

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**CONDOMINIUM AND COMMUNITY ASSOCIATION**

**REVISIONS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: Gage Froerer

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**LONG TITLE**

**General Description:**

This bill modifies, enacts, and repeals provisions relating to condominium associations and community associations.

**Highlighted Provisions:**

This bill:

- ▶ modifies, repeals, and enacts provisions relating to the Condominium Ownership Act and the Community Association Act;
- ▶ provides what constitutes fair and reasonable notice;
- ▶ modifies provisions relating to liens for assessments and related charges and the process to collect assessments and enforce the liens;
- ▶ modifies provisions relating to insurance;
- ▶ enacts Community Association Act provisions, including provisions relating to:
  - declaration content;
  - the exercise of development rights;
  - association bylaws, rules, and budget;
  - creditor approval of specified actions;
  - the collection of assessments and related charges; and



- 26           • insurance;
- 27           ▶ repeals redundant or obsolete provisions; and
- 28           ▶ makes technical changes.

**29 Money Appropriated in this Bill:**

30           None

**31 Other Special Clauses:**

32           None

**33 Utah Code Sections Affected:**

**34 AMENDS:**

35           **57-8-3**, as last amended by Laws of Utah 2008, Chapter 291

36           **57-8-10**, as last amended by Laws of Utah 2009, Chapter 178

37           **57-8a-102**, as enacted by Laws of Utah 2004, Chapter 153

**38 ENACTS:**

39           **57-8-42**, Utah Code Annotated 1953

40           **57-8-43**, Utah Code Annotated 1953

41           **57-8-44**, Utah Code Annotated 1953

42           **57-8-45**, Utah Code Annotated 1953

43           **57-8-46**, Utah Code Annotated 1953

44           **57-8-47**, Utah Code Annotated 1953

45           **57-8-48**, Utah Code Annotated 1953

46           **57-8-49**, Utah Code Annotated 1953

47           **57-8-50**, Utah Code Annotated 1953

48           **57-8-51**, Utah Code Annotated 1953

49           **57-8-52**, Utah Code Annotated 1953

50           **57-8-53**, Utah Code Annotated 1953

51           **57-8-54**, Utah Code Annotated 1953

52           **57-8a-212**, Utah Code Annotated 1953

53           **57-8a-213**, Utah Code Annotated 1953

54           **57-8a-214**, Utah Code Annotated 1953

55           **57-8a-215**, Utah Code Annotated 1953

56           **57-8a-216**, Utah Code Annotated 1953

- 57            **57-8a-217**, Utah Code Annotated 1953
- 58            **57-8a-218**, Utah Code Annotated 1953
- 59            **57-8a-219**, Utah Code Annotated 1953
- 60            **57-8a-220**, Utah Code Annotated 1953
- 61            **57-8a-221**, Utah Code Annotated 1953
- 62            **57-8a-301**, Utah Code Annotated 1953
- 63            **57-8a-302**, Utah Code Annotated 1953
- 64            **57-8a-303**, Utah Code Annotated 1953
- 65            **57-8a-304**, Utah Code Annotated 1953
- 66            **57-8a-305**, Utah Code Annotated 1953
- 67            **57-8a-306**, Utah Code Annotated 1953
- 68            **57-8a-307**, Utah Code Annotated 1953
- 69            **57-8a-308**, Utah Code Annotated 1953
- 70            **57-8a-309**, Utah Code Annotated 1953
- 71            **57-8a-310**, Utah Code Annotated 1953
- 72            **57-8a-311**, Utah Code Annotated 1953
- 73            **57-8a-401**, Utah Code Annotated 1953
- 74            **57-8a-402**, Utah Code Annotated 1953
- 75            **57-8a-403**, Utah Code Annotated 1953
- 76            **57-8a-404**, Utah Code Annotated 1953
- 77            **57-8a-405**, Utah Code Annotated 1953
- 78            **57-8a-406**, Utah Code Annotated 1953
- 79            **57-8a-407**, Utah Code Annotated 1953

80    REPEALS:

- 81            **57-8-20**, as last amended by Laws of Utah 2010, Chapter 309
- 82            **57-8-29**, as last amended by Laws of Utah 2000, Chapter 99
- 83            **57-8a-202**, as enacted by Laws of Utah 2004, Chapter 153
- 84            **57-8a-203**, as enacted by Laws of Utah 2004, Chapter 153
- 85            **57-8a-204**, as enacted by Laws of Utah 2004, Chapter 153
- 86            **57-8a-205**, as enacted by Laws of Utah 2004, Chapter 153
- 87            **57-8a-207**, as enacted by Laws of Utah 2004, Chapter 153

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

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

91 **57-8-3. Definitions.**

92 As used in this chapter:

93 (1) "Assessment" means any charge imposed by the association, including:

94 (a) common expenses on or against a unit owner pursuant to the provisions of the  
95 declaration, bylaws, or this chapter[-]; and

96 (b) an amount that an association of unit owners assesses to a unit owner under  
97 Subsection 57-8-43(9)(h).

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

99 (a) acting as a group in accordance with the declaration and bylaws; or

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

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

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

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

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

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

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

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

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

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

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

119 (5) "Common expenses" means:

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

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

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

124 (d) expenses declared common expenses by this chapter, or by the declaration or the  
125 bylaws.

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

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

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

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

138 (10) "Condominium unit" means a unit together with the undivided interest in the  
139 common areas and facilities appertaining to that unit. Any reference in this chapter to a  
140 condominium unit includes both a physical unit together with its appurtenant undivided interest  
141 in the common areas and facilities and a time period unit together with its appurtenant  
142 undivided interest, unless the reference is specifically limited to a time period unit.

143 (11) "Contractible condominium" means a condominium project from which one or  
144 more portions of the land within the project may be withdrawn in accordance with provisions  
145 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or  
146 termination of one or more leases, then the condominium project is not a contractible  
147 condominium within the meaning of this chapter.

148 (12) "Convertible land" means a building site which is a portion of the common areas  
149 and facilities, described by metes and bounds, within which additional units or limited common

150 areas and facilities may be created in accordance with this chapter.

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

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

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

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

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

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

172 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the  
173 declaration or lawful amendments to the declaration, means the owners of more than 50% in  
174 the aggregate in interest of the undivided ownership of the common areas and facilities.

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

178 (21) "Par value" means a number of dollars or points assigned to each unit by the  
179 declaration. Substantially identical units shall be assigned the same par value, but units located  
180 at substantially different heights above the ground, or having substantially different views, or

181 having substantially different amenities or other characteristics that might result in differences  
182 in market value, may be considered substantially identical within the meaning of this  
183 subsection. If par value is stated in terms of dollars, that statement may not be considered to  
184 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or  
185 fair market transaction at a different figure may affect the par value of any unit, or any  
186 undivided interest in the common areas and facilities, voting rights in the unit owners'  
187 association, liability for common expenses, or right to common profits, assigned on the basis  
188 thereof.

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

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

194 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title  
195 57, Chapter 3, Recording of Documents.

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

202 (26) "Time period unit" means an annually recurring part or parts of a year specified in  
203 the declaration as a period for which a unit is separately owned and includes a timeshare estate  
204 as defined in Subsection 57-19-2(17).

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

211 (28) "Unit number" means the number, letter, or combination of numbers and letters

212 designating the unit in the declaration and in the record of survey map.

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

218 Section 2. Section **57-8-10** is amended to read:

219 **57-8-10. Contents of declaration.**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

260 (e) The initial recorded declaration shall include:

261 (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv);  
262 and

263 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to  
264 U.C.A. Sections 57-1-20 and 57-8-45 to (name of trustee), with power of sale, the unit and all  
265 improvements to the unit for the purpose of securing payment of assessments under the terms  
266 of the declaration."

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

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

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

272 (iii) (A) The declaration shall state, with respect to each area of convertible land, the  
273 maximum percentage of the aggregate land and floor area of all units that may be created and

274 the use of which will not or may not be restricted exclusively to residential purposes.

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

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

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

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

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

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

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

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

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

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

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

305 (iv) The declaration shall state:

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

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

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

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

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

318 (vii) The declaration shall state the maximum number of units that may be created on  
319 the additional land. If portions of the additional land may be added to the condominium project  
320 and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the  
321 declaration shall also state the maximum number of units that may be created on each portion  
322 added to the condominium project. If portions of the additional land may be added to the  
323 condominium project and the boundaries of those portions are not fixed in accordance with  
324 Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per  
325 acre that may be created on any portion added to the condominium project.

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

332 (ix) The declaration shall state the extent to which any structures erected on any  
333 portion of the additional land added to the condominium project will be compatible with  
334 structures on the land originally within the project in terms of quality of construction, the  
335 principal materials to be used, and architectural style. The declaration may also state that no

336 assurances are made in those regards.

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

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

346 (xii) The declaration shall describe the declarant's reserved right, if any, to create  
347 limited common areas and facilities within any portion of the additional land added to the  
348 condominium project, in terms of the types, sizes, and maximum number of limited common  
349 areas within each portion. The declaration may also state that no assurances are made in those  
350 regards.

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

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

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

357 (ii) The declaration shall contain a statement of any limitations on the option to  
358 contract, including a statement as to whether the consent of any unit owners shall be required,  
359 and if so, a statement as to the method by which this consent shall be ascertained. The  
360 declaration may also contain a statement that there are no such limitations.

361 (iii) The declaration shall state the time limit, not exceeding seven years from the  
362 recording of the declaration, upon which the option to contract the condominium project shall  
363 expire, together with a statement of any circumstances which will terminate this option prior to  
364 expiration of the specified time limit.

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

367 (ii) The declaration shall include a statement as to whether portions of the  
368 withdrawable land may be withdrawn from the condominium project at different times,  
369 together with any limitations fixing the boundaries of those portions by legal descriptions  
370 setting forth the metes and bounds and regulating the order in which they may be withdrawn  
371 from the condominium project.

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

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

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

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

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

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

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

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

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

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

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

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

400 (7) (a) If the condominium project contains time period units, the declaration shall also  
401 contain the location of each condominium unit in the calendar year. This information shall be  
402 set out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7(2), if the  
403 exhibit or schedule accompanies the declaration.

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

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

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

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

416 (9) (a) As used in this section, "rentals" or "rental unit" means:

417 (i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is occupied  
418 by someone while no unit owner occupies the unit as the unit owner's primary residence; and  
419 (ii) a unit owned by an entity or trust, regardless of who occupies the unit.

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

421 (A) create restrictions on the number and term of rentals in a condominium project; or  
422 (B) prohibit rentals in the condominium project.

