

## SB0167S01 compared with SB0167

~~deleted text~~ shows text that was in SB0167 but was deleted in SB0167S01.

inserted text shows text that was not in SB0167 but was inserted into SB0167S01.

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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;

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- ▶ 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
  - insurance;
- ▶ repeals redundant or obsolete provisions; and
- ▶ makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

#### **AMENDS:**

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

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

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

#### **ENACTS:**

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

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

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

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

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

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

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

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

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

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

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

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57-8-53, Utah Code Annotated 1953

57-8-54, Utah Code Annotated 1953

57-8a-212, Utah Code Annotated 1953

57-8a-213, Utah Code Annotated 1953

57-8a-214, Utah Code Annotated 1953

57-8a-215, Utah Code Annotated 1953

57-8a-216, Utah Code Annotated 1953

57-8a-217, Utah Code Annotated 1953

57-8a-218, Utah Code Annotated 1953

57-8a-219, Utah Code Annotated 1953

57-8a-220, Utah Code Annotated 1953

57-8a-221, Utah Code Annotated 1953

~~{ 57-8a-222, Utah Code Annotated 1953~~

{ 57-8a-301, Utah Code Annotated 1953

57-8a-302, Utah Code Annotated 1953

57-8a-303, Utah Code Annotated 1953

57-8a-304, Utah Code Annotated 1953

57-8a-305, Utah Code Annotated 1953

57-8a-306, Utah Code Annotated 1953

57-8a-307, Utah Code Annotated 1953

57-8a-308, Utah Code Annotated 1953

57-8a-309, Utah Code Annotated 1953

57-8a-310, Utah Code Annotated 1953

57-8a-311, Utah Code Annotated 1953

57-8a-401, Utah Code Annotated 1953

57-8a-402, Utah Code Annotated 1953

57-8a-403, Utah Code Annotated 1953

57-8a-404, Utah Code Annotated 1953

57-8a-405, Utah Code Annotated 1953

57-8a-406, Utah Code Annotated 1953

57-8a-407, Utah Code Annotated 1953

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### REPEALS:

**57-8-20**, as last amended by Laws of Utah 2010, Chapter 309

**57-8-29**, as last amended by Laws of Utah 2000, Chapter 99

**57-8a-202**, as enacted by Laws of Utah 2004, Chapter 153

**57-8a-203**, as enacted by Laws of Utah 2004, Chapter 153

**57-8a-204**, as enacted by Laws of Utah 2004, Chapter 153

**57-8a-205**, as enacted by Laws of Utah 2004, Chapter 153

**57-8a-207**, as enacted by Laws of Utah 2004, Chapter 153

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

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) "Common expenses" means:

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

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

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

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

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

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

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

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

(10) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant

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undivided interest, unless the reference is specifically limited to a time period unit.

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

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

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

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

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

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

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

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

(19) "Majority" or "majority of the unit owners," unless otherwise provided in the

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declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

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

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

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

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

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

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

(26) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate

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as defined in Subsection 57-19-2(17).

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

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

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

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

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

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

(2) (a) For every condominium project:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

(e) The initial recorded declaration shall include:

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

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

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of the declaration."

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

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

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

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

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

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

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

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

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

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

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

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

(B) The declaration shall include a statement of any limitations on the option to expand, including a statement as to whether the consent of any unit owners shall be required

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and, a statement as to the method by which consent shall be ascertained, or a statement that there are no such limitations.

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

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

(iv) The declaration shall state:

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

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

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

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

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

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

(viii) With respect to the additional land and to any portion of it that may be added to the condominium project, the declaration shall state the maximum percentage of the aggregate

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land and floor area of all units that may be created on it, the use of which will not or may not be restricted exclusively to residential purposes. However, these statements need not be supplied if none of the units on the land originally within the project are restricted exclusively to residential use.

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

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

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

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

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

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

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

(ii) The declaration shall contain a statement of any limitations on the option to contract, including a statement as to whether the consent of any unit owners shall be required,

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and if so, a statement as to the method by which this consent shall be ascertained. The declaration may also contain a statement that there are no such limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) a unit owner in the military for the period of the unit owner's deployment;
- (B) a unit occupied by a unit owner's parent, child, or sibling;
- (C) a unit owner whose employer has relocated the unit owner for no less than two

years; or

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

- (I) a current resident of the unit; or
- (II) the parent, child, or sibling of the current resident of the unit;

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

(A) the unit owner occupies the unit; or

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

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

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

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

(d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the

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following occur:

(i) the conveyance, sale, or other transfer of a unit by deed;  
(ii) the granting of a life estate in the unit; or  
(iii) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

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

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

(g) This section does not apply to:

(i) a condominium project containing a time period unit as defined in Section 57-8-3;  
(ii) any other form of timeshare interest as defined in Section 57-19-2; or  
(iii) a condominium project in which the initial declaration is recorded before May 12, 2009.

