765 agent;

1766 (f) the officers who may prepare, execute, certify, and record amendments to the
1767 declaration on behalf of the association;

1768 (g) a method for the unit owners to amend the bylaws; and

1769 (h) subject to the provisions of the declaration and unless the declaration or this chapter
1770 requires that a provision appear in a declaration, any other matter that is necessary or
1771 appropriate for conducting the affairs of the association, including:

1772 (i) meetings;

1773 (ii) voting requirements; and

1774 (iii) quorum requirements.

1775 (3) An association's bylaws may not include:

1776 (a) rules;

1777 (b) board resolutions; or

1778 (c) design guidelines.

1779 Section 47. Section **57-8b-417** is enacted to read:

1780 **57-8b-417. Association rules and design guidelines -- Requirements and**
1781 **limitations relating to board's action on rules and design guidelines -- Vote of**
1782 **disapproval.**

1783 (1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit,
1784 create exceptions to, expand, or enforce the rules and design guidelines of the association.

1785 (b) A board's action under Subsection (1)(a) is subject to:

1786 (i) the terms of this section;

1787 (ii) the limitation of such authority and power in the declaration; and

1788 (iii) the board's duty to exercise business judgment on behalf of:

1789 (A) the association; and

1790 (B) the unit owners in the common interest community; and

1791 (iv) the right of the unit owners or declarant to disapprove the action under Subsection

1792 (4).

1793 (2) Except as provided in Subsection (3), before adopting, amending, modifying,

1794 canceling, limiting, creating exceptions to, or expanding the rules and design guidelines of the

1795 association, the board shall:

1796 (a) provide the unit owners a copy of the proposed change to the rules or design
1797 guidelines;

1798 (b) notify the unit owners at least 15 days in advance of the date the board will meet to
1799 take action on the proposed change;

1800 (c) provide an open forum at the board meeting giving unit owners an opportunity to be
1801 heard at the board meeting prior to the board taking action under Subsection (1)(a); and

1802 (d) deliver a copy of the change in the rules or design guidelines approved by the board
1803 to the unit owners within 15 days after the date of the board meeting.

1804 (3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving
1805 notice to the unit owners under Subsection (2) if there is an imminent risk of harm to:

1806 (i) a common element;

1807 (ii) a unit owner; or

1808 (iii) a unit.

1809 (b) The board shall provide notice under Subsection (2) to the unit owners of a rule
1810 adopted under Subsection (3)(a).

1811 (4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if
1812 within 45 days from the date of the board meeting where the action was taken:

1813 (a) there is a vote of disapproval by more than 50% of the allocated votes of the
1814 association present at a special meeting called for that purpose by the unit owners under the
1815 bylaws; or

1816 (b) (i) the declarant delivers to the board a writing of disapproval; and

1817 (ii) (A) the declarant is within the period of declarant control; or

1818 (B) for a expandable common interest community, the declarant has the right to add
1819 property to the common interest community.

1820 (5) (a) The board has no obligation to call a meeting of the unit owners to consider
1821 disapproval, unless unit owners submit a petition, in the same manner as the bylaws provide for
1822 a special meeting, for the meeting to be held.

1823 (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the
1824 board's action is:

1825 (i) stayed until after the meeting is held; and

1826 (ii) subject to the outcome of the meeting.

1827 Section 48. Section **57-8b-418** is enacted to read:

1828 **57-8b-418. Equal treatment of rules required -- Limits on association rules and**
1829 **design guidelines.**

1830 (1) (a) An association rule shall treat similarly situated unit owners similarly.

1831 (b) Notwithstanding Subsection (1)(a), an association rule may:

1832 (i) vary according to the level and type of service that the association provides to unit
1833 owners; and

1834 (ii) differ between residential and nonresidential uses.

1835 (2) (a) An association rule or design guideline may not abridge the rights of a unit
1836 owner to display religious and holiday signs, symbols, and decorations:

1837 (i) inside a structure on the unit owner's unit in a planned community; and

1838 (ii) inside a unit in a condominium and cooperative.

1839 (b) Notwithstanding Subsection (2)(a), the association may adopt time, place, and
1840 manner restrictions with respect to displays visible from outside the structure or unit.

1841 (3) (a) An association rule may not regulate the content of political signs.

1842 (b) Notwithstanding Subsection (3)(a):

1843 (i) an association rule may regulate the time, place, and manner of posting a political
1844 sign; and

1845 (ii) an association design guideline may establish design criteria for political signs.

1846 (4) (a) An association rule may not interfere with the freedom of a unit owner to
1847 determine the composition of the unit owner's household.

1848 (b) Notwithstanding Subsection (4)(a), an association may:

1849 (i) require that all occupants of a unit be members of a single housekeeping unit; and

1850 (ii) limit the total number of occupants permitted in each residential unit on the basis of
1851 the residential unit's:

1852 (A) size and facilities; and

1853 (B) fair use of the common elements.

1854 (5) (a) An association rule may not interfere with an activity of a unit owner within the
1855 confines of a structure or unit, to the extent that the activity is in compliance with local laws
1856 and ordinances.

1857 (b) Notwithstanding Subsection (5)(a), an association rule may prohibit an activity
1858 within the unit owner's unit if the activity:

1859 (i) is not normally associated with a common interest community restricted to
1860 residential use; or

1861 (ii) (A) creates monetary costs for the association or other unit owners;

1862 (B) creates a danger to the health or safety of occupants of other units;

1863 (C) generates excessive noise or traffic;

1864 (D) creates unsightly conditions visible from:

1865 (I) outside the structures on units in a planned community; or

1866 (II) outside the units in a condominium or cooperative;

1867 (E) creates an unreasonable source of annoyance to persons outside the unit; or

1868 (F) in a condominium or cooperative, creates the potential for smoke to enter another
1869 unit owner's unit or the common elements.

1870 (c) The association may adopt rules described in Subsection (5)(b) that affect the use of
1871 or behavior inside the units of a condominium or cooperative used for residential purposes.

1872 (6) (a) An association rule or design guideline may not, to the detriment of a unit
1873 owner and over the unit owner's written objection to the board, alter the allocation of financial
1874 burdens among the various units or a right to use the common elements.

1875 (b) Notwithstanding Subsection (6)(a), the association may:

1876 (i) change the common elements available to a unit owner;

1877 (ii) adopt generally applicable rules for the use of common elements; or

1878 (iii) deny use privileges to a unit owner who:

1879 (A) is delinquent in paying assessments;

1880 (B) abuses the common elements; or

1881 (C) violates the governing documents.

1882 (c) This Subsection (6) does not permit a rule that:

1883 (i) alters the method of levying assessments; or

1884 (ii) increases the amount of assessments as provided in the declaration.

1885 (7) (a) Subject to Subsection (7)(b), an association rule or design guideline may not:

1886 (i) prohibit leasing or the transfer of a unit; or

1887 (ii) require the consent of the association or board to lease or transfer a unit.

1888 (b) (i) A unit owner rule or board resolution may require a minimum lease term.

1889 (ii) Subsection (7)(b)(i) does not apply to the terms of or amendments to a declaration.

1890 (8) (a) An association rule or design guideline may not require a unit owner to dispose

1891 of personal property that was in or on a unit before the adoption of the rule or design guideline

1892 if the personal property was in compliance with all rules previously in force.

1893 (b) The exemption in Subsection (8)(a):

1894 (i) applies during the period of the unit owner's ownership of the unit; and

1895 (ii) does not apply to a subsequent unit owner who takes title to the unit after adoption

1896 of the rule or resolution described in Subsection (8)(a).

1897 (9) A rule, design guideline, resolution, or action by the association or action by the

1898 board may not unreasonably impede a declarant's right to develop:

1899 (a) the project; or

1900 (b) other properties in the vicinity of the project.

1901 (10) An association rule, design guideline, or action may not interfere with:

1902 (a) the use or operation of an amenity that the association does not own or control; or

1903 (b) the exercise of a right associated with an easement.

1904 (11) An association rule, design guideline, or action shall be reasonable.

1905 (12) The declaration may vary any of the requirements of Subsections (1) through (11).

1906 Section 49. Section **57-8b-419** is enacted to read:

1907 **57-8b-419. Requirements of lessor under delimiting lease -- Declaration**

1908 **requirements for leasehold common interest community -- Limitations on lessor.**

1909 (1) The lessor under a delimiting lease shall:

1910 (a) submit the lease for recording in the office of each applicable county recorder; and

1911 (b) sign a declaration for the real estate that is subject to the delimiting lease.

1912 (2) The declaration required under Subsection (1)(b) shall state:

1913 (a) the recording information necessary to enable the delimiting lease to be located in

1914 the records of the applicable county recorder;

1915 (b) the date the lease is scheduled to expire;

1916 (c) a legally sufficient description of the real estate subject to the lease;

1917 (d) (i) (A) any right a unit owner has to redeem a reversion; and

1918 (B) how a unit owner may exercise the right to redeem a reversion; or

- 1919 (ii) that a unit owner does not have the right to redeem a reversion;
1920 (e) (i) any right a unit owner has to remove an improvement within a reasonable time
1921 after the expiration or termination of the delimiting lease; or
1922 (ii) that a unit owner does not have the right to remove an improvement after the
1923 expiration or termination of a delimiting lease;
1924 (f) (i) any right a unit owner has to extend or renew a delimiting lease; or
1925 (ii) that a unit owner does not have the right to extend or renew a delimiting lease;
1926 (g) (i) any right a unit owner has to redeem or purchase a reversion; or
1927 (ii) that the unit owner does not have a right to redeem or purchase a reversion; and
1928 (h) subject to Subsection (3), whether a unit owner will own any real estate or
1929 improvements in fee simple.
1930 (3) If a leasehold common interest community has fee simple ownership, the
1931 declaration required under Subsection (1)(b) shall include a description of the real estate and
1932 improvements, including a metes and bounds legal description of the real estate.
1933 (4) (a) After the declaration required under Subsection (1)(b) is recorded, a lessor or
1934 the lessor's successor in interest may not terminate the leasehold interest of a unit owner who:
1935 (i) makes timely payment of a unit owner's share of the rent; and
1936 (ii) otherwise complies with all covenants that, if violated, would entitle the lessor to
1937 terminate the lease.
1938 (b) A unit owner's leasehold interest is not affected by the failure of any other person
1939 who is not the unit owner to pay rent or comply with a covenant.
1940 (c) A unit owner who acquires a leasehold interest may not merge the acquired
1941 leasehold interest and fee simple interest with the unit owner's reversion or remainder interest,
1942 unless the leasehold interests of all unit owners subject to the reversion or remainder interests
1943 are acquired.
1944 (d) (i) If the expiration or termination of a delimiting lease decreases the number of
1945 units in a common interest community, the allocated interests shall be reallocated in
1946 accordance with Section 57-8b-710 as if those units had been taken by eminent domain.
1947 (ii) An association shall prepare, execute, and record an amendment to the declaration
1948 to confirm the reallocated interests subject to Subsection (4)(d)(i).
1949 Section 50. Section **57-8b-420** is enacted to read:

1950 **57-8b-420. Creditor approval may be required for unit owner or association**
1951 **action -- Creditor approval presumed in certain circumstances -- Notice to creditor or**
1952 **creditor's successor.**

1953 (1) (a) Subject to Subsection (1)(b), a declaration may:

1954 (i) condition the effectiveness of unit owners' actions specified in the declaration on the
1955 approval of a specified number or percentage of lenders holding a security interest in the units;

1956 or

1957 (ii) condition the effectiveness of association actions specified in the declaration on the
1958 approval of a specified number or percentage of lenders that have extended credit to the
1959 association.

1960 (b) A condition under Subsection (1)(a) may not:

1961 (i) deny or delegate the unit owners' or board's control over the association's general
1962 administrative affairs;

1963 (ii) prevent the association or board from commencing, intervening in, or settling any
1964 litigation or proceeding; or

1965 (iii) prevent an insurance trustee or the association from receiving or distributing
1966 insurance proceeds under Section 57-8b-513.

1967 (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection
1968 (1)(b) by:

1969 (i) requiring the association to deposit the association's assessments before default with
1970 the lender assigned the income; or

1971 (ii) requiring the association to increase assessments at the lender's direction by
1972 amounts reasonably necessary to amortize the loan in accordance with the loan terms.

1973 (d) This Subsection (1) applies to:

1974 (i) an association formed before, on, or after May 11, 2010; and

1975 (ii) documents created and recorded before, on, or after May 11, 2010.

1976 (2) Subject to this chapter and applicable law, a lender who has extended credit to an
1977 association secured by an assignment of income under Subsection 57-8b-502(1)(v) or an
1978 encumbrance of the common elements under Section 57-8b-310 may enforce the lender's
1979 security agreement as provided in the agreement.

1980 (3) (a) Subject to Subsection (4), a security holder's consent that is required under

1981 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:

1982 (i) the association sends written notice of the proposed amendment or action by
1983 certified or registered mail to the security holder's address stated in a recorded document
1984 evidencing the security interest; and

1985 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security
1986 holder's response does not receive a response within 60 days after the association sends notice
1987 under Subsection (3)(a)(i).

1988 (b) If a security holder's address for receiving notice is not stated in a recorded
1989 document evidencing the security interest, an association:

1990 (i) shall use reasonable efforts to find a mailing address for the security holder; and

1991 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).

1992 (4) If a security holder responds in writing within 60 days after the association sends
1993 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to
1994 another person, the association:

1995 (a) shall:

1996 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the
1997 security interest at the address provided by the security holder in the security holder's response;

1998 or

1999 (ii) if no address is provided:

2000 (A) use reasonable efforts to find a mailing address for the person assigned or
2001 conveyed the security interest; and

2002 (B) send notice by certified or registered mail to the person at the address that the
2003 association finds under Subsection (4)(a)(ii)(A); and

2004 (b) may not presume the security holder's consent under Subsection (3)(a) unless the
2005 person designated in a notice under Subsection (4)(a) to receive the response from the person
2006 assigned or conveyed the security interest does not receive a response within 60 days after the
2007 association sends the notice.