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

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

428 (i) a provision that requires a condominium project to exempt from the rental

429 restrictions the following unit owner and the unit owner's unit:

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

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

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

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

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

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

438 (ii) a provision allowing a unit owner who has a rental in the condominium project  
439 before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the  
440 county recorder of the county in which the condominium project is located to continue renting  
441 until:

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

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

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

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

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

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

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

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

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

458 (e) This section does not limit or affect residency age requirements for an association  
459 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42

460 U.S.C. Sec. 3607.

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

464 (g) This section does not apply to:

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

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

467 (iii) a condominium project in which the initial declaration is recorded before May 12,  
468 2009.

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

472 Section 3. Section **57-8-42** is enacted to read:

473 **57-8-42. Fair and reasonable notice.**

474 (1) Notice that an association of unit owners provides by a method allowed under Title  
475 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable  
476 notice, whether or not the association of unit owners is a nonprofit corporation.

477 (2) Notice that an association of unit owners provides by a method not referred to in  
478 Subsection (1), including a method described in Subsection (3), constitutes fair and reasonable  
479 notice if:

480 (a) the method is authorized in the declaration, articles, bylaws, or rules; and

481 (b) considering all the circumstances, the notice is fair and reasonable.

482 (3) (a) If provided in the declaration, articles, bylaws, or rules, an association of unit  
483 owners may provide notice by electronic means, including text message, email, or the website  
484 of the association of unit owners.

485 (b) Notwithstanding Subsection (3)(a), a unit owner may, by written demand, require  
486 an association of unit owners to provide notice to the unit owner by mail.

487 Section 4. Section **57-8-43** is enacted to read:

488 **57-8-43. Insurance.**

489 (1) As used in this section, "reasonably available" means available using typical  
490 insurance carriers and markets, irrespective of the ability of the association of unit owners to



491 pay.

492 (2) This section applies to an insurance policy or combination of insurance policies:

493 (a) issued or renewed on or after July 1, 2011; and

494 (b) issued to or renewed by:

495 (i) a unit owner; or

496 (ii) an association of unit owners, regardless of when the association of unit owners is  
497 formed.

498 (3) Beginning not later than the day on which the first unit is conveyed to a person  
499 other than a declarant, an association of unit owners shall maintain, to the extent reasonably  
500 available:

501 (a) subject to Subsection (9), property insurance on the physical structures in the  
502 condominium project, including common areas and facilities, limited common areas and  
503 facilities, and units, insuring against all risks of direct physical loss commonly insured against,  
504 including fire and extended coverage perils; and

505 (b) subject to Subsection (10), liability insurance, including medical payments  
506 insurance covering all occurrences commonly insured against for death, bodily injury, and  
507 property damage arising out of or in connection with the use, ownership, or maintenance of the  
508 common areas and facilities.

509 (4) If an association of unit owners becomes aware that property insurance under  
510 Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the  
511 association of unit owners shall, within seven calendar days after becoming aware, give all unit  
512 owners notice, as provided in Section 57-8-42, that the insurance is not reasonably available.

513 (5) (a) The declaration or bylaws may require the association of unit owners to carry  
514 other types of insurance in addition to those described in Subsection (3).

515 (b) In addition to any type of insurance coverage or limit of coverage provided in the  
516 declaration or bylaws and subject to the requirements of this section, an association of unit  
517 owners may, as the management committee considers appropriate, obtain:

518 (i) an additional type of insurance than otherwise required; or

519 (ii) a policy with greater coverage than otherwise required.

520 (6) Unless a unit owner is acting within the scope of the unit owner's authority on  
521 behalf of an association of unit owners, a unit owner's act or omission may not:

522 (a) void a property insurance policy under Subsection (3)(a) or a liability insurance  
523 policy under Subsection (3)(b); or

524 (b) be a condition to recovery under a policy.

525 (7) An insurer under a property insurance policy or liability insurance policy obtained  
526 under this section waives the insurer's right to subrogation under the policy against any unit  
527 owner or member of the unit owner's household.

528 (8) (a) An insurance policy issued to an association of unit owners may not be  
529 inconsistent with any provision of this section.

530 (b) A provision of a declaration, bylaw, rule, or other document governing the  
531 association of unit owners that is contrary to a provision of this section has no effect.

532 (c) A property insurance or liability insurance policy issued to an association of unit  
533 owners may not prevent a unit owner from obtaining insurance for the unit owner's own  
534 benefit.

535 (9) (a) This Subsection (9) applies to property insurance required under Subsection  
536 (3)(a).

537 (b) The property covered by property insurance shall include any property that, under  
538 the declaration, is required to become common areas and facilities.

539 (c) The total amount of coverage provided by blanket property insurance may not be  
540 less than 100% of the full replacement cost of the insured property at the time the insurance is  
541 purchased and at each renewal date, excluding items normally excluded from property  
542 insurance policies.

543 (d) Property insurance shall include coverage for any fixture, improvement, or  
544 betterment installed by a unit owner to a unit or to a limited common area, including a floor  
545 covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall  
546 covering, window, and any other item permanently part of or affixed to a unit or to a limited  
547 common element.

548 (e) Notwithstanding anything in this section and unless otherwise provided in the  
549 declaration, an association of unit owners is not required to obtain property insurance for a loss  
550 to a unit that is not physically attached to:

551 (i) another unit; or

552 (ii) an above-ground structure that is part of a common area or facility.

553 (f) Each unit owner is an insured person under a property insurance policy.  
554 (g) If a loss occurs that is covered by a property insurance policy in the name of an  
555 association of unit owners and another property insurance policy in the name of a unit owner:  
556 (i) the association's policy provides primary insurance coverage; and  
557 (ii) notwithstanding Subsection (9)(g)(i), the unit owner's policy applies to that portion  
558 of the loss attributable to the policy deductible of the association of unit owners.  
559 (h) (i) As used in this Subsection (9)(h):  
560 (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is  
561 covered by a property insurance policy of an association of unit owners.  
562 (B) "Unit damage" means damage to a unit or to a limited common area or facility  
563 applicable to that unit, or both.  
564 (C) "Unit damage percentage" means the percentage of total damage resulting in a  
565 covered loss that is attributable to unit damage.  
566 (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered  
567 loss is responsible for an amount calculated by applying the unit damage percentage for that  
568 unit to the amount of the deductible under the property insurance policy of the association of  
569 unit owners.  
570 (iii) If a unit owner does not pay the amount required under Subsection (9)(h)(ii) within  
571 30 days after substantial completion of the repairs to the unit, an association of unit owners  
572 may levy an assessment against the unit owner for that amount.  
573 (i) An association of unit owners shall set aside an amount equal to the amount of the  
574 association's property insurance policy deductible or \$10,000, whichever is less.  
575 (j) (i) An association of unit owners shall provide notice in accordance with Section  
576 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)(h) for the  
577 association's policy deductible and of any change in the amount of the deductible.  
578 (ii) An association of unit owners that fails to provide notice as provided in Subsection  
579 (9)(j)(i) is responsible for the amount of the deductible increase that the association of unit  
580 owners could have assessed to a unit owner under Subsection (9)(h).  
581 (iii) The failure of an association of unit owners to provide notice as provided in  
582 Subsection (9)(j)(i) may not be construed to invalidate any other provision of this section.  
583 (k) If, in the exercise of the business judgment rule, the management committee

584 determines that a claim is likely not to exceed the property insurance policy deductible of the  
585 association of unit owners:

586 (i) the unit owner's policy is considered the policy for primary coverage to the amount  
587 of the policy deductible of the association of unit owners;

588 (ii) a unit owner who does not have a policy to cover the property insurance policy  
589 deductible of the association of unit owners is responsible for the loss to the amount of the  
590 policy deductible of the association of unit owners, as provided in Subsection (9)(h); and

591 (iii) the association of unit owners need not tender the claim to the association's  
592 insurer.

593 (l) (i) An insurer under a property insurance policy issued to an association of unit  
594 owners shall adjust with the association of unit owners a loss covered under the association's  
595 policy.

596 (ii) Notwithstanding Subsection (9)(l)(i), the insurance proceeds for a loss under a  
597 property insurance policy of an association of unit owners:

598 (A) are payable to an insurance trustee that the association of unit owners designates  
599 or, if no trustee is designated, to the association of unit owners; and

600 (B) may not be payable to a holder of a security interest.

601 (iii) An insurance trustee or an association of unit owners shall hold any insurance  
602 proceeds in trust for the association of unit owners, unit owners, and lien holders.

603 (iv) (A) Insurance proceeds shall be disbursed first for the repair or restoration of the  
604 damaged property.

605 (B) After the disbursements described in Subsection (9)(l)(iv)(A) are made and the  
606 damaged property has been completely repaired or restored or the project terminated, any  
607 surplus proceeds are payable to the association of unit owners, unit owners, and lien holders.

608 (m) An insurer that issues a property insurance policy under this section, or the  
609 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

610 (i) the association of unit owners;

611 (ii) a unit owner, upon the unit owner's written request; and

612 (iii) a holder of a security interest, upon the holder's written request.

613 (n) A cancellation or nonrenewal of a property insurance policy under this section is  
614 subject to the procedures stated in Section 31A-21-303.

615 (o) A management committee that acquires from an insurer the property insurance  
616 required in this section is not liable to unit owners if the insurance proceeds are not sufficient  
617 to cover 100% of the full replacement cost of the insured property at the time of the loss.

618 (10) (a) This Subsection (10) applies to a liability insurance policy required under  
619 Subsection (3)(b).

620 (b) A liability insurance policy shall be in an amount determined by the management  
621 committee but not less than an amount specified in the declaration or bylaws.

622 (c) Each unit owner is an insured person under a liability insurance policy that an  
623 association of unit owners obtains that insures against liability arising from the unit owner's  
624 interest in the common areas and facilities or from membership in the association of unit  
625 owners.

626 Section 5. Section **57-8-44** is enacted to read:

627 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**  
628 **collection.**

629 (1) (a) An association of unit owners has a lien on a unit for:

630 (i) an assessment;

631 (ii) except as provided in the declaration, fees, charges, and costs associated with  
632 collecting an unpaid assessment, including:

633 (A) court costs and reasonable attorney fees;

634 (B) late charges;

635 (C) interest; and

636 (D) any other amount that the association of unit owners is entitled to recover under the  
637 declaration, this chapter, or an administrative or judicial decision; and

638 (iii) a fine that the association of unit owners imposes against the owner of the unit.

639 (b) The recording of a declaration constitutes record notice and perfection of a lien  
640 described in Subsection (1)(a).

641 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)  
642 is for the full amount of the assessment from the time the first installment is due, unless the  
643 association of unit owners otherwise provides in a notice of assessment.