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

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

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

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

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

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

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

(3) (a) If provided in the declaration, articles, bylaws, or rules, an association of unit



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owners may provide notice by electronic means, including text message, email, or the website of the association of unit owners.

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

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

### **57-8-43. Insurance.**

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

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

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

(b) issued to or renewed by:

(i) a unit owner; or

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

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

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

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

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

(5) (a) The declaration or bylaws may require the association of unit owners to carry

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other types of insurance in addition to those described in Subsection (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Property insurance shall include coverage for any fixture, improvement, or betterment installed by a unit owner to a unit or to a limited common area, including a floor

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covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common element.

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

(i) another unit; or

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

(f) Each unit owner is an insured person under a property insurance policy.

(g) If a loss occurs that is covered by a property insurance policy in the name of an association of unit owners and another property insurance policy in the name of a unit owner:

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

(ii) notwithstanding Subsection (9)(g)(i), the unit owner's policy applies to that portion of the loss attributable to the policy deductible of the association of unit owners.

(h) (i) As used in this Subsection (9)(h):

(A) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of an association of unit owners.

(B) "Unit damage" means damage to a unit or to a limited common area or facility applicable to that unit, or both.

(C) "Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to unit damage.

(ii) A unit owner who owns a unit that has suffered unit damage as part of a covered loss is responsible for an amount calculated by applying the unit damage percentage for that unit to the amount of the deductible under the property insurance policy of the association of unit owners.

(iii) If a unit owner does not pay the amount required under Subsection (9)(h)(ii) within 30 days after substantial completion of the repairs to the unit, an association of unit owners may levy an assessment against the unit owner for that amount.

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

(j) (i) An association of unit owners shall provide notice in accordance with Section

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57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)(h) for the association's policy deductible and of any change in the amount of the deductible.

(ii) An association of unit owners that fails to provide notice as provided in Subsection (9)(j)(i) is responsible for the amount of the deductible increase that the association of unit owners could have assessed to a unit owner under Subsection (9)(h).

(iii) The failure of an association of unit owners to provide notice as provided in Subsection (9)(j)(i) may not be construed to invalidate any other provision of this section.

(k) If, in the exercise of the business judgment rule, the management committee determines that a claim is likely not to exceed the property insurance policy deductible of the association of unit owners:

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

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

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

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

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

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

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

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

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

(B) After the disbursements described in Subsection (9)(l)(iv)(A) are made and the damaged property has been completely repaired or restored or the project terminated, any

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surplus proceeds are payable to the association of unit owners, unit owners, and lien holders.

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

(i) the association of unit owners;

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

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

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

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

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

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

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

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

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

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

(i) an assessment;

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

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) this chapter; or

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

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

(B) this chapter.

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

(1)(a):

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

and

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

(2) A unit owner's acceptance of the owner's interest in a unit constitutes a simultaneous conveyance of the unit in trust, with power of sale, to the trustee designated as provided in this section~~†~~

~~—— (a) † for the purpose of securing payment of all amounts due under the declaration and this chapter~~†~~; and~~

~~—— (b) whether or not a conveyance in trust is included in the declaration or another recorded document~~†~~.~~

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

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

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

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

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

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

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

(1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association

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of unit owners shall provide notice to the owner of the unit that is the intended subject of the nonjudicial foreclosure.

(2) The notice under Subsection (1):

(a) shall:

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

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

(iii) be in substantially the following form:

"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

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

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

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

(3) An association of unit owners may not use a nonjudicial foreclosure to enforce a



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lien if the unit owner mails the association of unit owners a written demand for judicial foreclosure:

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

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

and

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

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

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

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

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

(b) this chapter.

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

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

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

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

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

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

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

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

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collecting the judgment.

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

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

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

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

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

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

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

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

(a) before commencement of the action; or

(b) during the pendency of the action; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) A delinquent unit owner may submit a written request to the management committee for an informal hearing to dispute the assessment.