2008 Section 51. Section **57-8b-501** is enacted to read:

2009 **Part 5. Association and Board Provisions**

2010 **57-8b-501. Association required for common interest community -- Association**
2011 **membership and board -- Organization of association as a nonprofit corporation.**

2012 (1) (a) A declarant of a declaration creating a common interest community shall, no
2013 later than the date that the first unit in the common interest community is conveyed, organize
2014 an association for the common interest community.

2015 (b) An association organized on or after May 11, 2010 shall be organized as a nonprofit
2016 corporation under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

2017 (c) Members of the association shall consist of:

2018 (i) except as provided in Subsection 57-8b-507(3), all owners of units in the common
2019 interest community; or

2020 (ii) following termination of the common interest community, all former unit owners
2021 entitled to a distribution of proceeds under Section 57-8b-324 or their heirs, successors, or
2022 assigns.

2023 (d) The association shall be governed by a board.

2024 (2) The failure to organize an association as required under Subsection (1) does not
2025 constitute a basis to invalidate or challenge any right, responsibility, or otherwise lawful and
2026 proper action of the association or of the board that is otherwise allowed by this chapter or the
2027 governing documents.

2028 (3) An association may amend an organizational document or governing document that
2029 is attached to a recorded declaration according to the terms of the document or applicable law.

2030 (4) Governing documents, other than a plat, need not be recorded with the declaration.

2031 (5) When an association is organized as a nonprofit corporation, the association shall,
2032 on the incorporation form provided by the Division of Corporations and Commercial Code:

2033 (a) indicate that the association is for a common interest community;

2034 (b) include the following applicable North American Industry Classification System
2035 code number:

2036 (i) 1001 for a condominium;

2037 (ii) 1002 for a cooperative; and

2038 (iii) 1003 for a planned community;

2039 (c) provide the current address of the registered agent; and

2040 (d) provide information required by the Division of Corporations and Commercial
2041 Code.

2042 Section 52. Section **57-8b-502** is enacted to read:

2043 **57-8b-502. Association duties and powers -- Requirements to approve an interest**
2044 **affecting common elements -- Informal hearing relating to certain action of association.**

2045 (1) Except as otherwise provided in Section 57-8b-507, an association:

2046 (a) shall adopt and may amend bylaws;

2047 (b) may adopt and amend rules;

2048 (c) shall adopt and may amend a budget;

2049 (d) shall collect assessments for common expenses from unit owners;

2050 (e) may invest association funds;

2051 (f) may hire and discharge:

2052 (i) a managing agent;

2053 (ii) employees;

2054 (iii) agents; and

2055 (iv) independent contractors;

2056 (g) may, in the association's name, institute, defend, or intervene in litigation or

2057 administrative proceedings affecting the common interest community on behalf of the

2058 association;

2059 (h) may make contracts;

2060 (i) may incur liabilities;

2061 (j) may by rule regulate the use, maintenance, repair, replacement, and modification of
2062 common elements;

2063 (k) may, unless prohibited in the declaration, add capital improvements as a part of the
2064 common elements, if the additional capital improvements are approved by the association in
2065 the same manner as a rule is adopted;

2066 (l) may acquire, hold, encumber, and convey in the association's name any right, title,
2067 or interest to real estate or personal property, except that:

2068 (i) the association may convey common elements in a condominium and planned
2069 community or subject those common elements to a security interest only as provided in Section
2070 57-8b-310; and

2071 (ii) the association may convey part of a cooperative or subject all or part of a
2072 cooperative to a security interest only as provided in Section 57-8b-310;

2073 (m) subject to Subsection (2), may grant an easement, lease, license, or concession

2074 through or over the common elements;
2075 (n) may by rule impose and receive any payment, fee, or charge for:
2076 (i) the use, rental, or operation of the common elements, except limited common
2077 elements; and
2078 (ii) a service provided to unit owners;
2079 (o) may suspend a privilege, other than the privilege to vote, or service provided to unit
2080 owners for nonpayment of an assessment;
2081 (p) may levy a reasonable fine for a violation of the governing documents;
2082 (q) shall, as provided in Subsections (3) and (4), give notice and an opportunity to be
2083 heard before:
2084 (i) suspending a privilege or service; or
2085 (ii) levying a fine;
2086 (r) may by rule impose a charge for a late payment of an assessment;
2087 (s) may impose a reasonable charge for:
2088 (i) the preparation and recordation of an amendment to the declaration that benefits less
2089 than all of the unit owners;
2090 (ii) reasonable administrative fees associated with the sale of a unit; or
2091 (iii) a statement of unpaid assessments;
2092 (t) may provide for the indemnification of its officers and board consistent with Title
2093 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;
2094 (u) may maintain directors' and officers' liability insurance;
2095 (v) unless limited or varied by the declaration, may assign its right to future income,
2096 including the right to receive common expense assessments;
2097 (w) may exercise any other powers conferred by the declaration or bylaws;
2098 (x) may exercise all other powers that may be exercised under Title 16, Chapter 6a,
2099 Utah Revised Nonprofit Corporation Act; and
2100 (y) may exercise any other power necessary and proper for the governance and
2101 operation of the association.
2102 (2) Unless otherwise provided for in the declaration, at least 51% of the allocated votes
2103 of the unit owners represented at a meeting called for that purpose is required to approve an
2104 interest affecting the common elements, including granting:

- 2105 (a) a lease;
2106 (b) an easement;
2107 (c) a right-of-way;
2108 (d) a license; or
2109 (e) a concession.
- 2110 (3) The notice to a unit owner in Subsection (1)(q) shall state:
- 2111 (a) that utility service or a privilege will be terminated if the unit owner does not pay
2112 the assessment within the time provided in the declaration, bylaws, or rules, but no less than 48
2113 hours from the time the notice was provided to the owner;
- 2114 (b) the amount of the assessment due or fine to be imposed, including any interest, late
2115 payment fee, and costs and expenses of collection, including attorney fees; and
- 2116 (c) the unit owner's right to request a hearing under Subsection (4).
- 2117 (4) (a) A unit owner who is given notice under Subsection (3) may request an informal
2118 hearing by submitting a written request to the board within 14 days after the date on which the
2119 owner receives the notice described in Subsection (3).
- 2120 (b) The informal hearing described in Subsection (4)(a) shall be:
- 2121 (i) conducted by the board; and
- 2122 (ii) in accordance with the standards provided in the declaration, bylaws, and rules.
- 2123 (c) (i) If a unit owner requests a hearing under Subsection (4)(a), the association may
2124 not suspend a unit owner's utility service or suspend a unit owner's privilege until after the
2125 hearing has been conducted and a final decision has been entered by the board.
- 2126 (ii) If the unit owner pays the assessment due, interest, late payment fee, and costs and
2127 expenses of collection, including attorney fees, the manager or board shall immediately
2128 reinstate each of the unit owner's suspended utility services and privileges.
- 2129 (d) If the association assesses a fine for a unit owner, the fine shall:
- 2130 (i) be for a violation of the governing documents;
- 2131 (ii) be in an amount:
- 2132 (A) specifically provided for in the association's governing documents for that specific
2133 type of violation; or
- 2134 (B) commensurate with the nature of the violation; and
- 2135 (iii) accrue interest and late fees as provided in the associations' governing documents.

2136 (e) If provided for in the governing documents, the association may collect an unpaid
2137 fine as an unpaid assessment.

2138 Section 53. Section **57-8b-503** is enacted to read:

2139 **57-8b-503. Association records -- Requirements and limitations.**

2140 (1) (a) An association shall maintain:

2141 (i) (A) detailed records of receipts and expenditures affecting the association's
2142 operation and administration; and

2143 (B) other appropriate accounting records;

2144 (ii) (A) minutes of all meetings of the unit owners and board;

2145 (B) a record of all actions taken by the unit owners or board without a meeting; and

2146 (C) a record of all actions taken by a committee in place of the executive board on
2147 behalf of the association;

2148 (iii) the names of unit owners in a form that:

2149 (A) permits preparation of a list of the names and addresses of all unit owners;

2150 (B) lists the names in alphabetical order; and

2151 (C) shows the number of votes each unit owner is entitled to cast;

2152 (iv) (A) the unit owners' original or, if applicable, restated governing documents;

2153 (B) bylaws; and

2154 (C) all governing document amendments currently in effect;

2155 (v) any financial statements and tax returns of the association for the past three years;

2156 (vi) a list of the names and business addresses of the association's current board
2157 members and officers;

2158 (vii) if applicable, the association's most recent annual report delivered to the Division
2159 of Corporations and Commercial Code;

2160 (viii) each current contract to which the association is a party;

2161 (ix) records of board or committee actions to approve or deny a unit owner request for
2162 design or architectural approval; and

2163 (x) subject to Subsection (1)(b), ballots, proxies, and other records related to voting by
2164 unit owners.

2165 (b) An association shall maintain records described in Subsection (1)(a)(x) for at least
2166 one year after the action was taken to which the ballot, proxy, or other record relates.

- 2167 (2) An association may withhold from inspection and copying a record that it maintains
2168 if the record is concerning:
- 2169 (a) a personnel matter relating to a specific person;
 - 2170 (b) a person's medical care or treatment;
 - 2171 (c) a contract, lease, or other commercial transaction to purchase or provide a good or
2172 service currently in or under negotiation;
 - 2173 (d) pending or potential litigation;
 - 2174 (e) a matter involving a state or local administrative or other formal proceeding before
2175 a governmental tribunal for enforcement of the declaration, bylaws, or rules;
 - 2176 (f) a communication with the association's legal counsel that is otherwise protected by
2177 the attorney-client privilege or the attorney work product doctrine;
 - 2178 (g) disclosure of information if the disclosure would violate applicable law;
 - 2179 (h) a record of an executive session of the board; or
 - 2180 (i) the file relating to an individual unit other than the unit of the requesting unit owner.
- 2181 (3) The association may compile or synthesize information contained in the records it
2182 maintains.
- 2183 (4) Information provided to an association under this section may not be used for
2184 commercial purposes.
- 2185 (5) (a) A request for records is a request made in good faith and for a proper purpose
2186 under Section 16-6a-1602, if, in connection with the offering for sale, transfer, or conveyance
2187 of the unit, a unit owner or the unit owner's agent requests, in writing, copies of the:
- 2188 (i) governing documents;
 - 2189 (ii) current budget;
 - 2190 (iii) financial statement for the last fiscal year;
 - 2191 (iv) minutes for the last six months; and
 - 2192 (v) leases affecting the property.
- 2193 (b) The association shall comply with a request under Subsection (5)(a) within the time
2194 required by Section 16-6a-1602.
- 2195 (c) If the association fails to provide the documents described in Subsection (5)(a)
2196 within the allotted time, the association shall pay to the unit owner:
- 2197 (i) the greater of:

2198 (A) \$100 per day; or
2199 (B) \$1,000; and
2200 (ii) attorney fees and court costs.
2201 (6) The provisions of Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act,
2202 also apply to records of the association.

2203 Section 54. Section **57-8b-504** is enacted to read:

2204 **57-8b-504. Third-party dealings with association.**

2205 (1) A third person dealing with the association in the association's capacity as a trustee:

2206 (a) may assume without inquiry the existence of trust powers and the association's
2207 proper exercise of those powers; and

2208 (b) is not bound to inquire whether the association has power to act as trustee or is
2209 properly exercising trust powers.

2210 (2) A third person, without actual knowledge that the association is exceeding or
2211 improperly exercising its powers, is fully protected in dealing with the association as if it
2212 possessed and properly exercised the powers it purports to exercise.

2213 (3) A third person is not bound to assure the proper application of trust assets paid or
2214 delivered to the association in its capacity as trustee.

2215 Section 55. Section **57-8b-505** is enacted to read:

2216 **57-8b-505. Association powers relating to a unit owner's tenant who violates a**
2217 **governing document provision -- Limitation -- Liability for fines.**

2218 (1) If a unit owner's tenant violates a provision of an association's governing
2219 documents, in addition to exercising any of its powers against the unit owner, the association
2220 may:

2221 (a) exercise its powers described in Subsections 57-8b-502(1)(o) and (p) directly
2222 against the tenant;

2223 (b) levy reasonable fines against the tenant for the violation after:

2224 (i) giving notice to the tenant and the unit owner as provided in Subsection
2225 57-8b-502(1)(q); and

2226 (ii) giving the tenant and the unit owner an opportunity to be heard as provided in
2227 Subsections 57-8b-502(3) and (4); and

2228 (c) enforce any other right against the tenant for the violation that:

- 2229 (i) the unit owner as landlord could lawfully exercise under the lease; or
- 2230 (ii) the association could lawfully exercise directly against the unit owner; or
- 2231 (iii) a combination of Subsections (1)(c)(i) and (ii).
- 2232 (2) The association may not exercise a right under Subsection (1)(c) unless the tenant
- 2233 or unit owner fails to cure a violation within 14 days after the association notifies the tenant
- 2234 and unit owner of the violation.

2235 (3) Unit owners and tenants are jointly and severally liable for fines levied under
 2236 Subsection (1)(b).

2237 (4) Unless otherwise provided in a lease, this section does not affect rights:

2238 (a) that the unit owner has to enforce the lease; or

2239 (b) that the association has under law.

2240 Section 56. Section **57-8b-506** is enacted to read:

2241 **57-8b-506. Association permitted to take action in manner permitted by nonprofit**
 2242 **corporation statute -- Association meetings -- Notice -- Meeting agenda.**

2243 (1) Except to the extent limited in this section, an association may take an action in any
 2244 manner provided for in Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

2245 (2) An association shall hold a meeting of unit owners annually at a time and place
 2246 stated or fixed in accordance with the bylaws.

2247 (3) (a) An association shall notify unit owners of the date, time, and place of an annual
 2248 and special unit owners' meeting no fewer than 30 and no more than 60 days before the
 2249 meeting date.