644 (3) An unpaid assessment or fine accrues interest at the rate provided:

645 (a) in Subsection 15-1-1(2); or

646 (b) in the governing documents, if the governing documents provide for a different  
647 interest rate.

648 (4) A lien under this section has priority over each other lien and encumbrance on a  
649 unit except:

650 (a) a lien or encumbrance recorded before the declaration is recorded;

651 (b) a first security interest on the unit recorded before a recorded notice of lien by or on  
652 behalf of the association of unit owners; or

653 (c) a lien for real estate taxes or other governmental assessments or charges against the  
654 unit.

655 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah  
656 Exemptions Act.

657 (6) Unless the declaration provides otherwise, if two or more associations of unit  
658 owners have liens for assessments on the same unit, the liens have equal priority, regardless of  
659 when the liens are created.

660 Section 6. Section **57-8-45** is enacted to read:

661 **57-8-45. Enforcement of a lien.**

662 (1) (a) To enforce a lien established under Section 57-8-44, an association of unit  
663 owners may:

664 (i) cause a unit to be sold through nonjudicial foreclosure as though the lien were a  
665 deed of trust, in the manner provided by:

666 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and

667 (B) this chapter; or

668 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:

669 (A) law for the foreclosure of a mortgage; and

670 (B) this chapter.

671 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection

672 (1)(a):

673 (i) the association of unit owners is considered to be the beneficiary under a trust deed;

674 and

675 (ii) the unit owner is considered to be the trustor under a trust deed.

676 (2) A unit owner's acceptance of the owner's interest in a unit constitutes a

677 simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as  
678 provided in this section for the purpose of securing payment of all amounts due under the  
679 declaration and this chapter.

680 (3) (a) A power of sale and other powers of a trustee under this part and under Sections  
681 57-1-19 through 57-1-34 may not be exercised unless the association of unit owners appoints a  
682 qualified trustee.

683 (b) An association of unit owners' execution of a substitution of trustee form  
684 authorized in Section 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

685 (c) A person may not be a trustee under this part unless the person qualifies as a trustee  
686 under Subsection 57-1-21(1)(a)(i) or (iv).

687 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections  
688 57-1-19 through 57-1-34.

689 (4) This chapter does not prohibit an association of unit owners from bringing an  
690 action against a unit owner to recover an amount for which a lien is created under Section  
691 57-8-44 or from taking a deed in lieu of foreclosure, if the action is brought or deed taken  
692 before the sale or foreclosure of the unit owner's unit under this chapter.

693 Section 7. Section **57-8-46** is enacted to read:

694 **57-8-46. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if**  
695 **unit owner demands judicial foreclosure.**

696 (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association  
697 of unit owners shall provide notice to the owner of the unit that is the intended subject of the  
698 nonjudicial foreclosure.

699 (2) The notice under Subsection (1):

700 (a) shall:

701 (i) notify the unit owner that the association of unit owners intends to pursue  
702 nonjudicial foreclosure with respect to the owner's unit to enforce the association of unit  
703 owners' lien for an unpaid assessment;

704 (ii) notify the unit owner of the owner's right to demand judicial foreclosure in the  
705 place of nonjudicial foreclosure;

706 (iii) be in substantially the following form:

707 "NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND

708 JUDICIAL FORECLOSURE

709 The (insert the name of the association of unit owners), the association for the project in  
710 which your unit is located, intends to foreclose upon your unit and allocated interest in the  
711 common areas and facilities using a procedure that will not require it to file a lawsuit or  
712 involve a court. This procedure is being followed in order to enforce the association's lien  
713 against your unit and to collect the amount of an unpaid assessment against your unit, together  
714 with any applicable late fees and the costs, including attorney fees, associated with the  
715 foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your  
716 property be conducted in a lawsuit with the oversight of a judge. If you make this demand and  
717 the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit  
718 will likely be significantly higher than if a lawsuit were not required, and you may be  
719 responsible for paying those costs and attorney fees. If you want to make this demand, you  
720 must state in writing that 'I demand a judicial foreclosure proceeding upon my unit', or words  
721 substantially to that effect. You must send this written demand by first class and certified U.S.  
722 mail, return receipt requested, within 15 days after the date of the postmark on the envelope in  
723 which this notice was mailed to you. The address to which you must mail your demand is  
724 (insert the address of the association of unit owners for receipt of a demand)."; and

725 (iv) be sent to the unit owner by certified mail, return receipt requested; and

726 (b) may be included with other association correspondence to the unit owner.

727 (3) An association of unit owners may not use a nonjudicial foreclosure to enforce a  
728 lien if the unit owner mails the association of unit owners a written demand for judicial  
729 foreclosure:

730 (a) by U.S. mail, certified with a return receipt requested;

731 (b) to the address stated in the association of unit owners' notice under Subsection (1);

732 and

733 (c) within 15 days after the date of the postmark on the envelope of the association of  
734 unit owners' notice under Subsection (1).

735 Section 8. Section **57-8-47** is enacted to read:

736 **57-8-47. Provisions applicable to nonjudicial foreclosure.**

737 (1) An association of unit owners' nonjudicial foreclosure of a unit is governed by:

738 (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association of



739 unit owners' lien were a trust deed; and

740 (b) this chapter.

741 (2) If there is a conflict between a provision of this chapter and a provision of Sections  
742 57-1-19 through 57-1-34 with respect to an association of unit owners' nonjudicial foreclosure  
743 of a unit, the provision of this chapter controls.

744 Section 9. Section **57-8-48** is enacted to read:

745 **57-8-48. One-action rule not applicable -- Abandonment of enforcement**  
746 **proceedings.**

747 (1) Subsection 78B-6-901(1) does not apply to an association of unit owners' judicial  
748 or nonjudicial foreclosure of a unit under this part.

749 (2) An association of unit owners may abandon a judicial foreclosure, nonjudicial  
750 foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure,  
751 nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial  
752 foreclosure, or sheriff's sale is not complete.

753 Section 10. Section **57-8-49** is enacted to read:

754 **57-8-49. Costs and attorney fees in lien enforcement action.**

755 (1) A court entering a judgment or decree in a judicial action brought under Sections  
756 57-8-44 through 57-8-53 shall award the prevailing party its costs and reasonable attorney fees  
757 incurred before the judgment or decree and, if the association of unit owners is the prevailing  
758 party, any costs and reasonable attorney fees that the association of unit owners incurs  
759 collecting the judgment.

760 (2) In a nonjudicial foreclosure, an association of unit owners may include in the  
761 amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the  
762 amount due, including the costs of preparing, recording, and foreclosing a lien.

763 Section 11. Section **57-8-50** is enacted to read:

764 **57-8-50. Action to recover unpaid assessment.**

765 An association of unit owners need not pursue a judicial foreclosure or nonjudicial  
766 foreclosure to collect an unpaid assessment but may file an action to recover a money judgment  
767 for the unpaid assessment without waiving the lien under Section 57-8-44.

768 Section 12. Section **57-8-51** is enacted to read:

769 **57-8-51. Appointment of receiver.**

770 In an action by an association of unit owners to collect an assessment or to foreclose a  
771 lien for an unpaid assessment, a court may:

772 (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money  
773 alleged to be due and owing to a unit owner:

774 (a) before commencement of the action; or

775 (b) during the pendency of the action; and

776 (2) order the receiver to pay the association of unit owners, to the extent of the  
777 association's common expense assessment, money the receiver holds under Subsection (1).

778 Section 13. Section **57-8-52** is enacted to read:

779 **57-8-52. Termination of a delinquent owner's rights -- Notice -- Informal hearing.**

780 (1) As used in this section, "delinquent unit owner" means a unit owner who fails to  
781 pay an assessment when due.

782 (2) A management committee may, if authorized in the declaration, bylaws, or rules  
783 and as provided in this section, terminate a delinquent unit owner's right:

784 (a) to receive a utility service for which the unit owner pays as a common expense; or

785 (b) of access to and use of recreational facilities.

786 (3) (a) Before terminating a utility service or right of access to and use of recreational  
787 facilities under Subsection (2), the manager or management committee shall give the  
788 delinquent unit owner notice in a manner provided in the declaration, bylaws, or association of  
789 unit owners rules.

790 (b) (i) A notice under Subsection (3)(a) shall state:

791 (A) that the association of unit owners will terminate the unit owner's utility service or  
792 right of access to and use of recreational facilities, or both, if the association of unit owners  
793 does not receive payment of the assessment within the time provided in the declaration, bylaws,  
794 or association of unit owners rules, subject to Subsection (3)(b)(ii);

795 (B) the amount of the assessment due, including any interest or late payment fee; and

796 (C) the unit owner's right to request a hearing under Subsection (4).

797 (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.

798 (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a  
799 utility service if service is terminated.

800 (4) (a) A delinquent unit owner may submit a written request to the management

801 committee for an informal hearing to dispute the assessment.

802 (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date  
803 the delinquent unit owner receives the notice under Subsection (3).

804 (5) A management committee shall conduct an informal hearing requested under  
805 Subsection (4) in accordance with the standards provided in the declaration, bylaws, or  
806 association of unit owners rules.

807 (6) If a delinquent unit owner requests a hearing, the association of unit owners may  
808 not terminate a utility service or right of access to and use of recreational facilities until after  
809 the management committee:

810 (a) conducts the hearing; and

811 (b) enters a final decision.

812 (7) If an association of unit owners terminates a utility service or a right of access to  
813 and use of recreational facilities, the association of unit owners shall take immediate action to  
814 reinstate the service or right following the unit owner's payment of the assessment, including  
815 any interest and late payment fee.

816 (8) An association of unit owners may:

817 (a) assess a unit owner for the cost associated with reinstating a utility service that the  
818 association of unit owners terminates as provided in this section; and

819 (b) demand that the estimated cost to reinstate the utility service be paid before the  
820 service is reinstated, if the estimated cost is included in a notice under Subsection (3).

821 Section 14. Section **57-8-53** is enacted to read:

822 **57-8-53. Requiring tenant in residential condominium unit to pay rent to**  
823 **association of unit owners if owner fails to pay assessment.**

824 (1) As used in this section:

825 (a) "Amount owing" means the total of:

826 (i) any assessment or obligation under Subsection 57-8-44(1)(a) that is due and owing;  
827 and

828 (ii) any applicable interest, late fee, and cost of collection that accrues after an  
829 association of unit owners gives notice under Subsection (3).

830 (b) "Lease" means an arrangement under which a tenant occupies a unit owner's  
831 residential condominium unit in exchange for the unit owner receiving a consideration or

832 benefit, including a fee, service, gratuity, or emolument.