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

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

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

(a) conducts the hearing; and

(b) enters a final decision.

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

(8) An association of unit owners may:

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

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

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

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

(1) As used in this section:

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

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

and

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

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

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

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

(a) if:

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

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

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

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

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

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

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

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

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lease payments; and

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

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

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

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

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

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

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

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

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

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

(b) A unit owner:

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

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

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

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

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

(i) the amount owing is paid; and

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

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

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

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

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

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

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

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

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

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

As used in this chapter:

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

(i) by the association;

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

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

(b) "Assessment" includes:

(i) a common expense[-]; and

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

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

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

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

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

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

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

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

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

(a) owns;

(b) maintains;

(c) repairs; or

(d) administers.

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

(6) "Declarant":

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

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

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

(i) exercise powers; or

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

(b) "Governing documents" includes:

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- (i) articles of incorporation;
- (ii) bylaws;
- (iii) a plat;
- (iv) a declaration of covenants, conditions, and restrictions; and
- (v) rules of the association.

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

(a) for the nonpayment of an assessment; and

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

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

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

(a) by a person or persons other than the owner; and

(b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

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

~~(8)~~ (11) "Lot" means:

(a) a lot, parcel, plot, or other division of land:

(i) designated for separate ownership or occupancy; and

(ii) (A) shown on a recorded subdivision plat; or

(B) the boundaries of which are described in a recorded governing document; or

(b) (i) a unit in a condominium association if the condominium association is a part of a development; or

(ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

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

(a) for the nonpayment of an assessment; and

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

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

~~(9)~~ (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or



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otherwise to primarily residential or recreational purposes.

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

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

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

(a) the name of the project;

(b) the name of the association;

(c) a statement that the project is not a cooperative;

(d) a statement indicating any portions of the project that contain condominiums

governed by Chapter 8, Condominium Ownership Act;

(e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;

~~(f)~~(f) the name of each county in which any part of the project is located;

~~(ff)~~(g) a legally sufficient description of the real estate included in the project;

~~(fg)~~(h) a description of any limited common areas and any real estate that is or is

required to become common areas;

~~{~~ (h) (i) a description of any right to convert lots to common areas or convert common areas to lots, withdraw real estate from the project, or add real estate to the project; and

~~——~~ (ii) for each right under Subsection (1)(h)(i), a legally sufficient description of the real estate to which the right applies;

~~——~~ (i) if a development right may be exercised with respect to different parcels of real estate at different times;

~~——~~ (i) a statement of that right;

~~——~~ (ii) (A) a statement fixing the boundaries of those parcels and regulating the order in which the parcels may be subjected to the exercise of the right; or

~~——~~ (B) a statement that a fixing of boundaries and regulating of the order described in Subsection (1)(h)(ii)(A) are not assured;

~~‡~~ (ff)i) any restriction on the alienation of a lot, including a restriction on leasing; and

~~(fk)~~(j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i)

or (iv); and

(ii) the following statement: "The declarant hereby conveys and warrants pursuant to

U.C.A. Sections 57-1-20 and 57-8a-402 to (name of trustee), with power of sale, the lot and all

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improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."

(2) A declaration may contain any other information the declarant considers appropriate, including any restriction on the use of a lot, the number of persons who may occupy a lot, or other qualifications of a person who may occupy a lot.

(3) The location of a limited common area or real estate described in Subsection (1)(g) may be shown on a subdivision plat.

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

~~{~~ ~~57-8a-213. Exercise of development rights.~~

~~(1) (a) To exercise a development right reserved in a declaration under Subsection 57-8a-212(1)(h), the declarant shall prepare, execute, and submit for recording in the county recorder's office:~~

~~(i) an amendment to the declaration if the purpose of the exercise of a development right is:~~

~~(A) to convert lots to common areas or to convert common areas to lots; or~~

~~(B) to withdraw real estate from the project; or~~

~~(ii) a supplement to the declaration if the purpose of the exercise of a development right is to add real estate to the project.~~

~~(b) An amendment or supplement to the declaration or plat shall describe any common areas and limited common areas created by the amendment or supplement to the declaration or plat and designate the lot to which each limited common area is allocated.~~

~~(2) This section does not extend the time limit stated in the declaration under Subsection 57-8a-212(1)(h) for the exercise of a development right.~~

~~(3) A development right may be reserved to the declarant on real estate added to the project if:~~

~~(a) the supplement to the declaration adding the real estate includes the information required in Subsection 57-8a-212(1)(h); and~~

~~(b) the plat complies with applicable requirements under, as applicable, Title 10, Chapter 9a, Part 6, Subdivisions, or Title 17, Chapter 27a, Part 6, Subdivisions.~~

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

~~{~~ ~~57-8a-214;~~ **57-8a-213. Board action to enforce governing documents --**

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### Parameters.