2250 (b) An association may deliver the notice described in Subsection (3)(a) in the manner
 2251 provided in Section 57-8b-108.

2252 (c) An association may reduce or waive the minimum time to give notice under
 2253 Subsection (3)(a) if a meeting is being called to deal with an emergency.

2254 (4) Each unit owner meeting agenda shall provide an open forum giving unit owners an
 2255 opportunity to be heard regarding a matter affecting the common interest community.

2256 (5) An association may not suspend a unit owner's voting rights for any reason,
 2257 including a violation of a provision of the governing documents.

2258 Section 57. Section **57-8b-507** is enacted to read:

2259 **57-8b-507. Power of board -- Duties of officers and board members -- Limits on**

2260 **board's powers -- Period of declarant control -- Election of board members --**

2261 **Indemnifying and limiting liability of officers and board members.**

2262 (1) (a) Except as provided in a declaration, the association's bylaws, Subsection (2), or
2263 other provisions of this chapter, a board acts in all instances on behalf of the association.

2264 (b) An officer or board member not appointed by the declarant:

2265 (i) shall exercise the degree of care and loyalty to the association required of an officer
2266 or director of a corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit
2267 Corporation Act; and

2268 (ii) is subject to the conflict of interest rules governing directors and officers in Title
2269 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

2270 (2) (a) A board may not:

2271 (i) amend a declaration;

2272 (ii) amend the bylaws;

2273 (iii) terminate the common interest community;

2274 (iv) elect members of the board; or

2275 (v) determine board members':

2276 (A) qualifications;

2277 (B) powers and duties; or

2278 (C) terms of office.

2279 (b) A board may fill a vacancy in its membership for the unexpired portion of the term.

2280 (3) (a) Subject to Subsection (4), a declaration may provide for a period of declarant
2281 control of the association.

2282 (b) During a period of declarant control under Subsection (3)(a), a declarant, or persons
2283 designated by the declarant in an instrument recorded in each county in which the common
2284 interest community is situated, may:

2285 (i) appoint officers and members of the board; and

2286 (ii) remove officers and members of the board.

2287 (c) Unless otherwise provided for in a declaration and except as provided in Section
2288 57-8b-312, a period of declarant control terminates on the first to occur of the following:

2289 (i) 60 days after conveyance;

2290 (A) to a unit owner other than a declarant; and

2291 (B) of 75% of the units that may be created;
2292 (ii) two years after all declarants have ceased to offer units for sale in the ordinary
2293 course of business;
2294 (iii) two years after any right to add new units was last exercised; and
2295 (iv) the day the declarant, after giving written notice to the unit owners, records an
2296 instrument voluntarily surrendering all rights to control activities of the association.
2297 (d) (i) A declarant may voluntarily surrender the right to appoint and remove officers
2298 and members of the board before the period of declarant control terminates under Subsection
2299 (3)(c).
2300 (ii) Subject to Subsection (3)(d)(i), the declarant may require, for the duration of the
2301 period of declarant control, that actions of the association or board, as specified in a recorded
2302 instrument executed by the declarant, be approved by the declarant before they become
2303 effective.
2304 (4) Unless the declaration provides otherwise:
2305 (a) no later than 60 days after 25% of the units that may be created are conveyed to unit
2306 owners other than a declarant, the unit owners other than the declarant shall elect to the board
2307 at least one member and not less than 25% of the members of the board; and
2308 (b) no later than 60 days after 50% of the units that may be created are conveyed to unit
2309 owners other than a declarant, the unit owners other than the declarant shall elect at least
2310 one-third of the members of the board.
2311 (5) (a) Except as otherwise provided in Section 57-8b-514:
2312 (i) the unit owners shall:
2313 (A) elect a board consisting of an odd number of at least three members; and
2314 (B) hold the election described in Subsection (5)(a)(i)(A) no later than the day after the
2315 last day of a period of declarant control under Subsection (3); and
2316 (ii) a majority of the board members shall be unit owners.
2317 (b) (i) Unless the declaration provides for the election of officers by the unit owners,
2318 the board shall elect association officers.
2319 (ii) The board members and officers shall take office upon election or appointment.
2320 (6) Notwithstanding any conflict with the declaration or recorded bylaws, the
2321 association's organizational documents may indemnify and limit board member and officer

2322 liability to the extent permitted by the law under which the association is organized.

2323 Section 58. Section **57-8b-508** is enacted to read:

2324 **57-8b-508. Board action to enforce governing documents -- Parameters.**

2325 (1) (a) The board shall use its reasonable judgment to determine whether to exercise
2326 the association's powers to impose sanctions or pursue legal action for a violation of the
2327 governing documents, including:

2328 (i) whether to compromise a claim made by or against the board or the association; and

2329 (ii) whether to pursue a claim for an unpaid assessment.

2330 (b) The association may not be required to take enforcement action if the board
2331 determines, after fair review and acting in good faith and without conflict of interest, that under
2332 the particular circumstances:

2333 (i) the association's legal position does not justify taking any or further enforcement
2334 action;

2335 (ii) the covenant, restriction, or rule in the governing documents is likely to be
2336 construed as inconsistent with current law;

2337 (iii) (A) a technical violation has or may have occurred; and

2338 (B) (I) the violation is not material as to a reasonable person; or

2339 (II) the violation does not justify expending the association's resources; or

2340 (iv) it is not in the association's best interests to pursue an enforcement action, based
2341 upon:

2342 (A) hardship;

2343 (B) expense; or

2344 (C) other reasonable criteria.

2345 (2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego
2346 enforcement, the association is not prevented from later taking enforcement action under
2347 different circumstances.

2348 (3) The board may not be arbitrary or capricious in taking enforcement action.

2349 (4) This section does not govern whether the association's action in enforcing a
2350 provision of the governing documents constitutes a waiver or modification of that provision.

2351 Section 59. Section **57-8b-509** is enacted to read:

2352 **57-8b-509. Board permitted to take action in manner permitted under nonprofit**

2353 corporation statute -- Board meetings -- Calling of meeting -- Required meetings -- Notice
2354 of meetings -- Effect of noncompliance with meeting requirements -- Time limit on
2355 challenge to board action.

2356 (1) As used in this section, "meeting of the board" does not include a gathering of
2357 board members at which the board members do not conduct association business.

2358 (2) Except as limited in this section or Section 57-8b-310, the board may take an action
2359 in any manner allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

2360 (3) (a) (i) Except as provided in Subsection (3)(b) and Section 57-8b-310, a meeting of
2361 the board or a committee meeting comprised of only board members shall be open to unit
2362 owners.

2363 (ii) A board and its members may not use incidental or social gatherings of board
2364 members to evade the requirement of Subsection (3)(a)(i).

2365 (b) An association's board may hold a closed, executive session during a board meeting
2366 or committee meeting comprised of only board members if the purpose of the session is to:

2367 (i) consult with the association's attorney to obtain legal advice;

2368 (ii) discuss existing or potential litigation, mediation, arbitration, or administrative
2369 proceeding;

2370 (iii) discuss a labor or personnel matter;

2371 (iv) discuss a matter relating to initial contract negotiations, including the review of a
2372 bid or proposal;

2373 (v) discuss a matter involving a person, if the board determines that public knowledge
2374 of the matter would violate the person's privacy; or

2375 (vi) discuss a delinquent assessment.

2376 (4) The president of the board or a majority of the board members may call a meeting
2377 of the board.

2378 (5) Unless otherwise provided in the declaration or bylaws:

2379 (a) the board shall meet at least four times per year; and

2380 (b) the board shall hold at least one of the meetings described in Subsection (5)(a) at
2381 the common interest community or in a location convenient to the common interest
2382 community.

2383 (6) At a board meeting, the board shall provide a reasonable opportunity for unit

2384 owners to offer comments.

2385 (7) (a) A secretary or other officer specified in the bylaws, or an agent of the
2386 association specified in a resolution of the board, shall give notice of a board meeting to each
2387 board member and to unit owners unless:

2388 (i) the meeting has been included in a schedule previously given to unit owners; or

2389 (ii) the meeting has been called to deal with an emergency.

2390 (b) The notice to unit owners described in Subsection (7)(a) shall:

2391 (i) be given:

2392 (A) as required under Section 57-8b-108; and

2393 (B) not fewer than 10 days before the day of the meeting; and

2394 (ii) state the time and place of the meeting.

2395 (8) An association that enters a contract with a third party in violation of this section is
2396 bound by the contract if the third party:

2397 (a) relies on an action of the board; and

2398 (b) had no knowledge at the time of entering the contract that the action violates this
2399 section.

2400 (9) Notwithstanding noncompliance with this section, a board action is binding and
2401 valid unless set aside by a court.

2402 (10) A person challenging the validity of an action of the board for failure to comply
2403 with a provision of this section may not bring the challenge more than 60 days after the earlier
2404 of:

2405 (a) the approval of the board minutes recording the board's action; and

2406 (b) distribution of the record of the board's action to unit owners.

2407 Section 60. Section **57-8b-510** is enacted to read:

2408 **57-8b-510. Board action without a meeting.**

2409 An association's board may act without a meeting:

2410 (1) by following the procedures of Section 16-6a-813; or

2411 (2) after the period of declarant control described in Subsection 57-8b-507(3), to:

2412 (a) undertake ministerial actions; or

2413 (b) implement an action that the board previously agreed to in an open meeting.

2414 Section 61. Section **57-8b-511** is enacted to read:

2415 **57-8b-511. Removal of officers or board members.**

2416 (1) (a) Notwithstanding a provision of the declaration, bylaws, or Title 16, Chapter 6a,
2417 Utah Revised Nonprofit Corporation Act, the unit owners may vote to remove, with or without
2418 cause:

2419 (i) a member of the board; or

2420 (ii) an officer elected by the unit owners.

2421 (b) A unit owner vote described in Subsection (1)(a) shall be:

2422 (i) by a majority vote of all persons present in person, by proxy, or ballot; and

2423 (ii) at a meeting of the unit owners with a quorum present.

2424 (c) Notwithstanding Subsection (1)(a):

2425 (i) a board member appointed by a declarant may not be removed by a unit owner vote
2426 during the period of declarant control; and

2427 (ii) the unit owners may not consider whether or not to remove a board member at a
2428 meeting of the unit owners unless the proposed removal was listed in the meeting's notice.

2429 (2) Subject to reasonable limits on debate, a board shall provide all persons, including
2430 a member of the board or officer being considered for removal, a reasonable opportunity to
2431 speak before a vote at a meeting to remove the board member or officer is taken.

2432 (3) (a) After all persons present at a meeting called to vote for the removal of a board
2433 member or officer have been given a reasonable opportunity to speak, the board may:

2434 (i) call for a vote immediately; or

2435 (ii) recess the meeting to conduct the vote as described in Subsection (3)(b).

2436 (b) (i) Promptly following a recess under Subsection (3)(a)(ii), the association shall:

2437 (A) notify all unit owners of the recessed meeting; and

2438 (B) inform a unit owner of the unit owner's opportunity to cast a vote either in favor of
2439 or against removal during the period specified in the notice.

2440 (ii) The notice in Subsection (3)(b)(i) shall state whether or not the unit owner may cast
2441 a vote:

2442 (A) in a secret written ballot;

2443 (B) on a form provided to the unit owner; or

2444 (C) by electronic means.

2445 (4) Whether a vote on the proposed removal is taken before or after a recess, and

2446 whether or not taken by electronic means, a board member or officer may be removed only if
2447 the number of votes cast in favor of removal exceeds the number of votes cast opposing
2448 removal.

2449 Section 62. Section **57-8b-512** is enacted to read:

2450 **57-8b-512. Voting by multiple owners of unit.**

2451 (1) As used in this section, "multiple-owner unit" means a unit owned by more than
2452 one owner.

2453 (2) Except as otherwise provided in the declaration or bylaws:

2454 (a) if an owner of a multiple-owner unit is the only owner of that unit present at an
2455 association meeting, that owner is entitled to cast all the votes allocated to that unit; and

2456 (b) if more than one of the owners of a multiple-owner unit are present at an
2457 association meeting:

2458 (i) subject to Subsection (2)(b)(ii), the vote of a majority of owners present at an
2459 association meeting constitutes the casting of all votes allocated to that unit; and

2460 (ii) the owners of a multiple-owner unit are considered to have cast a majority vote
2461 under Subsection (2)(b)(i) if:

2462 (A) any of the multiple-owner unit's owners casts the unit's allocated votes; and

2463 (B) none of the other owners of the multiple-owner unit promptly objects to the
2464 meeting's presiding officer.

2465 Section 63. Section **57-8b-513** is enacted to read:

2466 **57-8b-513. Insurance.**

2467 (1) This section applies to an insurance policy or combination of insurance policies
2468 issued or renewed on or after January 1, 2011.

2469 (2) (a) Beginning not later than the day on which the first unit is conveyed to a person
2470 other than a declarant, an association shall maintain, to the extent reasonably available:

2471 (i) subject to Subsections (2)(b), (4), and (5), property insurance on the common
2472 elements insuring against all risks of direct physical loss commonly insured against, including
2473 fire and extended coverage perils; and

2474 (ii) subject to Subsection (5), liability insurance, including medical payments insurance
2475 covering all occurrences commonly insured against for death, bodily injury, and property
2476 damage arising out of or in connection with the use, ownership, or maintenance of the common

2477 elements and, for a cooperative, all units.

2478 (b) (i) The property covered by property insurance required in Subsection (2)(a)(i) shall
2479 include any property that, under the declaration, is required to become common elements.

2480 (ii) The total amount of coverage provided by insurance required in Subsection
2481 (2)(a)(i) may not be less than 100% of the full replacement cost of the insured property at the
2482 time the insurance is purchased and at each renewal date, excluding items normally excluded
2483 from property policies.

2484 (c) The declaration may require the association to carry insurance other than that
2485 described in Subsections (2)(a) and (b).