833 (c) "Tenant" means a person, other than the unit owner, who has regular, exclusive  
834 occupancy of the unit owner's residential condominium unit.

835 (2) Subject to Subsections (3) and (4), the management committee may require a tenant  
836 under a lease with a unit owner to pay the association of unit owners all future lease payments  
837 due to the unit owner:

838 (a) if:

839 (i) the unit owner fails to pay an assessment for a period of more than 60 days after the  
840 assessment is due and payable; and

841 (ii) authorized in the declaration, bylaws, or rules;

842 (b) beginning with the next monthly or periodic payment due from the tenant; and

843 (c) until the association of unit owners is paid the amount owing.

844 (3) (a) Before requiring a tenant to pay lease payments to the association of unit owners  
845 under Subsection (2), the manager or management committee shall give the unit owner notice,  
846 in accordance with the declaration, bylaws, or association rules.

847 (b) The notice required under Subsection (3)(a) shall state:

848 (i) the amount of the assessment due, including any interest, late fee, collection cost,  
849 and attorney fees;

850 (ii) that any costs of collection, including attorney fees, and other assessments that  
851 become due may be added to the total amount due and to be paid through the collection of  
852 lease payments; and

853 (iii) that the association intends to demand payment of future lease payments from the  
854 unit owner's tenant if the unit owner does not pay the amount owing within 15 days.

855 (4) (a) If a unit owner fails to pay the amount owing within 15 days after the manager  
856 or management committee gives the unit owner notice under Subsection (3), the manager or  
857 management committee may exercise the rights of the association of unit owners under  
858 Subsection (2) by delivering a written notice to the tenant.

859 (b) A notice under Subsection (4)(a) shall state that:

860 (i) due to the unit owner's failure to pay an assessment within the required time, the  
861 manager or management committee has notified the unit owner of the manager or management  
862 committee's intent to collect all lease payments until the amount owing is paid;

863 (ii) the law requires the tenant to make all future lease payments, beginning with the  
864 next monthly or other periodic payment, to the association of unit owners, until the amount  
865 owing is paid; and

866 (iii) the tenant's payment of lease payments to the association of unit owners does not  
867 constitute a default under the terms of the lease with the unit owner.

868 (c) The manager or management committee shall mail a copy of the notice to the unit  
869 owner.

870 (5) (a) A tenant to whom notice under Subsection (4) is given shall pay to the  
871 association of unit owners all future lease payments as they become due and owing to the unit  
872 owner:

873 (i) beginning with the next monthly or other periodic payment after the notice under  
874 Subsection (4) is delivered to the tenant; and

875 (ii) until the association of unit owners notifies the tenant under Subsection (6) that the  
876 amount owing is paid.

877 (b) A unit owner:

878 (i) shall credit each payment that the tenant makes to the association of unit owners  
879 under this section against any obligation that the tenant owes to the owner as though the tenant  
880 made the payment to the owner; and

881 (ii) may not initiate a suit or other action against a tenant for failure to make a lease  
882 payment that the tenant pays to an association of unit owners as required under this section.

883 (6) (a) Within five business days after the amount owing is paid, the manager or  
884 management committee shall notify the tenant in writing that the tenant is no longer required to  
885 pay future lease payments to the association of unit owners.

886 (b) The manager or management committee shall mail a copy of the notification  
887 described in Subsection (6)(a) to the unit owner.

888 (7) (a) An association of unit owners shall deposit money paid to the association of unit  
889 owners under this section in a separate account and disburse that money to the association of  
890 unit owners until:

891 (i) the amount owing is paid; and

892 (ii) any cost of administration, not to exceed \$25, is paid.

893 (b) The association of unit owners shall, within five business days after the amount

894 owing is paid, pay to the unit owner any remaining balance.

895 Section 15. Section **57-8-54** is enacted to read:

896 **57-8-54. Statement from manager or management committee of unpaid**  
897 **assessment.**

898 (1) A manager or management committee shall issue a written statement indicating any  
899 unpaid assessment with respect to a unit owner's unit upon:

900 (a) a written request by the unit owner; and

901 (b) payment of a reasonable fee not to exceed \$25.

902 (2) A written statement under Subsection (1) is conclusive in favor of a person who  
903 relies on the written statement in good faith.

904 Section 16. Section **57-8a-102** is amended to read:

905 **57-8a-102. Definitions.**

906 As used in this chapter:

907 (1) (a) "Assessment" means a charge imposed or levied:

908 (i) by the association;

909 (ii) on or against a lot or a lot owner; and

910 (iii) pursuant to a governing document recorded with the county recorder.

911 (b) "Assessment" includes:

912 (i) a common expense[-]; and

913 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(8).

914 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or  
915 other legal entity, each member of which:

916 (i) is an owner of a residential lot located within the jurisdiction of the association, as  
917 described in the governing documents; and

918 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

919 (A) real property taxes;

920 (B) insurance premiums;

921 (C) maintenance costs; or

922 (D) for improvement of real property not owned by the member.

923 (b) "Association" or "homeowner association" does not include an association created  
924 under Title 57, Chapter 8, Condominium Ownership Act.

925 (3) "Board of directors" or "board" means the entity, regardless of name, with primary  
926 authority to manage the affairs of the association.

927 (4) "Common areas" means property that the association:

928 (a) owns;

929 (b) maintains;

930 (c) repairs; or

931 (d) administers.

932 (5) "Common expense" means costs incurred by the association to exercise any of the  
933 powers provided for in the association's governing documents.

934 (6) "Declarant":

935 (a) means the person who executes a declaration and submits it for recording in the  
936 office of the recorder of the county in which the property described in the declaration is  
937 located; and

938 (b) includes the person's successor and assign.

939 [~~6~~] (7) (a) "Governing documents" means a written instrument by which the  
940 association may:

941 (i) exercise powers; or

942 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the  
943 association.

944 (b) "Governing documents" includes:

945 (i) articles of incorporation;

946 (ii) bylaws;

947 (iii) a plat;

948 (iv) a declaration of covenants, conditions, and restrictions; and

949 (v) rules of the association.

950 (8) "Judicial foreclosure" means a foreclosure of a lot:

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

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

954 (ii) as provided in Part 3, Collection of Assessments.

955 [~~7~~] (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

- 956 (a) by a person or persons other than the owner; and
- 957 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 958 gratuity, or emolument.

959 (10) "Limited common areas" means common areas described in the declaration and  
960 allocated for the exclusive use of one or more lot owners.

961 [~~8~~] (11) "Lot" means:

- 962 (a) a lot, parcel, plot, or other division of land:
  - 963 (i) designated for separate ownership or occupancy; and
  - 964 (ii) (A) shown on a recorded subdivision plat; or
  - 965 (B) the boundaries of which are described in a recorded governing document; or
- 966 (b) (i) a unit in a condominium association if the condominium association is a part of
- 967 a development; or
- 968 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 969 development.

970 (12) "Nonjudicial foreclosure" means the sale of a lot:

- 971 (a) for the nonpayment of an assessment; and
- 972 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through  
973 57-1-34; and
- 974 (ii) as provided in Part 3, Collection of Assessments.

975 [~~9~~] (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or  
976 otherwise to primarily residential or recreational purposes.

977 Section 17. Section **57-8a-212** is enacted to read:

978 **57-8a-212. Content of a declaration.**

979 (1) An initial declaration recorded on or after May 10, 2011 shall contain:

- 980 (a) the name of the project;
- 981 (b) the name of the association;
- 982 (c) a statement that the project is not a cooperative;
- 983 (d) a statement indicating any portions of the project that contain condominiums  
984 governed by Chapter 8, Condominium Ownership Act;
- 985 (e) if the declarant desires to reserve the option to expand the project, a statement  
986 reserving the option to expand the project;



- 987 (f) the name of each county in which any part of the project is located;
- 988 (g) a legally sufficient description of the real estate included in the project;
- 989 (h) a description of any limited common areas and any real estate that is or is required
- 990 to become common areas;
- 991 (i) any restriction on the alienation of a lot, including a restriction on leasing; and
- 992 (j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or
- 993 (iv); and
- 994 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
- 995 U.C.A. Sections 57-1-20 and 57-8a-402 to (name of trustee), with power of sale, the lot and all
- 996 improvements to the lot for the purpose of securing payment of assessments under the terms of
- 997 the declaration."
- 998 (2) A declaration may contain any other information the declarant considers
- 999 appropriate, including any restriction on the use of a lot, the number of persons who may
- 1000 occupy a lot, or other qualifications of a person who may occupy a lot.
- 1001 (3) The location of a limited common area or real estate described in Subsection (1)(g)
- 1002 may be shown on a subdivision plat.

1003 Section 18. Section **57-8a-213** is enacted to read:

1004 **57-8a-213. Board action to enforce governing documents -- Parameters.**

- 1005 (1) (a) The board shall use its reasonable judgment to determine whether to exercise
- 1006 the association's powers to impose sanctions or pursue legal action for a violation of the
- 1007 governing documents, including:
- 1008 (i) whether to compromise a claim made by or against the board or the association; and
- 1009 (ii) whether to pursue a claim for an unpaid assessment.
- 1010 (b) The association may not be required to take enforcement action if the board
- 1011 determines, after fair review and acting in good faith and without conflict of interest, that under
- 1012 the particular circumstances:
- 1013 (i) the association's legal position does not justify taking any or further enforcement
- 1014 action;
- 1015 (ii) the covenant, restriction, or rule in the governing documents is likely to be
- 1016 construed as inconsistent with current law;
- 1017 (iii) (A) a technical violation has or may have occurred; and

1018 (B) the violation is not material as to a reasonable person or does not justify expending  
1019 the association's resources; or

1020 (iv) it is not in the association's best interests to pursue an enforcement action, based  
1021 upon hardship, expense, or other reasonable criteria.

1022 (2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego  
1023 enforcement, the association is not prevented from later taking enforcement action.

1024 (3) The board may not be arbitrary, capricious, or against public policy in taking or not  
1025 taking enforcement action.

1026 (4) This section does not govern whether the association's action in enforcing a  
1027 provision of the governing documents constitutes a waiver or modification of that provision.

1028 Section 19. Section **57-8a-214** is enacted to read:

1029 **57-8a-214. Fair and reasonable notice.**

1030 (1) Notice that an association provides by a method allowed under Title 16, Chapter 6a,  
1031 Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, regardless of  
1032 whether or not the association is a nonprofit corporation.

1033 (2) Notice that an association provides by a method not referred to in Subsection (1)  
1034 constitutes fair and reasonable notice if:

1035 (a) the method is authorized in the declaration, articles, bylaws, or rules; and

1036 (b) considering all the circumstances, the notice is fair and reasonable.