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

- (i) whether to compromise a claim made by or against the board or the association; and
- (ii) whether to pursue a claim for an unpaid assessment.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notice that an association provides by a method not referred to in Subsection (1)

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constitutes fair and reasonable notice if:

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

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

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

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

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

**57-8a-215. ~~Fair and reasonable notice:~~**

~~(1) Notice that an association provides by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, regardless of whether or not~~ **Budget.**

~~(1) At least annually the board shall prepare and adopt a budget for the association~~ is a nonprofit corporation:

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

~~(a) the method is authorized in~~ :

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

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

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

(b) the vote is taken at a special meeting called for that purpose by lot owners under the declaration, articles, ~~bylaws, or rules; and~~

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

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

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

(4) If a budget is disapproved under Subsection (3), the budget that the board last

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adopted that was not disapproved by members continues as the budget until and unless the board presents another budget to members and that budget is not disapproved.

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

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

### 57-8a-216. ~~f~~ Budget:

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

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

~~— (3) A budget is disapproved if within 45 days after} Association bylaws -- Recording required -- Bylaw requirements.~~

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

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

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

(a) the number of board members;

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

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

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

(A) qualifications;

(B) powers and duties; and

(C) terms of office;

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

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

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

(f) the officers who may prepare, execute, certify, and record amendments to the

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declaration on behalf of the association:

(g) a method for the board or lot owners to amend the bylaws, consistent with Section 16-6a-1010; and

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

(i) meetings;

(ii) voting requirements; and

(iii) quorum requirements.

(3) An association shall file any amended bylaws for recording in the same manner as the association is required to file the initial bylaws for recording under Subsection (f2) at which the board presents the adopted budget:

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

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

~~— (4) If a budget is disapproved under Subsection (3), the budget that the board last adopted that was not disapproved by members continues as the budget until and unless the board presents another budget to members and that budget is not disapproved; 1).~~

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

**57-8a-217. Association {bylaws -- Recording required -- Bylaw requirements:**

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

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

~~— (a) the number of board members;~~

~~— (b) the title of each} **rules, including design criteria -- Requirements and limitations relating to board's action on rules and design criteria -- Vote of disapproval.**~~

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

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~~officers;~~association.

~~(c) the manner and method of officer election by the board or, if;~~b) A board's action under Subsection (1)(a) is subject to:

(i) this section;

(ii) any limitation that the declaration requires by the lot owners;

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

~~(A) qualifications;~~

~~(B) powers and duties; and~~

~~(C) terms of office;~~

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

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

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

~~(f) the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of;~~imposes on the authority stated in Subsection (1)(a):

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

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

(A) the association;~~;~~

~~(g) a method for the board or lot owners to amend the bylaws, consistent with Section 16-6a-1010; and~~

~~(h) subject to the provisions of the declaration and unless the declaration or this chapter requires that a provision appear in a declaration, any other matter that is necessary or appropriate for conducting the affairs;~~ and

(B) the lot owners in the association; and

(v) the right of the lot owners or declarant to disapprove the action under Subsection

(4).

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

~~(i) meetings;~~

~~(ii) voting requirements; and~~

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~~(iii) quorum requirements.~~

~~(3) An association shall file any amended bylaws for recording; the board shall:~~

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

~~(b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection (1)(a); and~~

~~(c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board meeting.~~

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

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

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

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

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

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

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

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

~~(5) (a) The board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition, in the same manner as the ~~association is required to file the initial bylaws for recording~~ declaration, articles, or bylaws provide for a special meeting, for the meeting to be held.~~

~~(b) Upon the board receiving a petition under Subsection ~~(4)~~:~~

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



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~~57-8a-218. Association rules, including design criteria -- Requirements and limitations relating to board's action on rules and design criteria -- Vote of disapproval.~~

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

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

~~(i) this section;~~

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

~~(iii) the limitation on rules in Sections 57-8a-219 and 57-8a-220;~~

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

~~(A) the association; and~~

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

~~(v) the right of the lot owners or declarant to disapprove the action under Subsection (4);~~