2486 (d) Notwithstanding any types of insurance coverage or limits of coverage that are in
2487 the declaration and subject to the requirements of this section, the association may obtain other
2488 insurance with limits that the board considers appropriate.

2489 (3) The liability insurance required in Subsection (2)(a)(ii) shall be in an amount
2490 determined by the board but not less than an amount specified in the declaration.

2491 (4) The insurance maintained under Subsection (2)(a)(i), to the extent reasonably
2492 available:

2493 (a) shall include coverage for units contained in a building that:

2494 (i) is part of a cooperative; or

2495 (ii) contains units having horizontal boundaries as described in the declaration or plat;

2496 and

2497 (b) may include coverage for improvements installed by unit owners.

2498 (5) If an association becomes aware that the insurance described in Subsection (2)(a)(i)
2499 or (ii) is not reasonably available, the association shall, within seven calendar days after
2500 becoming aware, give to all unit owners written notice, as provided in Section 57-8b-108, that
2501 the insurance is not reasonably available.

2502 (6) (a) (i) Each unit owner is an insured person under a policy that an association
2503 obtains under this section with respect to liability arising out of the unit owner's interest in the
2504 common elements or membership in the association.

2505 (ii) An insurer under a policy obtained under this section waives its right to subrogation
2506 under the policy against any unit owner or member of the unit owner's household.

2507 (iii) Unless a unit owner is acting within the scope of the unit owner's authority on

2508 behalf of an association, a unit owner's act or omission may not:

2509 (A) void the policy; or

2510 (B) be a condition to recovery under the policy.

2511 (iv) (A) If a loss occurs that is covered by an insurance policy in the name of an

2512 association and another insurance policy in the name of a unit owner:

2513 (I) the association's policy provides primary insurance coverage; and

2514 (II) notwithstanding Subsection (6)(a)(iv)(A), the unit owner's policy applies to that
2515 portion of the loss attributable to the association's policy deductible.

2516 (B) An association may assess a unit owner for the portion of a loss attributable to the
2517 association's policy deductible if the unit owner does not have a policy to cover the
2518 association's policy deductible.

2519 (C) The association shall reserve an amount equal to the amount of the association's
2520 policy's deductible.

2521 (D) (I) An association shall provide written notice as provided in Section 57-8b-108 to
2522 each unit owner at least 30 calendar days prior to the effective date of any change in the amount
2523 of the association's policy's deductible.

2524 (II) If an association fails to provide notice as provided in Subsection (6)(a)(iv)(D)(I):

2525 (Aa) the association is responsible for the amount of the increase in the deductible
2526 amount; and

2527 (Bb) the failure may not be construed to invalidate any other provision under this
2528 Subsection (6).

2529 (E) If, in the exercise of the business judgment rule, the board determines that a claim
2530 is likely not to exceed the association's policy's deductible:

2531 (I) the unit owner's policy is considered the policy for primary coverage to the amount
2532 of the deductible; and

2533 (II) the association need not tender the claim to the association's insurer.

2534 (b) (i) An insurance policy issued to an association may not be inconsistent with any of
2535 the provisions of Subsection (6)(a).

2536 (ii) A provision of a declaration that is contrary to any of the provisions of Subsection
2537 (6)(a) or (b)(i) has no effect.

2538 (7) (a) An insurer under a policy issued to an association shall adjust with the

2539 association a loss covered under the policy.
2540 (b) Notwithstanding Subsection (7)(a), the insurance proceeds for a loss under an
2541 association's policy:
2542 (i) are payable to:
2543 (A) an insurance trustee that the association designates; or
2544 (B) the association, if no trustee is designated; and
2545 (ii) may not be payable to a holder of a security interest.
2546 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for
2547 the association, unit owners, and lien holders.
2548 (d) (i) Insurance proceeds shall be disbursed first for the repair or restoration of the
2549 damaged property.
2550 (ii) Any surplus proceeds are payable to the association, unit owners, and lien holders
2551 after:
2552 (A) the disbursements described in Subsection (7)(d)(i) are made; and
2553 (B) (I) the damaged property has been completely repaired or restored; or
2554 (II) the common interest community is terminated.
2555 (8) An insurance policy issued to an association may not prevent a unit owner from
2556 obtaining insurance for the unit owner's own benefit.
2557 (9) (a) An insurer that has issued an insurance policy under this section shall issue a
2558 certificate or memorandum of insurance to:
2559 (i) the association;
2560 (ii) a unit owner, upon the unit owner's written request; and
2561 (iii) a holder of a security interest, upon the holder's written request.
2562 (b) The cancellation or nonrenewal of an insurance policy under this section is subject
2563 to the procedures stated in Section 31A-21-303.
2564 (10) (a) (i) If a portion of the common interest community for which insurance is
2565 required under this section is damaged or destroyed, the association shall repair or replace the
2566 portion within a reasonable amount of time unless:
2567 (A) the common interest community is terminated;
2568 (B) repair or replacement would be illegal under a state statute or local ordinance
2569 governing health or safety; or

2570 (C) at least 80% of the unit owners, including every owner of a unit or assigned limited
2571 common element that will not be rebuilt, vote not to rebuild.

2572 (ii) If a portion of a common interest community is not repaired or replaced because the
2573 common interest community is terminated, Section 57-8a-710 applies.

2574 (b) The cost of repair or replacement in excess of insurance proceeds and reserves is a
2575 common expense.

2576 (c) If the entire common interest community is damaged or destroyed and not repaired
2577 or replaced:

2578 (i) the association shall use the insurance proceeds attributable to the damaged
2579 common elements to restore the damaged area to a condition compatible with the remainder of
2580 the common interest community;

2581 (ii) the association shall distribute the insurance proceeds attributable to units and
2582 limited common elements that are not rebuilt to:

2583 (A) the unit owners of the units that are not rebuilt;

2584 (B) the unit owners of the units to which those limited common elements that are not
2585 rebuilt were allocated; or

2586 (C) lien holders; and

2587 (iii) the association shall distribute the remainder of the proceeds to all the unit owners
2588 or lien holders:

2589 (A) in a condominium, in proportion to the common element interests of all the units;

2590 and

2591 (B) in a cooperative or planned community, in proportion to the common expense
2592 liabilities of all the units.

2593 (d) If the unit owners vote not to rebuild a unit:

2594 (i) the unit's allocated interests are automatically reallocated upon the unit owner's vote
2595 as if the unit had been condemned under Section 57-8b-710; and

2596 (ii) the association shall prepare, execute, and submit for recording an amendment to
2597 the declaration reflecting the reallocations described in Subsection (10)(d)(i).

2598 (11) Subsections (1) through (10) do not apply to a common interest community if all
2599 of the common interest community's units are restricted to entirely commercial, nonresidential
2600 use.

2601 Section 64. Section **57-8b-514** is enacted to read:

2602 **57-8b-514. Master association -- Applicability of chapter -- Exceptions -- Board of**
2603 **master association.**

2604 (1) Except as provided in Subsections (2) through (5), the provisions of this chapter
2605 applicable to an association apply equally to a master association.

2606 (2) Unless acting in the capacity of an association for a single common interest
2607 community, a master association may not exercise the powers relating to the adopting of a
2608 budget or the imposition of an assessment unless:

2609 (a) the declarations of the common interest communities that are subject to the master
2610 association expressly permit the master association to exercise those powers; or

2611 (b) those powers are expressly described in the delegation of power from those
2612 common interest communities to the master association.

2613 (3) A member of a board who, pursuant to a declaration, delegates a power to a master
2614 association is not liable for a master association's act or omission in the exercise of that power.

2615 (4) The rights and responsibilities described in Section 57-8b-310, 57-8b-506, and
2616 57-8b-507 apply to a person who elects a master association board, whether or not the person is
2617 a unit owner.

2618 (5) (a) The board of a master association may be elected after the period of declarant
2619 control if provided for in:

2620 (i) the certificate of incorporation or other instrument creating a master association that
2621 is also an association; and

2622 (ii) the declaration of each common interest community that is subject to the master
2623 association.

2624 (b) In an election under Subsection (5)(a):

2625 (i) all members of the master association's board may be elected by:

2626 (A) all unit owners of all common interest communities subject to the master
2627 association; or

2628 (B) all members of the boards of all common interest communities subject to the
2629 master association;

2630 (ii) all unit owners of each common interest community subject to the master
2631 association may elect members of the master association's board who are specified in the

2632 certificate of incorporation or other instrument creating the master association; or
2633 (iii) all members of the board of each common interest community subject to the
2634 master association may elect members of the master association's board who are specified in
2635 the certificate of incorporation or other instrument creating the master association.

2636 Section 65. Section **57-8b-601** is enacted to read:

2637 **Part 6. Declarant Rights**

2638 **57-8b-601. Declarant's exercise of certain development rights -- Declarant's**
2639 **reservation of development rights in added real estate.**

2640 (1) As used in this section, "specified development right":

2641 (a) means a development right that the declarant reserved in a declaration; and

2642 (b) does not include a development right described in this section or Section
2643 57-8b-705, 57-8b-706, or 57-8b-707.

2644 (2) To exercise a specified development right, a declarant shall:

2645 (a) prepare, execute, and submit for recording in the office of each applicable county
2646 recorder a declaration amendment in accordance with this section and Section 57-8b-413; and

2647 (b) submit for recording in the office of each applicable county recorder a new or
2648 supplemental plat that complies with Section 57-8b-415, if any common element or unit
2649 boundary is affected.

2650 (3) A declaration amendment under Subsection (2)(a) shall:

2651 (a) assign an identifying number to each new unit created;

2652 (b) reallocate the allocated interests among all units;

2653 (c) describe the common element; and

2654 (d) describe any created limited common element and the unit to which each is
2655 allocated in accordance with Section 57-8b-802.

2656 (4) A declarant is a unit owner of a unit created through the exercise of a specified
2657 development right under Subsection (2).

2658 (5) (a) A declarant may reserve a development right within real estate added to a
2659 common interest community if:

2660 (i) a declaration amendment under Subsection (2)(a) adding the real estate includes all
2661 matters required by Sections 57-8b-401 and 57-8b-419; and

2662 (ii) a new or supplemental plat under Subsection (2)(b) includes all matters required by

2663 Section 57-8b-415.

2664 (b) Subsection (5)(a) does not extend the time that a declarant has under the declaration
2665 to exercise a development right.

2666 Section 66. Section **57-8b-602** is enacted to read:

2667 **57-8b-602. Declarant's right to add real estate to common interest community.**

2668 (1) (a) Subject to Subsection (2), a declarant may amend a declaration, without unit
2669 owner consent, to add to the common interest community real estate not specified in the
2670 original declaration, if the original declaration reserves the right to the declarant to add real
2671 estate to a common interest community.

2672 (b) A declarant may add real estate under Subsection (1)(a) at any time during the
2673 period specified in the original declaration as the period for adding real estate to the common
2674 interest community.

2675 (2) (a) The amount of real estate that a declarant may add to a common interest
2676 community under this section may not exceed 10% of the combined total of:

2677 (i) the real estate initially subject to the declaration; and

2678 (ii) the real estate that the original declaration specifies for addition to the common
2679 interest community.

2680 (b) In the case of a condominium, the declarant may not increase the number of units in
2681 the condominium beyond the number stated in the original declaration.

2682 Section 67. Section **57-8b-603** is enacted to read:

2683 **57-8b-603. Conversion of convertible land -- Declaration amendment required.**

2684 (1) (a) Subject to restrictions and limitations specified in the declaration, a declarant
2685 may convert all or a portion of any convertible land into:

2686 (i) one or more units; or

2687 (ii) limited common elements.

2688 (b) A conversion of real estate under Subsection (1)(a) occurs when an amended
2689 declaration under Subsection (2) and an amended plat under Subsection 57-8b-415(4) are
2690 recorded in the office of each applicable county recorder.

2691 (2) (a) A declarant shall:

2692 (i) prepare and execute an amendment to the declaration describing a conversion of
2693 real estate under Subsection (1); and

2694 (ii) submit the amended declaration for recording in the office of each applicable
2695 county recorder at the same time that the declarant submits a new or supplemental plat for
2696 recording under Subsection 57-8b-415(4).

2697 (b) An amendment under Subsection (2)(a) shall:

2698 (i) assign an identifying number to each unit formed out of a convertible land;

2699 (ii) reallocate allocated interests in the common areas and facilities in accordance with
2700 Section 57-8b-412;

2701 (iii) describe or delineate the limited common areas and facilities formed out of the
2702 convertible land; and

2703 (iv) show or designate the unit or units to which each limited common element is
2704 assigned.

2705 (3) (a) Except for the portion of convertible land converted in accordance with this
2706 section, all convertible land is part of the common areas and facilities.

2707 (b) A conversion permitted by this section may not occur after:

2708 (i) five years after the day that the first declaration is recorded; or

2709 (ii) a period shorter than five years after the day that the first declaration is recorded:

2710 (A) if the shorter period is specified in the declaration; and

2711 (B) unless 75% of the allocated unit owners vote in favor of converting the real estate
2712 after the time period specified in the declaration has expired.

2713 Section 68. Section **57-8b-604** is enacted to read:

2714 **57-8b-604. Declarant's transferable easement -- Liability for damage caused while**
2715 **using easement.**

2716 (1) Subject to any restriction or limitation specified in a declaration, a declarant has a
2717 transferable easement:

2718 (a) over and on:

2719 (i) the common areas and facilities; and

2720 (ii) additional real estate specified in the declaration or provided in this chapter; and

2721 (b) for the purpose of doing all things reasonably necessary and properly connected
2722 with making improvements on the real estate within the project.

2723 (2) If a person causes damage on any part of a project while using an easement

2724 reserved by a declaration or created by this section, that person and the declarant are jointly and

2725 severally liable for:

2726 (a) the prompt repair of the damage; and

2727 (b) the restoration of the project to a condition compatible with the remainder of the
2728 project.