1037 (3) (a) If provided in the declaration, articles, bylaws, or rules, an association may  
1038 provide notice by electronic means, including text message, email, or the association's website.

1039 (b) Notwithstanding Subsection (3)(a), a lot owner may, by written demand, require an  
1040 association to provide notice to the lot owner by mail.

1041 Section 20. Section **57-8a-215** is enacted to read:

1042 **57-8a-215. Budget.**

1043 (1) At least annually the board shall prepare and adopt a budget for the association.

1044 (2) The board shall present the adopted budget to association members at a meeting of  
1045 the members.

1046 (3) A budget is disapproved if within 45 days after the date of the meeting under  
1047 Subsection (2) at which the board presents the adopted budget:

1048 (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of

1049 the lot owners in the association; and

1050 (b) the vote is taken at a special meeting called for that purpose by lot owners under the  
1051 declaration, articles, or bylaws.

1052 (4) If a budget is disapproved under Subsection (3), the budget that the board last  
1053 adopted that was not disapproved by members continues as the budget until and unless the  
1054 board presents another budget to members and that budget is not disapproved.

1055 (5) During the period of administrative control, association members may not  
1056 disapprove a budget.

1057 Section 21. Section **57-8a-216** is enacted to read:

1058 **57-8a-216. Association bylaws -- Recording required -- Bylaw requirements.**

1059 (1) (a) No later than the date of the first lot sale, an association shall file its bylaws for  
1060 recording in the office of the recorder of each county in which any part of the real estate  
1061 included within the association is located.

1062 (b) If an association fails to file bylaws for recording within the time specified in  
1063 Subsection (1)(a), the board may file the bylaws for recording as provided in Subsection (1)(a).

1064 (2) Unless otherwise provided in the declaration, an association's bylaws shall state:

1065 (a) the number of board members;

1066 (b) the title of each of the association's officers;

1067 (c) the manner and method of officer election by the board or, if the declaration  
1068 requires, by the lot owners;

1069 (d) (i) the board member and officer:

1070 (A) qualifications;

1071 (B) powers and duties; and

1072 (C) terms of office;

1073 (ii) the method for removing a board member or officer; and

1074 (iii) the method for filling a board member or officer vacancy;

1075 (e) the powers that the board or officers may delegate to other persons or to a managing  
1076 agent;

1077 (f) the officers who may prepare, execute, certify, and record amendments to the  
1078 declaration on behalf of the association;

1079 (g) a method for the board or lot owners to amend the bylaws, consistent with Section

1080 16-6a-1010; and

1081 (h) subject to the provisions of the declaration and unless the declaration or this chapter  
1082 requires that a provision appear in a declaration, any other matter that is necessary or  
1083 appropriate for conducting the affairs of the association, including:

1084 (i) meetings;

1085 (ii) voting requirements; and

1086 (iii) quorum requirements.

1087 (3) An association shall file any amended bylaws for recording in the same manner as  
1088 the association is required to file the initial bylaws for recording under Subsection (1).

1089 Section 22. Section **57-8a-217** is enacted to read:

1090 **57-8a-217. Association rules, including design criteria -- Requirements and**  
1091 **limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

1092 (1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit,  
1093 create exceptions to, expand, or enforce the rules and design criteria of the association.

1094 (b) A board's action under Subsection (1)(a) is subject to:

1095 (i) this section;

1096 (ii) any limitation that the declaration imposes on the authority stated in Subsection  
1097 (1)(a);

1098 (iii) the limitation on rules in Sections 57-8a-218 and 57-8a-219;

1099 (iv) the board's duty to exercise business judgment on behalf of:

1100 (A) the association; and

1101 (B) the lot owners in the association; and

1102 (v) the right of the lot owners or declarant to disapprove the action under Subsection  
1103 (4).

1104 (2) Except as provided in Subsection (3), before adopting, amending, modifying,  
1105 canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the  
1106 association, the board shall:

1107 (a) at least 15 days before the board will meet to consider a change to a rule or design  
1108 criterion, deliver notice to lot owners, as provided in Section 57-8a-214, that the board is  
1109 considering a change to a rule or design criterion;

1110 (b) provide an open forum at the board meeting giving lot owners an opportunity to be

1111 heard at the board meeting before the board takes action under Subsection (1)(a); and  
1112 (c) deliver a copy of the change in the rules or design criteria approved by the board to  
1113 the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board  
1114 meeting.

1115 (3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving  
1116 notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common  
1117 area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

1118 (b) The board shall provide notice under Subsection (2) to the lot owners of a rule  
1119 adopted under Subsection (3)(a).

1120 (4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if  
1121 within 60 days after the date of the board meeting where the action was taken:

1122 (a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests  
1123 of the lot owners in the association; and

1124 (ii) the vote is taken at a special meeting called for that purpose by the lot owners  
1125 under the declaration, articles, or bylaws; or

1126 (b) (i) the declarant delivers to the board a writing of disapproval; and

1127 (ii) (A) the declarant is within the period of declarant control; or

1128 (B) for an expandable project, the declarant has the right to add real estate to the  
1129 project.

1130 (5) (a) The board has no obligation to call a meeting of the lot owners to consider  
1131 disapproval, unless lot owners submit a petition, in the same manner as the declaration,  
1132 articles, or bylaws provide for a special meeting, for the meeting to be held.

1133 (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the  
1134 board's action is:

1135 (i) stayed until after the meeting is held; and

1136 (ii) subject to the outcome of the meeting.

1137 (6) During the period of administrative control, a declarant may exempt the declarant  
1138 from association rules and the rulemaking procedure under this section if the declaration  
1139 reserves to the declarant the right to exempt the declarant.

1140 Section 23. Section **57-8a-218** is enacted to read:

1141 **57-8a-218. Equal treatment by rules required -- Limits on association rules and**

1142 **design criteria.**

1143 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot  
1144 owners similarly.

1145 (b) Notwithstanding Subsection (1)(a), a rule may:

1146 (i) vary according to the level and type of service that the association provides to lot  
1147 owners; and

1148 (ii) differ between residential and nonresidential uses.

1149 (2) (a) A rule criterion may not abridge the rights of a lot owner to display religious  
1150 and holiday signs, symbols, and decorations inside a dwelling on a lot.

1151 (b) Notwithstanding Subsection (2)(a), the association may adopt time, place, and  
1152 manner restrictions with respect to displays visible from outside the dwelling or lot.

1153 (3) (a) A rule may not regulate the content of political signs.

1154 (b) Notwithstanding Subsection (3)(a):

1155 (i) a rule may regulate the time, place, and manner of posting a political sign; and

1156 (ii) an association design provision may establish design criteria for political signs.

1157 (4) (a) A rule may not interfere with the freedom of a lot owner to determine the  
1158 composition of the lot owner's household.

1159 (b) Notwithstanding Subsection (4)(a), an association may:

1160 (i) require that all occupants of a dwelling be members of a single housekeeping unit;  
1161 and

1162 (ii) limit the total number of occupants permitted in each residential dwelling on the  
1163 basis of the residential dwelling's:

1164 (A) size and facilities; and

1165 (B) fair use of the common areas.

1166 (5) (a) A rule may not interfere with an activity of a lot owner within the confines of a  
1167 dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.

1168 (b) Notwithstanding Subsection (5)(a), a rule may prohibit an activity within a dwelling  
1169 on an owner's lot if the activity:

1170 (i) is not normally associated with a project restricted to residential use; or

1171 (ii) (A) creates monetary costs for the association or other lot owners;

1172 (B) creates a danger to the health or safety of occupants of other lots;

- 1173 (C) generates excessive noise or traffic;  
1174 (D) creates unsightly conditions visible from outside the dwelling;  
1175 (E) creates an unreasonable source of annoyance to persons outside the lot; or  
1176 (F) if there are attached dwellings, creates the potential for smoke to enter another lot  
1177 owner's dwelling, the common areas, or limited common areas.
- 1178 (c) If permitted by law, an association may adopt rules described in Subsection (5)(b)  
1179 that affect the use of or behavior inside the dwelling.
- 1180 (6) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written  
1181 objection to the board, alter the allocation of financial burdens among the various lots.
- 1182 (b) Notwithstanding Subsection (6)(a), an association may:  
1183 (i) change the common areas available to a lot owner;  
1184 (ii) adopt generally applicable rules for the use of common areas; or  
1185 (iii) deny use privileges to a lot owner who:  
1186 (A) is delinquent in paying assessments;  
1187 (B) abuses the common areas; or  
1188 (C) violates the governing documents.
- 1189 (c) This Subsection (6) does not permit a rule that:  
1190 (i) alters the method of levying assessments; or  
1191 (ii) increases the amount of assessments as provided in the declaration.
- 1192 (7) (a) Subject to Subsection (7)(b), a rule may not:  
1193 (i) prohibit the transfer of a lot; or  
1194 (ii) require the consent of the association or board to transfer a lot.
- 1195 (b) Unless contrary to a declaration, a rule may require a minimum lease term.
- 1196 (8) (a) A rule may not require a lot owner to dispose of personal property that was in or  
1197 on a lot before the adoption of the rule or design criteria if the personal property was in  
1198 compliance with all rules and other governing documents previously in force.
- 1199 (b) The exemption in Subsection (8)(a):  
1200 (i) applies during the period of the lot owner's ownership of the lot; and  
1201 (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of  
1202 the rule described in Subsection (8)(a).
- 1203 (9) A rule or action by the association or action by the board may not unreasonably

1204 impede a declarant's right to develop:

1205 (a) the project; or

1206 (b) other properties in the vicinity of the project.

1207 (10) A rule or association or board action may not interfere with:

1208 (a) the use or operation of an amenity that the association does not own or control; or

1209 (b) the exercise of a right associated with an easement.

1210 (11) A rule may not divest a lot owner of the right to proceed in accordance with a  
1211 completed application for design review, or to proceed in accordance with another approval  
1212 process, under the terms of the governing documents in existence at the time the completed  
1213 application was submitted by the owner for review.

1214 (12) Unless otherwise provided in the declaration, an association may by rule:

1215 (a) regulate the use, maintenance, repair, replacement, and modification of common  
1216 areas;

1217 (b) impose and receive any payment, fee, or charge for:

1218 (i) the use, rental, or operation of the common areas, except limited common areas; and

1219 (ii) a service provided to a lot owner;

1220 (c) impose a charge for a late payment of an assessment; or

1221 (d) provide for the indemnification of its officers and board consistent with Title 16,  
1222 Chapter 6a, Utah Revised Nonprofit Corporation Act.

1223 (13) A rule shall be reasonable.