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

~~(a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section 57-8a-215, that the board is considering a change to a rule or design criterion;~~

~~(b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection (1)(a); and~~

~~(c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section 57-8a-215 within 15 days after the date of the board meeting;~~

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

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

~~(4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if~~

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~~within 60 days after the date of the board meeting where the action was taken:~~

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

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

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

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

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

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

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

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

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

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

Section ~~{24}~~23. Section ~~{57-8a-219}~~57-8a-218 is enacted to read:

~~57-8a-219~~57-8a-218. **Equal treatment by rules required -- Limits on association rules and design criteria.**

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

~~(b) ~~{(i)}~~ Notwithstanding Subsection (1)(a), a rule may:~~

~~~~{(A)}~~i) vary according to the level and type of service that the association provides to lot owners; and~~

~~~~{(B)}~~ii) differ between residential and nonresidential uses.~~

~~{ — (ii) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under Section 57-8a-218 if the declaration reserves the right to exempt to the declarant.~~

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

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

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

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

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

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

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

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

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

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

(A) size and facilities; and

(B) fair use of the common areas.

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

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

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

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

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

(C) generates excessive noise or traffic;

(D) creates unsightly conditions visible from outside the dwelling;

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

(F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's dwelling, the common areas, or limited common areas.

(c) If permitted by law, an association may adopt rules described in Subsection (5)(b) that affect the use of or behavior inside the dwelling.

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(6) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.

(b) Notwithstanding Subsection (6)(a), an association may:

(i) change the common areas available to a lot owner;

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

(iii) deny use privileges to a lot owner who:

(A) is delinquent in paying assessments;

(B) abuses the common areas; or

(C) violates the governing documents.

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

(i) alters the method of levying assessments; or

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

(7) (a) Subject to Subsection (7)(b), a rule may not:

(i) prohibit the transfer of a lot; or

(ii) require the consent of the association or board to transfer a lot.

(b) Unless contrary to a declaration, a rule may require a minimum lease term.

(8) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

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

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

(ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (8)(a).

(9) A rule or action by the association or action by the board may not unreasonably impede a declarant's right to develop:

(a) the project; or

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

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

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

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

(11) A rule may not divest a lot owner of the right to proceed in accordance with a

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completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.

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

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

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

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

(ii) a service provided to a lot owner;

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

~~(d) establish a reasonable administrative fee associated with the sale of a lot; or~~

~~(e) or~~

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

(13) A rule shall be reasonable.

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

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

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

### 57-8a-219. Display of the flag.

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

(2) (a) Notwithstanding Subsection (1), an association may establish reasonable restrictions on the size of a flag and on the place, duration, and manner of placement or display of a flag if the restrictions are necessary to protect a substantial interest of the association.

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

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

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

57-8a-220. ~~f~~ Display of the flag.

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

~~— (2) (a) Notwithstanding Subsection (1), an association may establish reasonable restrictions on the size of a flag and on the place, duration, and manner of placement or display of a flag if the restrictions are necessary to protect a substantial interest of:~~ Creditor approval may be required for lot owner or association action under declaration -- Creditor approval presumed in certain circumstances -- Notice to creditor or creditor's successor.

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

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

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

(b) ~~{In an action that an association brings for a violation of a restriction}~~ A condition under Subsection ~~(2)(a)~~ 1(a) may not:

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

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

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

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

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

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

(d) This Subsection (1) applies to:

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

(ii) documents created and recorded before, on, or after May 10, 2011.

(2) Subject to this chapter and applicable law, a lender who has extended credit to an association secured by an assignment of income or an encumbrance of the common areas may enforce the lender's security agreement as provided in the agreement.

(3) (a) Subject to Subsection (4), a security holder's consent that is required under Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:

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

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

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

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

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

(4) If a security holder responds in writing within 60 days after the association sends notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to another person, the association ~~bears the burden of proof that the restriction is necessary to protect a substantial interest of~~:

(a) shall:

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

(ii) if no address is provided:

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

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(B) send notice by certified or registered mail to the person at the address that the association;

~~(3) An association may restrict the display of a flag on the common areas;~~ finds under Subsection (4)(a)(ii)(A); and

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

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

~~{ 57-8a-221. Creditor approval may be required for lot owner or association action under declaration -- Creditor approval presumed in certain circumstances -- Notice to creditor or creditor's successor:~~

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

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

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

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

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

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

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

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

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

~~(ii) requiring the association to increase an assessment at the lender's direction by an~~