2729 Section 69. Section **57-8b-701** is enacted to read:

2730 **Part 7. Units**

2731 **57-8b-701. Status of unit and allocated interest -- Taxes and assessments against**
2732 **leasehold interest -- Effect of forfeiture or sale of improvements or property.**

2733 (1) (a) A unit and the unit's percentage of allocated interest in the common elements
2734 are:

2735 (i) a parcel; and

2736 (ii) subject to separate assessment and taxation by each taxing entity for all taxes,
2737 including ad valorem levies and special assessments.

2738 (b) The following are not a parcel for purposes of property tax levies and special
2739 assessments:

2740 (i) a building in a condominium or cooperative;

2741 (ii) the property; or

2742 (iii) common elements.

2743 (2) All taxes and assessments on real property covered by a lease shall be levied
2744 against the owner of the lessee's interest until 10 years prior to the date that the leasehold is to
2745 expire or until the lease is terminated, whichever occurs first, if:

2746 (a) the leasehold interest is recorded in the office of the county recorder where the
2747 property is located;

2748 (b) the balance of the term remaining under the lease is at least 40 years at the time the
2749 leasehold interest is created;

2750 (c) units are situated or are to be situated on or within the real property covered by the
2751 lease; and

2752 (d) the lease provides that the lessee shall pay all taxes and assessments imposed by
2753 governmental authority.

2754 (3) If the real estate taxes or duly levied share of the assessments and charges on a unit
2755 are currently paid, title to a unit is not affected or divested by forfeiture or sale of the

2756 improvements or property for delinquent:

2757 (a) real estate taxes;

2758 (b) special assessments; or

2759 (c) other charges.

2760 Section 70. Section **57-8b-702** is enacted to read:

2761 **57-8b-702. Parts of a condominium unit -- Fixtures as limited common elements.**

2762 (1) A condominium declaration may modify any of the provisions of Subsection (2),

2763 (3), (4), or (5).

2764 (2) (a) The following are a part of a condominium unit if walls, floors, or ceilings are

2765 designated as the boundary of a unit:

2766 (i) lath;

2767 (ii) furring;

2768 (iii) wallboard;

2769 (iv) plasterboard;

2770 (v) plaster;

2771 (vi) paneling;

2772 (vii) tiles;

2773 (viii) wallpaper;

2774 (ix) paint;

2775 (x) finished flooring; and

2776 (xi) other materials constituting part of a finished surface.

2777 (b) Subject to Subsection (2)(a), all other portions of the walls, floors, and ceilings are

2778 part of the common elements.

2779 (3) (a) If a fixture lies partially within and partially outside the designated boundary of

2780 a condominium unit, any portion of the fixture serving only that unit is a limited common

2781 element allocated solely to that unit, including a portion of a:

2782 (i) chute;

2783 (ii) flue;

2784 (iii) duct;

2785 (iv) wire;

2786 (v) conduit;

- 2787 (vi) bearing wall; or
- 2788 (vii) bearing column.
- 2789 (b) Subject to Subsection (3)(a), a fixture is part of the common elements if the fixture
- 2790 serves:
- 2791 (i) more than one unit; or
- 2792 (ii) a portion of the common elements.
- 2793 (4) Subject to Subsection (3), the following are part of a condominium unit:
- 2794 (a) all spaces, interior partitions, and other fixtures and improvements within the
- 2795 boundary of the unit;
- 2796 (b) the glazing and screening of windows and unit access doors; and
- 2797 (c) all utility service line outlets within the boundary of the unit, including outlets for:
- 2798 (i) power;
- 2799 (ii) light;
- 2800 (iii) gas;
- 2801 (iv) hot and cold water;
- 2802 (v) heating;
- 2803 (vi) refrigeration;
- 2804 (vii) air conditioning; and
- 2805 (viii) waste disposal.
- 2806 (5) (a) A fixture is a limited common element allocated exclusively to a condominium
- 2807 unit if the fixture is:
- 2808 (i) designed to serve the unit; and
- 2809 (ii) located outside the unit's boundary.
- 2810 (b) A fixture described in Subsection (5)(a) includes:
- 2811 (i) a shutter;
- 2812 (ii) an awning;
- 2813 (iii) a window box;
- 2814 (iv) a doorstep;
- 2815 (v) a stoop;
- 2816 (vi) a porch;
- 2817 (vii) a balcony;

2818 (viii) a patio;
2819 (ix) an exterior door; and
2820 (x) an exterior window.
2821 Section 71. Section **57-8b-703** is enacted to read:
2822 **57-8b-703. Unit deed requirements -- Conflict between plat description and**
2823 **completed unit -- Effect of unit transfer in cooperative.**
2824 (1) A deed to a unit shall include:
2825 (a) the name of the common interest community;
2826 (b) the recording data for the declaration;
2827 (c) the unit's identifying number;
2828 (d) if the unit is in a condominium, the percentage of undivided interest in the common
2829 elements appertaining to the unit; and
2830 (e) any further information, consistent with the declaration and this chapter, that the
2831 grantor and grantee consider desirable to include in the deed.
2832 (2) If a conflict exists between the plat description of a unit and a completed unit, the
2833 completed unit, not the plat description, shall serve as the description of the unit.
2834 (3) An owner's sale, conveyance, voluntary or involuntary encumbrance, or other
2835 transfer of the owner's unit in a cooperative:
2836 (a) transfers the right to possess the unit under a proprietary lease, together with the
2837 allocated interests of that unit; and
2838 (b) does not affect the association's interest in the unit.
2839 Section 72. Section **57-8b-704** is enacted to read:
2840 **57-8b-704. Declarant's first conveyance of a unit -- Paying and releasing**
2841 **proportionate share of mortgage or lien -- Inapplicability to withdrawable land in**
2842 **contractible condominium.**
2843 (1) Subject to Subsection (2), at the time that the declarant first conveys a unit:
2844 (a) the declarant shall pay:
2845 (i) the unit's proportionate share of any mortgage or other lien affecting the unit; and
2846 (ii) the unit's percentage of undivided interest in the common elements; and
2847 (b) the mortgage or lien holder shall execute and submit for recording a partial release,
2848 releasing from the mortgage or lien the unit being conveyed and its percentage of undivided

2849 interest in the common elements.

2850 (2) Subsection (1) does not apply to withdrawable land in a contractible condominium.

2851 Section 73. Section **57-8b-705** is enacted to read:

2852 **57-8b-705. Improving or altering units -- Limitations -- Engineer or architect**
2853 **opinion may be required -- Limited application to planned community with detached**
2854 **dwelling units.**

2855 (1) Subject to the declaration, Subsection (2), and other applicable law, a unit owner
2856 may:

2857 (a) make an improvement or alteration to that owner's unit; and

2858 (b) after acquiring an adjoining unit or a portion of an adjoining unit:

2859 (i) remove or alter a partition between the unit owner's unit and the acquired unit, even
2860 if the partition is entirely or partly a common element; or

2861 (ii) create an aperture to the adjoining unit or portion.

2862 (2) A unit owner may not take an action under Subsection (1) if the action would:

2863 (a) impair either unit's structural integrity;

2864 (b) impair either unit's mechanical systems; or

2865 (c) reduce the support of any portion of the common elements or another unit.

2866 (3) An alteration of a boundary does not occur because of:

2867 (a) the removal or alteration of a partition under Subsection (1)(b)(i); or

2868 (b) the creation of an aperture under Subsection (1)(b)(ii).

2869 (4) A unit owner may not change the appearance of the common elements without the
2870 association's permission.

2871 (5) A board may require, at the expense of a unit owner, that a unit owner submit a
2872 registered professional engineer's or registered architect's opinion stating that a proposed

2873 change to the unit owner's unit will not:

2874 (a) impair the structural integrity of the unit;

2875 (b) impair the mechanical systems of the unit;

2876 (c) reduce the support of a common element;

2877 (d) reduce the integrity of a common element; or

2878 (e) compromise structural components.

2879 (6) Subsections (2)(a) and (b) and (5)(a) and (b) do not apply to a planned community

2880 with detached dwelling units.

2881 Section 74. Section **57-8b-706** is enacted to read:

2882 **57-8b-706. Boundary relocation.**

2883 (1) (a) (i) If permitted in a declaration, the owners of adjoining units may apply to the
2884 board to adopt a declaration amendment to relocate the boundary between the unit owner's
2885 adjoining units.

2886 (ii) A boundary relocation under this section is subject to:

2887 (A) applicable provisions of the declaration;

2888 (B) Section 10-9a-608 or 17-27a-608, as applicable; and

2889 (C) local ordinances.

2890 (iii) If the owners of adjoining units making application under Subsection (1)(a) have
2891 specified a reallocation of their allocated interests, their application shall state the proposed
2892 reallocations.

2893 (b) (i) The board shall review and decide on an application submitted under Subsection
2894 (1)(a) no later than 30 days after the day on which the application is submitted.

2895 (ii) Unless the board decides that the reallocations are unreasonable, the association
2896 shall prepare a declaration amendment that identifies the units involved and states the
2897 reallocations.

2898 (iii) (A) A declaration amendment under Subsection (1)(b)(ii) shall:

2899 (I) be executed by the adjoining unit owners; and

2900 (II) contain words of conveyance between the adjoining unit owners.

2901 (B) Upon a declaration amendment under Subsection (1)(b)(ii) being recorded, the
2902 applicable county recorder shall index the amendment:

2903 (I) in the name of the grantor and the grantee; and

2904 (II) in the name of the association in the grantee's index.

2905 (2) (a) Subject to the declaration and applicable law, a unit owner may apply to an
2906 association to adopt a declaration amendment to relocate a boundary between a unit and
2907 common elements to incorporate common elements within a unit.

2908 (b) (i) Unless a declaration provides otherwise, the association shall approve an
2909 application for a declaration amendment under Subsection (2)(a) if persons entitled to cast at
2910 least 75% of the allocated unit owner votes in the association, including 75% of the votes

2911 allocated to units not owned by a declarant, agree to approve the amendment.

2912 (ii) (A) A declaration amendment under this Subsection (2) may describe any fees or
2913 charges payable by the owner of the affected unit in connection with the boundary relocation.

2914 (B) Fees and charges described in Subsection (2)(b)(ii)(A) are assets of the association.

2915 (c) A declaration amendment under this Subsection (2) shall:

2916 (i) be executed by the unit owner of the unit whose boundary is being relocated and the
2917 association; and

2918 (ii) contain words of conveyance between the unit owner and the association.

2919 (d) Upon a declaration amendment under this Subsection (2) being recorded, the
2920 applicable county recorder shall index the amendment in the name of the unit owner and the
2921 association.

2922 (3) Upon the adoption of a declaration amendment under Subsection (1) or (2), the
2923 association shall:

2924 (a) in a condominium or planned community, prepare and record a plat or an
2925 amendment to an existing plat to show the altered boundary, dimensions, and identifying
2926 numbers of the affected units; and

2927 (b) in a cooperative, prepare and submit for recording in the office of each applicable
2928 county recorder a declaration amendment, including plan, necessary to show or describe the
2929 altered boundary, dimensions, and identifying numbers of affected units.

2930 (4) A unit owner shall bear all the costs and expenses related to the relocation of the
2931 unit owner's unit boundary.

2932 (5) Unless otherwise provided in the declaration, combining two or more units does not
2933 change the allocation of:

2934 (a) allocated interest in the common elements;

2935 (b) common expenses; or

2936 (c) voting interests.

2937 Section 75. Section **57-8b-707** is enacted to read:

2938 **57-8b-707. Dividing a unit.**

2939 (1) (a) If a declaration expressly permits, a unit owner may apply to the association to
2940 divide the unit owner's unit into two or more units.

2941 (b) Subject to the declaration and applicable law, upon receiving an application under

2942 Subsection (1)(a) an association shall prepare, execute, and submit for recording in the office
2943 of each applicable county recorder a declaration amendment subdividing the unit.

2944 (c) In a condominium or planned community, a declaration amendment under
2945 Subsection (1)(b) shall include a plat and plan.

2946 (2) A declaration amendment under this section shall:

2947 (a) be executed by the owner of the subdivided unit;

2948 (b) assign an identifying number to each unit created; and

2949 (c) in a reasonable manner prescribed by the owner of the subdivided unit, reallocate to
2950 the units resulting from the division the allocated interests formerly allocated to the subdivided
2951 unit.

2952 (3) (a) An association in a condominium or planned community shall prepare and
2953 record a plat or amendment necessary to show the altered boundary, dimensions, and
2954 identifying number of an affected unit.

2955 (b) An association in a cooperative shall prepare and submit for recording in the office
2956 of each applicable county recorder a declaration amendment, including a plan necessary to
2957 show or describe the altered boundary, dimensions, and identifying number of an affected unit.

2958 (4) A unit owner shall bear all the costs and expenses that relate to the subdivision of
2959 the unit owner's unit.

2960 Section 76. Section **57-8b-708** is enacted to read:

2961 **57-8b-708. Rental units -- Prohibiting or creating restrictions on rental units --**

2962 **Limitations on application of section.**

2963 (1) As used in this section, "rental unit" means a unit that is:

2964 (a) (i) owned by a person other than an entity or trust; and

2965 (ii) occupied by a person while no unit owner occupies the unit as the unit owner's
2966 primary residence; and

2967 (b) owned by an entity or trust, regardless of who occupies the unit.

2968 (2) (a) Subject to Subsections (2)(b), (6), and (7), an association may:

2969 (i) create restrictions on:

2970 (A) the number of rental units in the association; and

2971 (B) the term of rental units in the association; or

2972 (ii) prohibit rental units in the association.

2973 (b) A restriction or prohibition on rental units under Subsection (2)(a) shall be created
2974 in a recorded declaration or a recorded amended declaration.