1224 (14) A declaration, or an amendment to a declaration, may vary any of the  
1225 requirements of Subsections (1) through (12), except Subsection (1)(b)(ii).

1226 (15) A rule may not be inconsistent with a provision of a declaration.

1227 Section 24. Section **57-8a-219** is enacted to read:

1228 **57-8a-219. Display of the flag.**

1229 (1) An association may not prohibit a lot owner from displaying a United States flag  
1230 inside a dwelling or limited common area or on a lot, if the display complies with United States  
1231 Code, Title 4, Chapter 1, The Flag, or with a rule or custom pertaining to the proper display of  
1232 the flag.

1233 (2) (a) Notwithstanding Subsection (1), an association may establish reasonable  
1234 restrictions on the size of a flag and on the place, duration, and manner of placement or display



1235 of a flag if the restrictions are necessary to protect a substantial interest of the association.

1236 (b) In an action that an association brings for a violation of a restriction under  
1237 Subsection (2)(a), the association bears the burden of proof that the restriction is necessary to  
1238 protect a substantial interest of the association.

1239 (3) An association may restrict the display of a flag on the common areas.

1240 Section 25. Section **57-8a-220** is enacted to read:

1241 **57-8a-220. Creditor approval may be required for lot owner or association action**  
1242 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**  
1243 **creditor or creditor's successor.**

1244 (1) (a) Subject to Subsection (1)(b), a declaration may:

1245 (i) condition the effectiveness of lot owners' actions specified in the declaration on the  
1246 approval of a specified number or percentage of lenders holding a security interest in the lots;

1247 or

1248 (ii) condition the effectiveness of association actions specified in the declaration on the  
1249 approval of a specified number or percentage of lenders that have extended credit to the  
1250 association.

1251 (b) A condition under Subsection (1)(a) may not:

1252 (i) deny or delegate the lot owners' or board's control over the association's general  
1253 administrative affairs;

1254 (ii) prevent the association or board from commencing, intervening in, or settling any  
1255 litigation or proceeding; or

1256 (iii) prevent an insurance trustee or the association from receiving or distributing  
1257 insurance proceeds under Subsection 57-8a-405(12).

1258 (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection  
1259 (1)(b) by:

1260 (i) requiring the association to deposit the association's assessments before default with  
1261 the lender assigned the income; or

1262 (ii) requiring the association to increase an assessment at the lender's direction by an  
1263 amount reasonably necessary to pay the loan in accordance with the loan terms.

1264 (d) This Subsection (1) applies to:

1265 (i) an association formed before, on, or after May 10, 2011; and

1266 (ii) documents created and recorded before, on, or after May 10, 2011.  
1267 (2) Subject to this chapter and applicable law, a lender who has extended credit to an  
1268 association secured by an assignment of income or an encumbrance of the common areas may  
1269 enforce the lender's security agreement as provided in the agreement.  
1270 (3) (a) Subject to Subsection (4), a security holder's consent that is required under  
1271 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:  
1272 (i) the association sends written notice of the proposed amendment or action by  
1273 certified or registered mail to the security holder's address stated in a recorded document  
1274 evidencing the security interest; and  
1275 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security  
1276 holder's response does not receive a response within 60 days after the association sends notice  
1277 under Subsection (3)(a)(i).  
1278 (b) If a security holder's address for receiving notice is not stated in a recorded  
1279 document evidencing the security interest, an association:  
1280 (i) shall use reasonable efforts to find a mailing address for the security holder; and  
1281 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).  
1282 (4) If a security holder responds in writing within 60 days after the association sends  
1283 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to  
1284 another person, the association:  
1285 (a) shall:  
1286 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the  
1287 security interest at the address provided by the security holder in the security holder's response;  
1288 or  
1289 (ii) if no address is provided:  
1290 (A) use reasonable efforts to find a mailing address for the person assigned or  
1291 conveyed the security interest; and  
1292 (B) send notice by certified or registered mail to the person at the address that the  
1293 association finds under Subsection (4)(a)(ii)(A); and  
1294 (b) may not presume the security holder's consent under Subsection (3)(a) unless the  
1295 person designated in a notice under Subsection (4)(a) to receive the response from the person  
1296 assigned or conveyed the security interest does not receive a response within 60 days after the

1297 association sends the notice.

1298 Section 26. Section **57-8a-221** is enacted to read:

1299 **57-8a-221. Reincorporation of terminated or dissolved association.**

1300 (1) An association that is terminated or dissolved without possibility of reinstatement  
1301 under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, may be reincorporated by  
1302 the acting directors of the association refiling articles of incorporation that are substantially  
1303 similar to the articles of incorporation, as amended, in existence at the time of termination or  
1304 dissolution.

1305 (2) Upon the association's reincorporation under Subsection (1):

1306 (a) the board of directors shall readopt bylaws for the association that are the same as  
1307 the bylaws that were in existence at the time of termination or dissolution; and

1308 (b) all lot owners within the project are members of the reincorporated association.

1309 Section 27. Section **57-8a-301** is enacted to read:

1310 **Part 3. Collection of Assessments**

1311 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

1312 (1) (a) An association has a lien on a lot for:

1313 (i) an assessment;

1314 (ii) except as provided in the declaration, fees, charges, and costs associated with  
1315 collecting an unpaid assessment, including:

1316 (A) court costs and reasonable attorney fees;

1317 (B) late charges;

1318 (C) interest; and

1319 (D) any other amount that the association is entitled to recover under the declaration,  
1320 this chapter, or an administrative or judicial decision; and

1321 (iii) a fine that the association imposes against the owner of the lot.

1322 (b) The recording of a declaration constitutes record notice and perfection of a lien  
1323 described in Subsection (1)(a).

1324 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)  
1325 is for the full amount of the assessment from the time the first installment is due, unless the  
1326 association otherwise provides in a notice of assessment.

1327 (3) An unpaid assessment or fine accrues interest at the rate provided:

1328 (a) in Subsection 15-1-1(2); or  
1329 (b) in the declaration, if the declaration provides for a different interest rate.  
1330 (4) A lien under this section has priority over each other lien and encumbrance on a lot  
1331 except:  
1332 (a) a lien or encumbrance recorded before the declaration is recorded;  
1333 (b) a first security interest on the lot recorded before a recorded notice of lien by or on  
1334 behalf of the association; or  
1335 (c) a lien for real estate taxes or other governmental assessments or charges against the  
1336 lot.  
1337 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah  
1338 Exemptions Act.  
1339 (6) Unless the declaration provides otherwise, if two or more associations have liens  
1340 for assessments on the same lot, the liens have equal priority, regardless of when the liens are  
1341 created.  
1342 Section 28. Section **57-8a-302** is enacted to read:  
1343 **57-8a-302. Enforcement of a lien.**  
1344 (1) (a) To enforce a lien established under Section 57-8a-301, an association may:  
1345 (i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed  
1346 of trust, in the manner provided by:  
1347 (A) Sections 57-1-24, 57-1-25, 57-1-26, and 57-1-27; and  
1348 (B) this part; or  
1349 (ii) foreclose the lien through a judicial foreclosure in the manner provided by:  
1350 (A) law for the foreclosure of a mortgage; and  
1351 (B) this part.  
1352 (b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection  
1353 (1)(a):  
1354 (i) the association is considered to be the beneficiary under a trust deed; and  
1355 (ii) the lot owner is considered to be the trustor under a trust deed.  
1356 (2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous  
1357 conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this  
1358 section for the purpose of securing payment of all amounts due under the declaration and this

1359 chapter.

1360 (3) (a) A power of sale and other powers of a trustee under this part and under Sections  
1361 57-1-19 through 57-1-34 may not be exercised unless the association appoints a qualified  
1362 trustee.

1363 (b) An association's execution of a substitution of trustee form authorized in Section  
1364 57-1-22 is sufficient for appointment of a trustee under Subsection (3)(a).

1365 (c) A person may not be a trustee under this part unless the person qualifies as a trustee  
1366 under Subsection 57-1-21(1)(a)(i) or (iv).

1367 (d) A trustee under this part is subject to all duties imposed on a trustee under Sections  
1368 57-1-19 through 57-1-34.

1369 (4) This part does not prohibit an association from bringing an action against a lot  
1370 owner to recover an amount for which a lien is created under Section 57-8a-301 or from taking  
1371 a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure  
1372 of the lot owner's lot under this part.

1373 Section 29. Section **57-8a-303** is enacted to read:

1374 **57-8a-303. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited**  
1375 **if unit owner demands judicial foreclosure.**

1376 (1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association  
1377 shall provide notice to the owner of the lot that is the intended subject of the nonjudicial  
1378 foreclosure.

1379 (2) The notice under Subsection (1):

1380 (a) shall:

1381 (i) notify the lot owner that the association intends to pursue nonjudicial foreclosure  
1382 with respect to the owner's lot to enforce the association's lien for an unpaid assessment;

1383 (ii) notify the lot owner of the owner's right to demand judicial foreclosure in the place  
1384 of nonjudicial foreclosure;

1385 (iii) be in substantially the following form:

1386 "NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND  
1387 JUDICIAL FORECLOSURE

1388 The (insert the name of the association), the association for the project in which your lot  
1389 is located, intends to foreclose upon your lot and allocated interest in the common areas using a

1390 procedure that will not require it to file a lawsuit or involve a court. This procedure is being  
1391 followed in order to enforce the association's lien against your lot and to collect the amount of  
1392 an unpaid assessment against your lot, together with any applicable late fees and the costs,  
1393 including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the  
1394 right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight  
1395 of a judge. If you make this demand and the association prevails in the lawsuit, the costs and  
1396 attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit  
1397 were not required, and you may be responsible for paying those costs and attorney fees. If you  
1398 want to make this demand, you must state in writing that 'I demand a judicial foreclosure  
1399 proceeding upon my lot', or words substantially to that effect. You must send this written  
1400 demand by first class and certified U.S. mail, return receipt requested, within 15 days after the  
1401 date of the postmark on the envelope in which this notice was mailed to you. The address to  
1402 which you must mail your demand is (insert the association's address for receipt of a  
1403 demand)."; and

1404 (iv) be sent to the lot owner by certified mail, return receipt requested; and  
1405 (b) may be included with other association correspondence to the lot owner.  
1406 (3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot  
1407 owner mails the association a written demand for judicial foreclosure:  
1408 (a) by U.S. mail, certified with a return receipt requested;  
1409 (b) to the address stated in the association's notice under Subsection (1); and  
1410 (c) within 15 days after the date of the postmark on the envelope of the association's  
1411 notice under Subsection (1).