2975 (3) If an association prohibits or imposes restrictions on the number and term of rental
2976 units, the prohibition or restriction shall, except as provided in Subsection (6), include:

2977 (a) a provision that requires the association to exempt from the restrictions:

2978 (i) a unit owned by a unit owner in the military, for the period of the unit owner's
2979 deployment;

2980 (ii) a unit occupied by a unit owner's parent, child, or sibling;

2981 (iii) a unit owned by a unit owner whose employer has relocated the unit owner for no
2982 less than two years; and

2983 (iv) a unit owned by a trust or other entity created for estate planning purposes if the
2984 trust or other estate planning entity was created for:

2985 (A) the estate of a current resident of the unit; or

2986 (B) the parent, child, or sibling of the current resident of the unit;

2987 (b) a provision allowing a unit owner who has a rental unit in the association before the
2988 time a restriction described in Subsection (2)(a)(i) is recorded with the applicable county
2989 recorder to continue renting until:

2990 (i) the unit owner occupies the unit; or

2991 (ii) an officer, owner, member, trustee, beneficiary, director, or other person holding a
2992 similar position of ownership or control of an entity or trust that holds an ownership interest in
2993 the unit, occupies the unit; and

2994 (c) a requirement that the association create, by rule or resolution, procedures to:

2995 (i) determine and track the number of rental units in the association subject to the
2996 provisions described in Subsections (3)(a) and (b); and

2997 (ii) ensure consistent administration and enforcement of the restrictions on rental units.

2998 (4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the
2999 following occur:

3000 (a) a unit is conveyed, sold, or otherwise transferred by deed;

3001 (b) a life estate in the unit is granted; or

3002 (c) if the unit is owned by a limited liability company, corporation, partnership, or
3003 other business entity, more than 75% of the business entity's share, stock, membership

3004 interests, or partnership interests is sold or transferred in a 12-month period.

3005 (5) This section does not limit or affect residency age requirements for an association
3006 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.
3007 3607.

3008 (6) (a) A declaration or amended declaration recorded prior to the transfer of the first
3009 lot from the initial declarant may prohibit or restrict rental units without complying with the
3010 requirement of Subsection (3)(a).

3011 (b) With the unanimous approval of all unit owners, an association may restrict or
3012 prohibit rental units without complying with the requirement in Subsection (3).

3013 (7) This section does not apply to:

3014 (a) an association that contains a time period unit; or

3015 (b) any other form of timeshare interest as defined in Section 57-19-2.

3016 Section 77. Section **57-8b-709** is enacted to read:

3017 **57-8b-709. Limit on unit owner liability -- Unit owner's right to enforce equitable**
3018 **servitude.**

3019 (1) A unit owner may not be liable, solely by reason of being a unit owner, for an
3020 injury or damage arising out of the condition or use of the common elements.

3021 (2) A unit owner or the unit owner's successor in interest may enforce an equitable
3022 servitude described in a declaration.

3023 Section 78. Section **57-8b-710** is enacted to read:

3024 **57-8b-710. Eminent domain.**

3025 (1) For purposes of this section, a taking by eminent domain of part of a unit is
3026 considered to be a taking of the entire unit if the taking leaves the unit owner with a remnant
3027 that may not practically or lawfully be used for a purpose permitted by the declaration.

3028 (2) If a unit is taken by eminent domain, the court shall award the unit owner
3029 compensation for the unit and its allocated interests, whether or not any common elements are
3030 also taken by eminent domain.

3031 (3) Upon the taking of a unit by eminent domain:

3032 (a) the unit's allocated interests are automatically reallocated to the remaining units in
3033 proportion to the respective allocated interests of those units before the acquisition, unless the
3034 court orders otherwise; and

3035 (b) the association shall promptly prepare, execute, and submit for recording to each
3036 applicable county recorder a declaration amendment reflecting the reallocations.

3037 (4) A remnant of a unit remaining after part of the unit is taken by eminent domain
3038 becomes a common element if the taking of part of the unit is considered under Subsection (1)
3039 to be a taking of the entire unit.

3040 (5) If part of a unit is taken by eminent domain but the entire unit is not considered
3041 taken under Subsection (1):

3042 (a) the court shall award the unit owner compensation for the reduction in value of the
3043 unit and its interest in the common elements, whether or not any common elements are also
3044 taken; and

3045 (b) unless the court orders otherwise:

3046 (i) the unit's allocated interests are reduced:

3047 (A) in proportion to the reduction in the size of the unit; or

3048 (B) according to another basis specified in the declaration; and

3049 (ii) the portion of the allocated interests divested under Subsection (5)(b)(i) from the
3050 partially taken unit are automatically reallocated to that unit and to the remaining units in
3051 proportion to the respective allocated interests of those units before the taking, with the
3052 partially taken unit participating in the reallocation on the basis of its reduced allocated
3053 interests.

3054 (6) If part of the common elements is taken by eminent domain:

3055 (a) the entity taking part of the common elements shall pay to the association the
3056 portion of the compensation awarded for the taking that is attributable to the common
3057 elements; and

3058 (b) unless the declaration provides otherwise, the association shall equally divide any
3059 portion of the award attributable to the taking of a limited common element among the owners
3060 of the units to which the limited common element was allocated at the time of the taking.

3061 (7) An association shall submit for recording to each applicable county recorder the
3062 court judgment or order in an eminent domain action that results in the taking of some or all of
3063 a unit or common elements.

3064 Section 79. Section **57-8b-801** is enacted to read:

3065 **Part 8. Common Elements**

3066 **57-8b-801. Allocation and reallocation of limited common elements.**

3067 (1) (a) Except for the limited common elements described in Subsections 57-8b-702(3)
3068 and (5), the declaration shall specify the unit or units to which a limited common element is
3069 allocated.

3070 (b) A limited common element allocation may not be altered without the consent of all
3071 affected unit owners.

3072 (2) (a) Except as the declaration otherwise provides, a limited common element may be
3073 reallocated if:

3074 (i) the reallocation occurs through an amendment to the declaration; and

3075 (ii) the unit owners of all units affected by the reallocation execute the amendment.

3076 (b) The unit owners executing an amendment under Subsection (2)(a) shall provide a
3077 copy of the amendment to the association.

3078 (c) (i) The association shall submit the amendment executed under Subsection (2)(a) to
3079 each applicable county recorder for recording.

3080 (ii) An applicable county recorder shall record the amendment:

3081 (A) in the names of the unit owners who executed the amendment; and

3082 (B) in the name of the common interest community.

3083 (3) (a) A common element not previously allocated as a limited common element shall
3084 be allocated as provided in the declaration.

3085 (b) An allocation made under Subsection (3)(a) shall be made by amendments to the
3086 declaration.

3087 Section 80. Section **57-8b-802** is enacted to read:

3088 **57-8b-802. Responsibility for maintenance, repair, and replacement -- Access**
3089 **through unit required for common elements' maintenance, repair, or replacement --**
3090 **Declarant liability for expenses of real estate subject to development rights -- Association**
3091 **and declarant responsibility in planned community.**

3092 (1) Except as otherwise provided in the declaration, Subsection (4), or Section
3093 57-8b-513:

3094 (a) the association is responsible for the common elements' maintenance, repair, and
3095 replacement; and

3096 (b) subject to Subsection (5), a unit owner is responsible for the maintenance, repair,

3097 and replacement of the unit owner's unit.

3098 (2) A unit owner shall allow the association and the association's agents or employees
3099 access through the unit owner's unit for the purpose of the association's maintenance, repair, or
3100 replacement of the common elements.

3101 (3) The association is liable for prompt repairs if the association causes damage to:

3102 (a) the common elements; or

3103 (b) a unit the association uses to access the common elements.

3104 (4) (a) In addition to a declarant's liability as a unit owner under this chapter, the
3105 declarant is liable for all expenses in connection with real estate subject to development rights
3106 reserved in the declaration.

3107 (b) A unit owner or an owner of another portion of the common interest community
3108 may not be liable for the expenses described in Subsection (4)(a).

3109 (c) Unless stated otherwise in the declaration, any income or proceeds from real estate
3110 subject to development rights inures to the declarant.

3111 (5) Notwithstanding the provisions of the governing documents, the association for a
3112 planned community containing attached dwelling unit buildings is responsible for:

3113 (a) insuring the attached dwelling units; and

3114 (b) performing the obligations under Subsection (1)(a).

3115 (6) The declarant in a planned community remains liable for all expenses of real estate
3116 with respect to which all development rights reserved to the declarant in the declaration have
3117 expired, unless the declaration provides that, upon expiration of the development rights, the
3118 real estate becomes common elements or units.

3119 Section 81. Section **57-8b-803** is enacted to read:

3120 **57-8b-803. Board action affecting a common element facility.**

3121 (1) Except as otherwise provided in the declaration or bylaws and subject to Subsection
3122 (2), a board may modify, close, remove, eliminate, or discontinue the use of a common element
3123 facility or improvement or portion of common element landscaping, whether or not the facility,
3124 improvement, or landscaping is mentioned in the declaration or shown on the plat.

3125 (2) A modification, closure, removal, elimination, or discontinuation, other than on a
3126 temporary basis, of a swimming pool, spa, or recreation or community building requires the
3127 approval of at least a majority of the unit owners voting on the proposal at a meeting or by

3128 written ballot, consistent with the declaration, bylaws, and this chapter.

3129 (3) This section may not be construed to limit the board's authority to seek, in its
3130 discretion, unit owner approval of a modification, closure, removal, elimination, or
3131 discontinuation, even if not required under Subsection (2).

3132 Section 82. Section **57-8b-901** is enacted to read:

3133 **Part 9. Fiscal Provisions**

3134 **57-8b-901. Common interest community budget.**

3135 (1) At least annually the board shall prepare a proposed budget for the common interest
3136 community for consideration by the unit owners.

3137 (2) Within 30 days after the day that the board adopts a proposed budget, the board
3138 shall:

3139 (a) provide to a unit owner:

3140 (i) a summary of the budget, including any reserves; and

3141 (ii) a statement of the basis on which any reserves are calculated and funded; and

3142 (b) set a date for a meeting of the unit owners to consider ratification of the proposed
3143 budget.

3144 (3) The date set under Subsection (2)(b) may not be fewer than 10 days or more than
3145 60 days after the summary is mailed.

3146 (4) The proposed budget is ratified:

3147 (a) unless a majority of all unit owners, or a larger vote specified in the declaration,
3148 reject the budget at the meeting described in Subsection (2)(b); and

3149 (b) regardless of whether or not a quorum is present at the meeting.

3150 (5) If a proposed budget is rejected, the budget last ratified by the unit owners
3151 continues until the unit owners ratify a subsequent budget.

3152 Section 83. Section **57-8b-902** is enacted to read:

3153 **57-8b-902. Special assessment.**

3154 (1) The board may at any time propose a special assessment.

3155 (2) Except as provided in Subsection (3), the assessment is not effective if:

3156 (a) the board does not follow the procedures for ratification of a budget described in
3157 Section 57-8b-901; or

3158 (b) the unit owners reject the proposed assessment.

3159 (3) If the board determines by a two-thirds vote that a special assessment is necessary
3160 in order to respond to an emergency:

3161 (a) the special assessment becomes effective immediately in accordance with the terms
3162 of the vote:

3163 (b) the board shall promptly provide notice of the emergency assessment to all unit
3164 owners; and

3165 (c) the board shall spend the funds paid on account of the emergency assessment solely
3166 for a purpose described in the vote.

3167 Section 84. Section **57-8b-903** is enacted to read:

3168 **57-8b-903. Common expenses -- Assessment for common expenses -- Overriding a**
3169 **limit on allowable assessments.**

3170 (1) (a) Until an association makes a common expense assessment, the declarant shall
3171 pay all common expenses.

3172 (b) After an association makes a common expense assessment, the association shall
3173 make an assessment at least annually, based on a budget adopted annually under Section
3174 57-8b-901.

3175 (2) (a) Except for assessments under Subsections (3), (4), and (5), all common
3176 expenses shall be assessed against all the units in accordance with the allocations set forth in
3177 the declaration.

3178 (b) Unless the declaration provides otherwise, a past due common expense assessment
3179 or installment of a past due common expense assessment:

3180 (i) bears interest at the rate established by the board, but not to exceed 18% per year;
3181 and

3182 (ii) is subject to a monthly late charge established by the board, but not to exceed 50%
3183 of the amount of the annual assessment divided by 12.

3184 (3) To the extent required by the declaration:

3185 (a) the association shall assess a common expense associated with the maintenance,
3186 repair, or replacement of a limited common element:

3187 (i) equally against the units to which that limited common element is assigned; or

3188 (ii) in any other proportion provided by the declaration;

3189 (b) if a common expense or portion of a common expense included as part of the

3190 common expense budget benefits fewer than all of the units, including any fees for services that
3191 the association provides by to occupants of individual units, the association shall assess the
3192 common expense or portion of the common expense exclusively against a benefitted unit based
3193 on the unit's use and consumption of services; and

3194 (c) the association shall assess costs of utilities in proportion to usage.

3195 (4) If an association assesses units to pay a judgment against the association, the
3196 association shall assess units:

3197 (a) that were in the common interest community at the time the judgment was entered;

3198 and

3199 (b) in proportion to the units' common expense liabilities.

3200 (5) If a common expense is caused by the misconduct of a unit owner, the association
3201 may assess that expense exclusively against the unit owner's unit.

3202 (6) If an association reallocates common expense liabilities, the association shall
3203 recalculate common expense assessments and any installment of a common expense
3204 assessment not yet due in accordance with the reallocated common expense liabilities.

3205 (7) (a) (i) If the board determines that a limitation in the governing documents on the
3206 amount of allowable assessments has caused the association to be unable to carry out
3207 obligations contained in the governing documents, the board shall put to a vote of the
3208 association membership the question whether the limitation should be overridden.

3209 (ii) The board shall take the action described in Subsection (7)(a)(i) notwithstanding
3210 other amendment requirements, declaration provisions, bylaws, or provisions of this chapter.

3211 (iii) If, at a vote under Subsection (7)(a)(i), at least 51% of the association membership
3212 vote in favor of overriding the limitation, the override takes effect.

3213 (b) Subsection (7)(a) does not preclude a board from requesting a court of competent
3214 jurisdiction to determine that an override is:

3215 (i) necessary; and

3216 (ii) in the best interest of the association.

3217 Section 85. Section **57-8b-904** is enacted to read:

3218 **57-8b-904. Reserve studies and reserve accounts.**

3219 (1) An association may:

3220 (a) conduct a reserve study as provided in Subsection (4); and

- 3221 (b) establish a reserve account for:
- 3222 (i) the replacement of common elements that will normally require replacement in
- 3223 more than three years;
- 3224 (ii) exterior painting if the common elements include exterior painted surfaces;
- 3225 (iii) other items that do not involve common elements but are the association's
- 3226 responsibility; and
- 3227 (iv) other items required by the declaration or bylaws.
- 3228 (2) A reserve account established under Subsection (1)(b):
- 3229 (a) may include reserves for items:
- 3230 (i) that could reasonably be funded from operating assessments; or
- 3231 (ii) which one or more owners have the responsibility under the declaration or bylaws
- 3232 to maintain or replace;
- 3233 (b) shall be established in the name of the association; and
- 3234 (c) shall be funded by assessments against all units for which the reserves are
- 3235 established.
- 3236 (3) (a) An association is responsible for:
- 3237 (i) administering a reserve account established under this section; and
- 3238 (ii) making periodic payments into the account.
- 3239 (b) The reserve portion of the association's initial reserve account assessment shall be
- 3240 based on:
- 3241 (i) a reserve study described in Subsection (4); or
- 3242 (ii) other sources of reliable information.
- 3243 (c) An association board may:
- 3244 (i) to determine reserve amount requirements:
- 3245 (A) conduct a reserve study; or
- 3246 (B) review and update an existing reserve study; and
- 3247 (ii) (A) adjust the amount of payments based on a reserve study or update; and
- 3248 (B) provide for other reserve items that the board, in its discretion, considers
- 3249 appropriate.
- 3250 (4) (a) A reserve study under this section shall include:
- 3251 (i) an identification of all items requiring a reserve;

3252 (ii) the estimated remaining useful life of each item as of the date of the reserve study;
3253 (iii) the estimated cost of maintenance, repair, or replacement of each item at the end of
3254 the item's useful life; and
3255 (iv) subject to Subsection (4)(b), a plan for the maintenance, repair, and replacement of
3256 common elements, including:
3257 (A) details for regular and adequate contributions, adjusted by estimated inflation and
3258 interest earned on reserves; and
3259 (B) a plan to meet a maintenance, repair, and replacement schedule for the common
3260 elements.
3261 (b) A plan under Subsection (4)(a)(iv) shall:
3262 (i) be appropriate for the size and complexity of the common property; and
3263 (ii) address the useful life of the common elements.
3264 (5) At the annual meeting of the association, a board shall provide each unit owner:
3265 (a) a written statement that no reserve study has been performed; or
3266 (b) (i) a written summary of a reserve study conducted under this section, including the
3267 date of the study; and
3268 (ii) any revisions to the budget that the board will adopt based on the reserve study.
3269 (6) (a) Except as provided in Subsection (6)(b), an association shall:
3270 (i) use money in a reserve account for reserve purposes only; and
3271 (ii) keep a reserve account separate from other funds.
3272 (b) If, after the period of declarant control, an association adopts a resolution
3273 authorizing the board to borrow funds:
3274 (i) the board may borrow funds from the reserve account to meet:
3275 (A) high seasonal demands on the regular operating funds; or
3276 (B) unexpected increases in expenses; and
3277 (ii) the board shall, no later than the adoption of the budget for the following year,
3278 adopt by resolution a written payment plan providing for repayment of the borrowed funds
3279 within a reasonable period.
3280 (c) A resolution under Subsection (6)(b) authorizing the board to borrow funds may be
3281 an annual continuing resolution.
3282 (7) Subject to any constraints imposed by the governing documents, this section does

3283 not prohibit the prudent investment of reserve account funds.

3284 (8) An association may elect to reduce or increase a future assessment for a reserve
3285 account:

3286 (a) after the period of declarant control; and

3287 (b) by a vote of unit owners allocated at least 67% of the allocated unit owner votes in
3288 the association.

3289 (9) Assessments paid into a reserve account:

3290 (a) are the property of the association; and

3291 (b) are not refundable to sellers or owners of units.

3292 Section 86. Section **57-8b-905** is enacted to read:

3293 **57-8b-905. Surplus funds.**

3294 (1) With respect to surplus funds that are to be returned, paid out, or distributed, an
3295 association shall, unless the declaration provides otherwise:

3296 (a) pay surplus funds to the unit owners in proportion to the unit owners' common
3297 expense liabilities; or

3298 (b) provide a credit to the unit owners, in proportion to the unit owners' common
3299 expense liabilities and in the amount of surplus funds, to reduce the unit owners' future
3300 common expense assessments.

3301 (2) A board has sole discretion to determine whether any surplus is distinct from funds
3302 held for:

3303 (a) current or future common expenses; or

3304 (b) reserves.

3305 Section 87. Section **57-8b-1001** is enacted to read:

3306 **Part 10. Collection of Assessments**

3307 **57-8b-1001. Lien in favor of association for assessments and costs of collection.**

3308 (1) (a) An association has a lien on a unit for:

3309 (i) an assessment;

3310 (ii) except as provided in the declaration, fees, charges, and costs associated with
3311 collecting an unpaid assessment, including:

3312 (A) court costs and reasonable attorney fees;

3313 (B) late charges;

3314 (C) interest; and
3315 (D) any other amount that the association is entitled to recover under the declaration,
3316 this chapter, or an administrative or judicial decision; and
3317 (iii) a fine that the association imposes against the unit owner of the unit.
3318 (b) The recording of a declaration constitutes record notice and perfection of a lien
3319 described in Subsection (1)(a).
3320 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
3321 is for the full amount of the assessment from the time the first installment is due.
3322 (3) An unpaid assessment accrues interest at the rate provided:
3323 (a) in Subsection 15-1-1(2); or
3324 (b) in the declaration, if the declaration provides for a different interest rate.
3325 (4) (a) A lien under this section has priority over each other lien and encumbrance on a
3326 unit except:
3327 (i) (A) a lien or encumbrance recorded before the declaration is recorded; or
3328 (B) for a cooperative, a lien or encumbrance that the association creates, takes subject
3329 to, or assumes;
3330 (ii) subject to Subsection (4)(b):
3331 (A) a first security interest on the unit recorded before the date that the assessment is
3332 imposed; or
3333 (B) for a cooperative, a first security interest encumbering only the unit owner's interest
3334 and perfected before the date that the assessment is imposed; and
3335 (iii) a lien for real estate taxes or other governmental assessments or charges against:
3336 (A) the unit; or
3337 (B) for a cooperative, the cooperative.
3338 (b) The priority under Subsection (4)(a)(ii) of a lien under this section applies to the
3339 extent of:
3340 (i) the association's common expense assessment that would have become due, absent
3341 acceleration, during the nine-month period immediately before the association institutes a
3342 judicial or nonjudicial action to enforce the lien; and
3343 (ii) the court costs and reasonable attorney fees that the association incurs in the action.
3344 (c) Subsection (4)(b) does not affect the priority of:

3345 (i) a mechanic's lien;
3346 (ii) a materialman's lien; or
3347 (iii) a lien in favor of the association for another assessment that the association
3348 imposes.

3349 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
3350 Exemptions Act.

3351 (6) A lien for unpaid assessments under this section is extinguished three years after
3352 the full amount of the assessment becomes due unless, before the expiration of that time
3353 period, the association institutes a proceeding to enforce the lien.

3354 (7) Unless the declaration provides otherwise, if two or more associations have liens
3355 for assessments on the same property, the liens have equal priority, regardless of when the liens
3356 are created.

3357 Section 88. Section **57-8b-1002** is enacted to read:

3358 **57-8b-1002. Enforcement of a lien.**

3359 (1) To enforce a lien established under Section 57-8b-1001, an association may:

3360 (a) cause a unit to be sold through nonjudicial foreclosure as though the lien were a
3361 deed of trust, in the manner provided by:

3362 (i) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

3363 (ii) this part; or

3364 (b) foreclose the lien through a judicial foreclosure in the manner provided by:

3365 (i) law for the foreclosure of a mortgage; and

3366 (ii) this part.

3367 (2) A unit owner's acceptance of the unit owner's interest in a unit constitutes a
3368 simultaneous conveyance of the unit in trust to the trustee designated as provided in this
3369 section.

3370 (3) (a) A power of sale and other powers of a trustee under this part and under Sections
3371 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified
3372 trustee.

3373 (b) An association's execution of a substitution of trustee form authorized in Section
3374 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

3375 (c) A person may not be a trustee under this part unless the person qualifies as a trustee

3376 under Subsection 57-1-21(1)(a)(i) or (iv).

3377 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections
3378 57-1-19 through 57-1-34.

3379 (4) This part does not prohibit an association from bringing an action against a unit
3380 owner to recover an amount for which a lien is created under Section 57-8b-1001 or from
3381 taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or
3382 foreclosure of the unit owner's unit under this part.

3383 Section 89. Section **57-8b-1003** is enacted to read:

3384 **57-8b-1003. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure**
3385 **prohibited if unit owner demands judicial foreclosure.**

3386 (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association
3387 shall provide written notice to the unit owner of the unit that is the intended subject of the
3388 nonjudicial foreclosure.

3389 (2) The notice under Subsection (1):

3390 (a) shall:

3391 (i) notify the unit owner that the association intends to pursue nonjudicial foreclosure
3392 with respect to the unit owner's unit to enforce the association's lien for an unpaid assessment;

3393 (ii) notify the unit owner of the unit owner's right to demand judicial foreclosure in the
3394 place of nonjudicial foreclosure;

3395 (iii) be in substantially the following form:

3396 "NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND
3397 JUDICIAL FORECLOSURE

3398 The (insert the name of the association), the association for the common interest
3399 community in which your unit is located, intends to foreclose upon your unit and allocated
3400 interest in the common elements using a procedure that will not require it to file a lawsuit or
3401 involve a court. This procedure is being followed in order to enforce the association's lien
3402 against your unit and to collect the amount of an unpaid assessment against your unit, together
3403 with any applicable late fees and the costs, including attorney fees, associated with the
3404 foreclosure proceeding. If the association completes the foreclosure using this procedure, it
3405 will not be able to obtain a judgment against you for any amount it does not recover in the
3406 foreclosure proceeding, including the costs and attorney fees related to the foreclosure

3407 proceeding. Alternatively, you have the right to demand that a foreclosure of your property be
3408 conducted in a lawsuit with the oversight of a judge. If you make this demand and the
3409 association prevails in the lawsuit, in addition to the foreclosure, the association may be
3410 entitled to obtain a judgment against you personally for any unpaid assessment and for
3411 collection costs and attorney fees if these amounts are not paid in full through the foreclosure.
3412 If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure
3413 proceeding upon my unit', or words substantially to that effect. You must send this written
3414 demand by first class and certified U.S. mail, return receipt requested, within 15 days after the
3415 date of the postmark on the envelope in which this notice was mailed to you. The address to
3416 which you must mail your demand is (insert the association's address for receipt of a
3417 demand)."; and

3418 (iv) be mailed to the unit owner; and

3419 (b) may be included with other association correspondence to the unit owner.

3420 (3) An association may not use a nonjudicial foreclosure to enforce a lien if the unit
3421 owner mails the association a written demand for judicial foreclosure:

3422 (a) by U.S. mail, certified with a return receipt requested;

3423 (b) to the address stated in the association's notice under Subsection (1); and

3424 (c) within 15 days after the date of the postmark on the envelope of the association's
3425 notice under Subsection (1).

3426 Section 90. Section **57-8b-1004** is enacted to read:

3427 **57-8b-1004. Provisions applicable to nonjudicial foreclosure.**

3428 (1) An association's nonjudicial foreclosure of a unit is governed by:

3429 (a) the provisions of Sections 57-1-19 through 57-1-34, to the same extent as though
3430 the association's lien were a trust deed; and

3431 (b) the provisions of this part.

3432 (2) With respect to an association's nonjudicial foreclosure of a unit, the three-month
3433 period stated in Subsection 57-1-24(2) is changed to 45 calendar days.

3434 (3) If there is a conflict between a provision of this part and a provision of Sections
3435 57-1-19 through 57-1-34 with respect to an association's nonjudicial foreclosure of a unit, the
3436 provision of this part controls.

3437 Section 91. Section **57-8b-1005** is enacted to read:

3438 **57-8b-1005. Nonjudicial foreclosure bars deficiency judgment.**

3439 An association that collects an unpaid assessment through nonjudicial foreclosure may
3440 not seek or obtain a deficiency judgment against the unit owner for any outstanding amounts
3441 related to the unit owner's unit prior to the date of the nonjudicial foreclosure sale of the unit.

3442 Section 92. Section **57-8b-1006** is enacted to read:

3443 **57-8b-1006. Redemption prohibited -- Abandonment of enforcement proceeding.**

3444 (1) A unit owner may not redeem a property after a sale of the unit through:

3445 (a) a judicial foreclosure;

3446 (b) a nonjudicial foreclosure; or

3447 (c) a sheriff's sale pursuant to a judgment lien.

3448 (2) After a sale described in Subsection (1)(a), a sheriff, trustee, or other applicable
3449 officer may immediately issue a deed conveying title to the unit.

3450 (3) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or
3451 sheriff's sale and initiate another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if
3452 the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

3453 Section 93. Section **57-8b-1007** is enacted to read:

3454 **57-8b-1007. Costs and attorney fees in lien enforcement action.**

3455 A court entering a judgment or decree in an action brought under this part shall award
3456 the prevailing party its costs and reasonable attorney fees.

3457 Section 94. Section **57-8b-1008** is enacted to read:

3458 **57-8b-1008. Action to recover unpaid assessment.**

3459 (1) An association may file an action to recover a money judgment for an unpaid
3460 assessment without foreclosing or waiving the lien under Section 57-8b-1001.