1412 Section 30. Section **57-8a-304** is enacted to read:

1413 **57-8a-304. Provisions applicable to nonjudicial foreclosure.**

1414 (1) An association's nonjudicial foreclosure of a lot is governed by:

1415 (a) Sections 57-1-19 through 57-1-34, to the same extent as though the association's  
1416 lien were a trust deed; and

1417 (b) this part.

1418 (2) If there is a conflict between a provision of this part and a provision of Sections  
1419 57-1-19 through 57-1-34 with respect to an association's nonjudicial foreclosure of a lot, the  
1420 provision of this part controls.

1421 Section 31. Section **57-8a-305** is enacted to read:

1422 **57-8a-305. One-action rule not applicable -- Abandonment of enforcement**  
1423 **proceeding.**

1424 (1) Subsection 78B-6-901(1) does not apply to an association's judicial or nonjudicial  
1425 foreclosure of a lot under this part.

1426 (2) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or  
1427 sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial  
1428 foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or  
1429 sheriff's sale is not complete.

1430 Section 32. Section **57-8a-306** is enacted to read:

1431 **57-8a-306. Costs and attorney fees in lien enforcement action.**

1432 (1) A court entering a judgment or decree in a judicial action brought under this part  
1433 shall award the prevailing party its costs and reasonable attorney fees incurred before the  
1434 judgment or decree and, if the association is the prevailing party, any costs and reasonable  
1435 attorney fees that the association incurs collecting the judgment.

1436 (2) In a nonjudicial foreclosure, an association may include in the amount due, and may  
1437 collect, all costs and reasonable attorney fees incurred in collecting the amount due, including  
1438 the costs of preparing, recording, and foreclosing a lien.

1439 Section 33. Section **57-8a-307** is enacted to read:

1440 **57-8a-307. Action to recover unpaid assessment.**

1441 An association need not pursue a judicial foreclosure or nonjudicial foreclosure to  
1442 collect an unpaid assessment but may file an action to recover a money judgment for the unpaid  
1443 assessment without waiving the lien under Section 57-8a-301.

1444 Section 34. Section **57-8a-308** is enacted to read:

1445 **57-8a-308. Appointment of receiver.**

1446 In an action by an association to collect an assessment or to foreclose a lien for an  
1447 unpaid assessment, a court may:

1448 (1) appoint a receiver, in accordance with Section 7-2-9, to collect and hold money  
1449 alleged to be due and owing to a lot owner:

1450 (a) before commencement of the action; or

1451 (b) during the pendency of the action; and

1452 (2) order the receiver to pay the association, to the extent of the association's common  
1453 expense assessment, money the receiver holds under Subsection (1).

1454 Section 35. Section **57-8a-309** is enacted to read:

1455 **57-8a-309. Termination of a delinquent owner's rights -- Notice -- Informal**  
1456 **hearing.**

1457 (1) As used in this section, "delinquent lot owner" means a lot owner who fails to pay  
1458 an assessment when due.

1459 (2) A board may, if authorized in the declaration, bylaws, or rules and as provided in  
1460 this section, terminate a delinquent lot owner's right:

1461 (a) to receive a utility service for which the lot owner pays as a common expense; or

1462 (b) of access to and use of recreational facilities.

1463 (3) (a) Before terminating a utility service or right of access to and use of recreational  
1464 facilities under Subsection (2), the manager or board shall give the delinquent lot owner notice  
1465 in a manner provided in the declaration, bylaws, or association rules.

1466 (b) (i) A notice under Subsection (3)(a) shall state:

1467 (A) that the association will terminate the lot owner's utility service or right of access  
1468 to and use of recreational facilities, or both, if the association does not receive payment of the  
1469 assessment within the time provided in the declaration, bylaws, or association rules, subject to  
1470 Subsection (3)(b)(ii);

1471 (B) the amount of the assessment due, including any interest or late payment fee; and

1472 (C) the lot owner's right to request a hearing under Subsection (4).

1473 (ii) The time provided under Subsection (3)(b)(i)(A) may not be less than 14 days.

1474 (iii) A notice under Subsection (3)(a) may include the estimated cost to reinstate a  
1475 utility service if service is terminated.

1476 (4) (a) A delinquent lot owner may submit a written request to the board for an  
1477 informal hearing to dispute the assessment.

1478 (b) A request under Subsection (4)(a) shall be submitted within 14 days after the date  
1479 the delinquent lot owner receives the notice under Subsection (3).

1480 (5) A board shall conduct an informal hearing requested under Subsection (4) in  
1481 accordance with the standards provided in the declaration, bylaws, or association rules.

1482 (6) If a delinquent lot owner requests a hearing, the association may not terminate a



1483 utility service or right of access to and use of recreational facilities until after the board:

1484 (a) conducts the hearing; and

1485 (b) enters a final decision.

1486 (7) If an association terminates a utility service or a right of access to and use of  
1487 recreational facilities, the association shall take immediate action to reinstate the service or  
1488 right following the lot owner's payment of the assessment, including any interest and late  
1489 payment fee.

1490 (8) An association may:

1491 (a) assess a lot owner for the cost associated with reinstating a utility service that the  
1492 association terminates as provided in this section; and

1493 (b) demand that the estimated cost to reinstate the utility service be paid before the  
1494 service is reinstated, if the estimated cost is included in a notice under Subsection (3).

1495 Section 36. Section **57-8a-310** is enacted to read:

1496 **57-8a-310. Requiring tenant in residential condominium lot to pay rent to**  
1497 **association if owner fails to pay assessment.**

1498 (1) As used in this section:

1499 (a) "Amount owing" means the total of:

1500 (i) any assessment or obligation under Section 57-8a-301 that is due and owing; and

1501 (ii) any applicable interest, late fee, and cost of collection.

1502 (b) "Lease" means an arrangement under which a tenant occupies a lot owner's lot in  
1503 exchange for the lot owner receiving a consideration or benefit, including a fee, service,  
1504 gratuity, or emolument.

1505 (c) "Tenant" means a person, other than the lot owner, who has regular, exclusive  
1506 occupancy of the lot owner's lot.

1507 (2) Subject to Subsections (3) and (4), the board may require a tenant under a lease  
1508 with a lot owner to pay the association all future lease payments due to the lot owner:

1509 (a) if:

1510 (i) the lot owner fails to pay an assessment for a period of more than 60 days after the  
1511 assessment is due and payable; and

1512 (ii) authorized in the declaration, bylaws, or rules;

1513 (b) beginning with the next monthly or periodic payment due from the tenant; and

1514 (c) until the association is paid the amount owing.  
1515 (3) (a) Before requiring a tenant to pay lease payments to the association under  
1516 Subsection (2), the association's manager or board shall give the lot owner notice, in  
1517 accordance with the declaration, bylaws, or association rules.  
1518 (b) The notice required under Subsection (3)(a) shall state:  
1519 (i) the amount of the assessment due, including any interest, late fee, collection cost,  
1520 and attorney fees;  
1521 (ii) that any costs of collection, including attorney fees, and other assessments that  
1522 become due may be added to the total amount due and be paid through the collection of lease  
1523 payments; and  
1524 (iii) that the association intends to demand payment of future lease payments from the  
1525 lot owner's tenant if the lot owner does not pay the amount owing within 15 days.  
1526 (4) (a) If a lot owner fails to pay the amount owing within 15 days after the  
1527 association's manager or board gives the lot owner notice under Subsection (3), the  
1528 association's manager or board may exercise the association's rights under Subsection (2) by  
1529 delivering a written notice to the tenant.  
1530 (b) A notice under Subsection (4)(a) shall state that:  
1531 (i) due to the lot owner's failure to pay an assessment within the required time, the  
1532 board has notified the lot owner of the board's intent to collect all lease payments until the  
1533 amount owing is paid;  
1534 (ii) the law requires the tenant to make all future lease payments, beginning with the  
1535 next monthly or other periodic payment, to the association, until the amount owing is paid; and  
1536 (iii) the tenant's payment of lease payments to the association does not constitute a  
1537 default under the terms of the lease with the lot owner.  
1538 (c) The manager or board shall mail a copy of the notice to the lot owner.  
1539 (5) (a) A tenant to whom notice under Subsection (4) is given shall pay to the  
1540 association all future lease payments as they become due and owing to the lot owner:  
1541 (i) beginning with the next monthly or other periodic payment after the notice under  
1542 Subsection (4) is delivered to the tenant; and  
1543 (ii) until the association notifies the tenant under Subsection (6) that the amount owing  
1544 is paid.

1545 (b) A lot owner:  
1546 (i) shall credit each payment that the tenant makes to the association under this section  
1547 against any obligation that the tenant owes to the owner as though the tenant made the payment  
1548 to the owner; and

1549 (ii) may not initiate a suit or other action against a tenant for failure to make a lease  
1550 payment that the tenant pays to an association as required under this section.

1551 (6) (a) Within five business days after the amount owing is paid, the association's  
1552 manager or board shall notify the tenant in writing that the tenant is no longer required to pay  
1553 future lease payments to the association.

1554 (b) The manager or board shall mail a copy of the notification described in Subsection  
1555 (6)(a) to the lot owner.

1556 (7) (a) An association shall deposit money paid to the association under this section in  
1557 a separate account and disburse that money to the association until:

1558 (i) the amount owing is paid; and

1559 (ii) any cost of administration, not to exceed \$25, is paid.

1560 (b) The association shall, within five business days after the amount owing is paid, pay  
1561 to the lot owner any remaining balance.

1562 Section 37. Section **57-8a-311** is enacted to read:

1563 **57-8a-311. Statement from association's manager or board of unpaid assessment.**

1564 (1) An association's manager or board shall issue a written statement indicating any  
1565 unpaid assessment with respect to a lot owner's lot upon:

1566 (a) a written request by the lot owner; and

1567 (b) payment of a reasonable fee not to exceed \$25.

1568 (2) A written statement under Subsection (1) is conclusive in favor of a person who  
1569 relies on the written statement in good faith.

1570 Section 38. Section **57-8a-401** is enacted to read:

1571 **Part 4. Insurance**

1572 **57-8a-401. Definition.**

1573 As used in this part, "reasonably available" means available using typical insurance  
1574 carriers and markets, irrespective of the ability of the association to pay.

1575 Section 39. Section **57-8a-402** is enacted to read:

1576 **57-8a-402. Applicability of part.**

1577 (1) This part applies to an insurance policy or combination of insurance policies:

1578 (a) issued or renewed on or after July 1, 2011; and

1579 (b) issued to or renewed by:

1580 (i) a lot owner; or

1581 (ii) an association, regardless of when the association is formed.

1582 (2) This part does not apply to a project if all of the project's lots are restricted to  
1583 entirely nonresidential use.