3461 (2) (a) In an action described in Subsection (1), the court shall award the prevailing
3462 party court costs and reasonable attorney fees.

3463 (b) If an association is the prevailing party, the court costs and attorney fees to be
3464 awarded under Subsection (2)(a) include those incurred through the time that the judgment is
3465 actually collected.

3466 Section 95. Section **57-8b-1009** is enacted to read:

3467 **57-8b-1009. Appointment of receiver.**

3468 In an action by an association to collect an assessment or to foreclose a lien for an

3469 unpaid assessment, a court may:

3470 (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money
3471 alleged to be due and owing to a unit owner:

3472 (a) before commencement of the action; or

3473 (b) during the pendency of the action; and

3474 (2) order the receiver to pay the association, to the extent of the association's common
3475 expense assessment, money the receiver holds under Subsection (1).

3476 Section 96. Section **57-8b-1010** is enacted to read:

3477 **57-8b-1010. Rights of an association for a cooperative.**

3478 An association for a cooperative may, for nonpayment of an assessment on a unit in the
3479 cooperative:

3480 (1) evict the unit owner in the same manner that a commercial tenant may be evicted
3481 for an unlawful holdover; and

3482 (2) enforce the lien through a judicial foreclosure or a nonjudicial foreclosure of the
3483 unit, as provided in this part.

3484 Section 97. Section **57-8b-1011** is enacted to read:

3485 **57-8b-1011. Termination of a delinquent owner's rights -- Notice -- Informal**
3486 **hearing.**

3487 (1) As used in this section, "delinquent unit owner" means a unit owner who fails to
3488 pay an assessment when due.

3489 (2) A board may, if authorized in the declaration or bylaws and as provided in this
3490 section, terminate a delinquent unit owner's right:

3491 (a) to receive a utility service for which the unit owner pays as a common expense; or

3492 (b) of access to and use of recreational facilities.

3493 (3) (a) Before terminating a utility service or right of access to and use of recreational
3494 facilities under Subsection (2), the manager or board shall give the delinquent unit owner
3495 written notice in a manner provided in the declaration, bylaws, or association rules.

3496 (b) (i) The notice under Subsection (3)(a) shall state:

3497 (A) that the association will terminate the unit owner's utility service or right of access
3498 to and use of recreational facilities, or both, if the association does not receive payment of the
3499 assessment within the time provided in the declaration, bylaws, or association rules, subject to

3500 Subsection (3)(b)(ii);

3501 (B) the amount of the assessment due, including any interest or late payment fee; and

3502 (C) the unit owner's right to request a hearing under Subsection (4).

3503 (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 48 hours.

3504 (4) (a) A delinquent unit owner may submit a written request to the board for an
3505 informal hearing to dispute the assessment.

3506 (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date
3507 the delinquent unit owner receives the notice under Subsection (3).

3508 (5) A board shall conduct an informal hearing requested under Subsection (4) in
3509 accordance with the standards provided in the declaration, bylaws, or association rules.

3510 (6) If a delinquent unit owner requests a hearing, the association may not terminate a
3511 utility service or right of access to and use of recreational facilities until after the board:

3512 (a) conducts the hearing; and

3513 (b) enters a final decision.

3514 (7) If an association terminates a utility service or a right of access to and use of
3515 recreational facilities, the manager or board shall take immediate action to reinstate the service
3516 or right following the unit owner's payment of the assessment, including any interest and late
3517 payment fee.

3518 Section 98. Section **57-8b-1012** is enacted to read:

3519 **57-8b-1012. Requiring tenant in residential condominium unit to pay rent to**
3520 **association if owner fails to pay assessment.**

3521 (1) As used in this section:

3522 (a) "Amount owing" means the total of:

3523 (i) any assessment that is due and owing; and

3524 (ii) any applicable interest, late fee, and cost of collection.

3525 (b) "Lease" means an arrangement under which a tenant occupies a unit owner's unit in
3526 exchange for the unit owner receiving a consideration or benefit, including:

3527 (i) a fee;

3528 (ii) a service;

3529 (iii) a gratuity; or

3530 (iv) an emolument.

- 3531 (c) "Tenant" means a person, other than the unit owner, who has regular, exclusive
3532 occupancy of the unit owner's unit.
- 3533 (2) This section applies to a residential condominium unit.
- 3534 (3) Subject to Subsections (4) and (5), the board may require a tenant under a lease
3535 with a unit owner to pay the association all future lease payments due to the unit owner:
- 3536 (a) if:
- 3537 (i) the unit owner fails to pay an assessment for a period of more than 60 days after the
3538 assessment is due and payable; and
- 3539 (ii) authorized in the declaration or bylaws;
- 3540 (b) beginning with the next monthly or periodic payment due from the tenant; and
- 3541 (c) until the association is paid the amount owing.
- 3542 (4) (a) Before requiring a tenant to pay lease payments to the association under
3543 Subsection (3), the association's manager or board shall give the unit owner written notice, in
3544 accordance with the declaration, bylaws, or association rules.
- 3545 (b) The notice required under Subsection (4)(a) shall state:
- 3546 (i) the amount of the assessment due, including any interest or late fee;
- 3547 (ii) that any costs of collection, and other assessments that become due, may be added
3548 to the total amount due; and
- 3549 (iii) that the association intends to demand payment of future lease payments from the
3550 unit owner's tenant if the unit owner does not pay the amount owing within 15 days.
- 3551 (5) (a) If a unit owner fails to pay the amount owing within 15 days after the
3552 association's manager or board gives the unit owner notice under Subsection (4), the
3553 association's manager or board may exercise the association's rights under Subsection (3) by
3554 delivering a written notice to the tenant.
- 3555 (b) A notice under Subsection (5)(a) shall state that:
- 3556 (i) due to the unit owner's failure to pay an assessment within the required time, the
3557 board has notified the unit owner of the board's intent to collect all lease payments until the
3558 amount owing is paid;
- 3559 (ii) the law requires the tenant to make all future lease payments, beginning with the
3560 next monthly or other periodic payment, to the association, until the amount owing is paid; and
- 3561 (iii) the tenant's payment of lease payments to the association may not constitute a

3562 default under the terms of the lease with the unit owner.

3563 (c) The manager or board shall mail a copy of the notice to the unit owner.

3564 (6) (a) A tenant to whom notice under Subsection (5) is given shall pay to the
3565 association all future lease payments as they become due and owing to the unit owner:

3566 (i) beginning with the next monthly or other periodic payment after the notice under
3567 Subsection (5) is delivered to the tenant; and

3568 (ii) until the association notifies the tenant under Subsection (7) that the amount owing
3569 is paid.

3570 (b) A unit owner may not initiate a suit or other action against a tenant for failure to
3571 make a lease payment that the tenant pays to an association as required under this section.

3572 (7) (a) Within five business days after the amount owing is paid, the association's
3573 manager or board shall notify the tenant in writing that the tenant is no longer required to pay
3574 future lease payments to the association.

3575 (b) The manager or board shall mail a copy of the notification described in Subsection
3576 (7)(a) to the unit owner.

3577 (8) (a) An association shall deposit money paid to the association under this section in
3578 a separate account and disburse that money to the association until:

3579 (i) the amount owing is paid; and

3580 (ii) any cost of administration, not to exceed \$25, is paid.

3581 (b) The association shall, within five business days after the amount owing is paid, pay
3582 to the unit owner any remaining balance.

3583 Section 99. Section **57-8b-1013** is enacted to read:

3584 **57-8b-1013. Statement from association's manager or board of unpaid**
3585 **assessment.**

3586 (1) An association's manager or board shall issue a written statement indicating any
3587 unpaid assessment with respect to a unit owner's unit upon:

3588 (a) a written request by the unit owner; and

3589 (b) payment of a reasonable fee not to exceed \$25.

3590 (2) A written statement under Subsection (1) is conclusive in favor of a person who
3591 relies on the written statement in good faith.

3592 (3) An unpaid assessment that matures before a person makes a request for a written

3593 statement under Subsection (1) is subordinate to a lien held by the person requesting the
3594 statement, unless the manager or board provides the written statement within 10 days after the
3595 request is made.

3596 Section 100. Section **57-8b-1014** is enacted to read:

3597 **57-8b-1014. Statement from association of unpaid assessment.**

3598 (1) An association shall, within 10 business days after receiving a unit owner's written
3599 request, provide to the unit owner a statement of the amount of any unpaid assessment against
3600 the unit owner's unit.

3601 (2) If the unit owner's interest is real estate, the association shall provide the statement
3602 described in Subsection (1) in recordable form.

3603 (3) A statement under Subsection (1) is binding on the association, the board, and
3604 every unit owner.

3605 Section 101. **Repealer.**

3606 This bill repeals:

3607 Section **57-8-1, Short title.**

3608 Section **57-8-2, Applicability of chapter.**

3609 Section **57-8-3, Definitions.**

3610 Section **57-8-4, Status of the units.**

3611 Section **57-8-5, Recognized tenancy relationships.**

3612 Section **57-8-6, Ownership and possession rights.**

3613 Section **57-8-7, Common areas and facilities.**

3614 Section **57-8-7.2, Scope -- Designation of certain areas.**

3615 Section **57-8-8, Compliance with covenants, bylaws and/or house rules and**
3616 **administrative provisions.**

3617 Section **57-8-9, Certain work prohibited.**

3618 Section **57-8-10, Contents of declaration.**

3619 Section **57-8-11, Contents of deeds of units.**

3620 Section **57-8-12, Recording.**

3621 Section **57-8-13, Condominium plat to be recorded.**

3622 Section **57-8-13.2, Conversion of convertible land -- Amendment to declaration --**
3623 **Limitations.**

3624 Section **57-8-13.4, Conversion of convertible space -- Amendment to declaration --**
3625 **Limitations.**

3626 Section **57-8-13.6, Expansion of project.**

3627 Section **57-8-13.8, Contraction of project.**

3628 Section **57-8-13.10, Condominiums containing convertible land -- Expandable**
3629 **condominiums -- Allocation of interests in common areas and facilities.**

3630 Section **57-8-13.12, Land to be withdrawn or added to project -- Applicability of**
3631 **restrictions.**

3632 Section **57-8-13.14, Easement rights -- Sales offices and model units -- Damage to**
3633 **property.**

3634 Section **57-8-14, Legal description of units.**

3635 Section **57-8-15, Bylaws.**

3636 Section **57-8-16, Contents of bylaws.**

3637 Section **57-8-16.5, Appointment and removal of committee members and**
3638 **association officers -- Renewal or ratification of contracts -- Failure to establish**
3639 **association or committee.**

3640 Section **57-8-17, Records of receipts and expenditures -- Availability for**
3641 **examination.**

3642 Section **57-8-18, Blanket mortgages and other blanket liens affecting unit at time**
3643 **of first conveyance.**

3644 Section **57-8-19, Liens against units -- Removal from lien -- Effect of part payment.**

3645 Section **57-8-20, Lien for nonpayment of common expenses.**

3646 Section **57-8-21, Acquisition through tax deed or foreclosure of liens.**

3647 Section **57-8-22, Removal of property from statutory provisions.**

3648 Section **57-8-23, Removal no bar to subsequent resubmission.**

3649 Section **57-8-24, Common profits, common expenses, and voting rights.**

3650 Section **57-8-25, Joint and several liability of grantor and grantee for unpaid**
3651 **common expenses.**

3652 Section **57-8-26, Waiver of use of common areas and facilities -- Abandonment of**
3653 **unit.**

3654 Section **57-8-27, Separate taxation.**

- 3655 Section 57-8-28, Exemption from rules of property.
- 3656 Section 57-8-29, Insurance.
- 3657 Section 57-8-30, Application of insurance proceeds to reconstruction.
- 3658 Section 57-8-31, Disposition of property where insurance proceeds are insufficient
- 3659 **for reconstruction.**
- 3660 Section 57-8-32, Sale of property.
- 3661 Section 57-8-32.5, Property taken by eminent domain -- Allocation of award --
- 3662 **Reallocation of interests.**
- 3663 Section 57-8-33, Actions.
- 3664 Section 57-8-34, Persons subject to provisions and agreements.
- 3665 Section 57-8-35, Effect of other laws -- Compliance with ordinances and codes --
- 3666 **Approval of projects by municipality or county.**
- 3667 Section 57-8-36, Existing projects -- Effect of statutory amendments.
- 3668 Section 57-8-37, Fines.
- 3669 Section 57-8-38, Arbitration.
- 3670 Section 57-8-39, Limitation on requirements for amending declaration or bylaws.
- 3671 Section 57-8-40, Organization of an association of unit owners under other law --
- 3672 **Priority -- Reorganization.**
- 3673 Section 57-8a-101, Title.
- 3674 Section 57-8a-102, Definitions.
- 3675 Section 57-8a-103, Scope of chapter.
- 3676 Section 57-8a-104, Limitation on requirements for amending governing documents
- 3677 **-- Limitation on contracts.**
- 3678 Section 57-8a-201, Payment of a common expense or assessment.
- 3679 Section 57-8a-202, Unpaid assessment -- Costs and attorney fees.
- 3680 Section 57-8a-203, Unpaid assessment -- Lien -- Foreclosure.
- 3681 Section 57-8a-204, Unpaid assessment -- Utility service -- Right of access and use.
- 3682 Section 57-8a-205, Unpaid assessment -- Future lease payments.
- 3683 Section 57-8a-206, Written statement of unpaid assessment.
- 3684 Section 57-8a-207, Payment of unpaid assessment by encumbrancer.
- 3685 Section 57-8a-208, Fines.

3686 Section **57-8a-209, Rental restrictions.**

3687 Section **57-8a-210, Lender approval -- Declaration amendments and association**

3688 **action.**

Legislative Review Note

as of 2-22-10 10:03 AM

Office of Legislative Research and General Counsel

H.B. 399 - Common Interest Ownership Amendments

Fiscal Note

2010 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.