1584 (3) Subject to Subsection (4), this part does not apply to a project if:

1585 (a) the initial declaration for the project is recorded before January 1, 2012;

1586 (b) the project includes attached dwellings; and

1587 (c) the declaration requires each lot owner to insure the lot owner's dwelling.

1588 (4) (a) An association that is subject to a declaration recorded before January 1, 2012  
1589 may amend the declaration, as provided in the declaration, to subject the association to this  
1590 part.

1591 (b) During the period of administrative control, an amendment under Subsection (4)(a)  
1592 requires the consent of the declarant.

1593 Section 40. Section **57-8a-403** is enacted to read:

1594 **57-8a-403. Property and liability insurance required -- Notice if insurance not**  
1595 **reasonably available.**

1596 (1) Beginning not later than the day on which the first lot is conveyed to a person other  
1597 than a declarant, an association shall maintain, to the extent reasonably available:

1598 (a) subject to Section 57-8a-405, property insurance on the physical structure of all  
1599 attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common  
1600 areas in the project, insuring against all risks of direct physical loss commonly insured against,  
1601 including fire and extended coverage perils; and

1602 (b) subject to Section 57-8a-406, liability insurance, including medical payments  
1603 insurance covering all occurrences commonly insured against for death, bodily injury, and  
1604 property damage arising out of or in connection with the use, ownership, or maintenance of the  
1605 common areas.

1606 (2) If an association becomes aware that property insurance under Subsection (1)(a) or

1607 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,  
1608 within seven calendar days after becoming aware, give all lot owners notice, as provided in  
1609 Section 57-8a-215, that the insurance is not reasonably available.

1610 Section 41. Section **57-8a-404** is enacted to read:

1611 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**  
1612 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

1613 (1) (a) The declaration or bylaws may require the association to carry other types of  
1614 insurance in addition to those described in Section 57-8a-403.

1615 (b) In addition to any type of insurance coverage or limit of coverage provided in the  
1616 declaration or bylaws and subject to the requirements of this part, an association may, as the  
1617 board considers appropriate, obtain:

1618 (i) an additional type of insurance than otherwise required; or

1619 (ii) a policy with greater coverage than otherwise required.

1620 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf  
1621 of an association, a lot owner's act or omission may not:

1622 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability  
1623 insurance policy under Subsection 57-8a-403(1)(b); or

1624 (b) be a condition to recovery under a policy.

1625 (3) An insurer under a property insurance policy or liability insurance policy obtained  
1626 under this part waives its right to subrogation under the policy against any lot owner or member  
1627 of the lot owner's household.

1628 (4) (a) An insurance policy issued to an association may not be inconsistent with any  
1629 provision of this part.

1630 (b) A provision of a governing document that is contrary to a provision of this part has  
1631 no effect.

1632 (c) A property insurance or liability insurance policy issued to an association may not  
1633 prevent a lot owner from obtaining insurance for the lot owner's own benefit.

1634 Section 42. Section **57-8a-405** is enacted to read:

1635 **57-8a-405. Property insurance.**

1636 (1) This section applies to property insurance required under Subsection  
1637 57-8a-403(1)(a).

1638           (2) The property covered by property insurance shall include any property that, under  
1639 the declaration, is required to become common areas.

1640           (3) The total amount of coverage provided by blanket property insurance may not be  
1641 less than 100% of the full replacement cost of the insured property at the time the insurance is  
1642 purchased and at each renewal date, excluding items normally excluded from property  
1643 insurance policies.

1644           (4) Property insurance shall include coverage for any fixture, improvement, or  
1645 betterment installed by a lot owner to an attached dwelling or to a limited common area  
1646 appurtenant to a dwelling on a lot, including a floor covering, cabinet, light fixture, electrical  
1647 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item  
1648 permanently part of or affixed to an attached dwelling or to a limited common area.

1649           (5) Notwithstanding anything in this part and unless otherwise provided in the  
1650 declaration, an association is not required to obtain property insurance for a loss to a dwelling  
1651 that is not physically attached to another dwelling or to a common area structure.

1652           (6) Each lot owner is an insured person under a property insurance policy.

1653           (7) If a loss occurs that is covered by a property insurance policy in the name of an  
1654 association and another property insurance policy in the name of a lot owner:

1655           (a) the association's policy provides primary insurance coverage; and

1656           (b) notwithstanding Subsection (7)(a) and subject to Subsection (8):

1657           (i) a lot owner is responsible for the association's policy deductible; and

1658           (ii) the lot owner's policy applies to that portion of the loss attributable to the  
1659 association's policy deductible.

1660           (8) (a) As used in this Subsection (8):

1661           (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is  
1662 covered by an association's property insurance policy.

1663           (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a  
1664 limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

1665           (iii) "Lot damage percentage" means the percentage of total damage resulting in a  
1666 covered loss that is attributable to lot damage.

1667           (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is  
1668 responsible for an amount calculated by applying the lot damage percentage for that lot to the

1669 amount of the deductible under the association's property insurance policy.

1670 (c) If a lot owner does not pay the amount required under Subsection (8)(b) within 30  
1671 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot,  
1672 or the limited common area appurtenant to the lot, an association may levy an assessment  
1673 against a lot owner for that amount.

1674 (9) An association shall set aside an amount equal to the amount of the association's  
1675 property insurance policy deductible or \$10,000, whichever is less.

1676 (10) (a) An association shall provide notice in accordance with Section 57-8a-215 to  
1677 each lot owner of the lot owner's obligation under Subsection (8) for the association's policy  
1678 deductible and of any change in the amount of the deductible.

1679 (b) An association that fails to provide notice as provided in Subsection (10)(a) is  
1680 responsible for the amount of the deductible increase that the association could have assessed  
1681 to a lot owner under Subsection (8).

1682 (c) An association's failure to provide notice as provided in Subsection (10)(a) may not  
1683 be construed to invalidate any other provision of this part.

1684 (11) If, in the exercise of the business judgment rule, the board determines that a claim  
1685 is likely not to exceed the association's property insurance policy deductible:

1686 (a) the lot owner's policy is considered the policy for primary coverage to the amount  
1687 of the association's policy deductible;

1688 (b) a lot owner who does not have a policy to cover the association's property insurance  
1689 policy deductible is responsible for the loss to the amount of the association's policy deductible,  
1690 as provided in Subsection (8); and

1691 (c) the association need not tender the claim to the association's insurer.

1692 (12) (a) An insurer under a property insurance policy issued to an association shall  
1693 adjust with the association a loss covered under the association's policy.

1694 (b) Notwithstanding Subsection (12)(a), the insurance proceeds for a loss under an  
1695 association's property insurance policy:

1696 (i) are payable to an insurance trustee that the association designates or, if no trustee is  
1697 designated, to the association; and

1698 (ii) may not be payable to a holder of a security interest.

1699 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for

1700 the association, lot owners, and lien holders.

1701 (d) (i) Insurance proceeds shall be disbursed first for the repair or restoration of the  
1702 damaged property.

1703 (ii) After the disbursements described in Subsection (12)(d)(i) are made and the  
1704 damaged property has been completely repaired or restored or the project terminated, any  
1705 surplus proceeds are payable to the association, lot owners, and lien holders.

1706 (13) An insurer that issues a property insurance policy under this part, or the insurer's  
1707 authorized agent, shall issue a certificate or memorandum of insurance to:

1708 (a) the association;

1709 (b) a lot owner, upon the lot owner's written request; and

1710 (c) a holder of a security interest, upon the holder's written request.

1711 (14) A cancellation or nonrenewal of a property insurance policy under this section is  
1712 subject to the procedures stated in Section 31A-21-303.

1713 (15) A board that acquires from an insurer the property insurance required in this  
1714 section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of  
1715 the full replacement cost of the insured property at the time of the loss.

1716 Section 43. Section **57-8a-406** is enacted to read:

1717 **57-8a-406. Liability insurance.**

1718 (1) This section applies to a liability insurance policy required under Subsection  
1719 57-8a-403(1)(b).

1720 (2) A liability insurance policy shall be in an amount determined by the board but not  
1721 less than an amount specified in the declaration or bylaws.

1722 (3) Each lot owner is an insured person under a liability insurance policy that an  
1723 association obtains that insures against liability arising from the lot owner's interest in the  
1724 common areas or from membership in the association.

1725 Section 44. Section **57-8a-407** is enacted to read:

1726 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1727 (1) (a) If a portion of the project for which insurance is required under this part is  
1728 damaged or destroyed, the association shall repair or replace the portion within a reasonable  
1729 amount of time unless:

1730 (i) the project is terminated;



- 1731 (ii) repair or replacement would be illegal under a state statute or local ordinance  
1732 governing health or safety; or
- 1733 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the  
1734 association vote not to rebuild; and
- 1735 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that  
1736 lot that will not be rebuilt votes not to rebuild.
- 1737 (b) If a portion of a project is not repaired or replaced because the project is terminated,  
1738 the termination provisions of applicable law and the governing documents apply.
- 1739 (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a  
1740 common expense.
- 1741 (3) If the entire project is damaged or destroyed and not repaired or replaced:
- 1742 (a) the association shall use the insurance proceeds attributable to the damaged  
1743 common areas to restore the damaged area to a condition compatible with the remainder of the  
1744 project;
- 1745 (b) the association shall distribute the insurance proceeds attributable to lots and  
1746 common areas that are not rebuilt to:
- 1747 (i) the lot owners of the lots that are not rebuilt;
- 1748 (ii) the lot owners of the lots to which those common areas that are not rebuilt were  
1749 allocated; or
- 1750 (iii) lien holders; and
- 1751 (c) the association shall distribute the remainder of the proceeds to all the lot owners or  
1752 lien holders in proportion to the common expense liabilities of all the lots.
- 1753 (4) If the lot owners vote not to rebuild a lot:
- 1754 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote  
1755 as if the lot had been condemned; and
- 1756 (b) the association shall prepare, execute, and submit for recording an amendment to  
1757 the declaration reflecting the reallocations described in Subsection (4)(a).
- 1758 **Section 45. Repealer.**
- 1759 This bill repeals:
- 1760 **Section 57-8-20, Lien for nonpayment of common expenses.**
- 1761 **Section 57-8-29, Insurance.**

- 1762 Section **57-8a-202, Unpaid assessment -- Costs and attorney fees.**
- 1763 Section **57-8a-203, Unpaid assessment -- Lien -- Foreclosure.**
- 1764 Section **57-8a-204, Unpaid assessment -- Utility service -- Right of access and use.**
- 1765 Section **57-8a-205, Unpaid assessment -- Future lease payments.**
- 1766 Section **57-8a-207, Payment of unpaid assessment by encumbrancer.**