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~~amount reasonably necessary to pay the loan in accordance with the loan terms:~~

~~—— (d) This Subsection (1) applies to:~~

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

~~—— (ii) documents created and recorded before, on, or after May 10, 2011.~~

~~—— (2) Subject to this chapter and applicable law, a lender who has extended credit to an association secured by an assignment of income or an encumbrance of the common areas may enforce the lender's security agreement as provided in the agreement.~~

~~—— (3) (a) Subject to Subsection (4), a security holder's consent that is required under Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:~~

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

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

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

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

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

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

~~—— (a) shall:~~

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

~~or~~

~~—— (ii) if no address is provided:~~

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

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

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

~~Section 27. Section 57-8a-222 is enacted to read:~~

† ~~{57-8a-222}~~57-8a-221. **Reincorporation of terminated or dissolved association.**

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

(2) Upon the association's reincorporation under Subsection (1)~~{1}~~:

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

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

Section ~~{28}~~27. Section **57-8a-301** is enacted to read:

### **Part 3. Collection of Assessments**

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

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

(i) an assessment;

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

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

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

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

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

(2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)

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is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.

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

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

(b) in the declaration, if the declaration provides for a different interest rate.

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

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

(b) a first security interest on the lot recorded before a recorded notice of lien by or on behalf of the association; or

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

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

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

Section ~~{29}~~28. Section **57-8a-302** is enacted to read:

### **57-8a-302. Enforcement of a lien.**

(1) (a) To enforce a lien established under Section 57-8a-301, an association may:

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

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

(B) this part; or

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

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

(B) this part.

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

(1)(a):

(i) the association is considered to be the beneficiary under a trust deed; and

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

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(2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this section~~f~~:

~~— (a) } for the purpose of securing payment of all amounts due under the declaration and this chapter~~f~~; and~~

~~— (b) whether or not a conveyance in trust is included in the declaration or another recorded document~~f~~.~~

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

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

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

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

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

Section ~~30~~29. Section **57-8a-303** is enacted to read:

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

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

(2) The notice under Subsection (1):

(a) shall:

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

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

## SB0167S01 compared with SB0167

of nonjudicial foreclosure:

(iii) be in substantially the following form:

"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND

JUDICIAL FORECLOSURE

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

(iv) be ~~mailed~~ sent to the lot owner ~~by certified mail, return receipt requested~~; and

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

(3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot owner mails the association a written demand for judicial foreclosure:

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

(b) to the address stated in the association's notice under Subsection (1); and

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

Section ~~31~~ 30. Section **57-8a-304** is enacted to read:

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

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

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

(b) this part.

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

Section ~~{32}~~31. Section **57-8a-305** is enacted to read:

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

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

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

Section ~~{33}~~32. Section **57-8a-306** is enacted to read:

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

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

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

Section ~~{34}~~33. Section **57-8a-307** is enacted to read:

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

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

Section ~~{35}~~34. Section **57-8a-308** is enacted to read:

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

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

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

(a) before commencement of the action; or

(b) during the pendency of the action; and

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

Section ~~36~~35. Section **57-8a-309** is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) A delinquent lot owner may submit a written request to the board for an

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informal hearing to dispute the assessment.

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

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

(6) If a delinquent lot owner requests a hearing, the association may not terminate a utility service or right of access to and use of recreational facilities until after the board:

(a) conducts the hearing; and

(b) enters a final decision.

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

(8) An association may:

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

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

Section ~~37~~36. Section **57-8a-310** is enacted to read:

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

(1) As used in this section:

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

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

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

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

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

(2) Subject to Subsections (3) and (4), the board may require a tenant under a lease



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with a lot owner to pay the association all future lease payments due to the lot owner:

(a) if:

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

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

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

(c) until the association is paid the amount owing.

(3) (a) Before requiring a tenant to pay lease payments to the association under Subsection (2), the association's manager or board shall give the lot owner notice, in accordance with the declaration, bylaws, or association rules.

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

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

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

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

(4) (a) If a lot owner fails to pay the amount owing within 15 days after the association's manager or board gives the lot owner notice under Subsection (3), the association's manager or board may exercise the association's rights under Subsection (2) by delivering a written notice to the tenant.

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

(i) due to the lot owner's failure to pay an assessment within the required time, the board has notified the lot owner of the board's intent to collect all lease payments until the amount owing is paid;

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

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

(c) The manager or board shall mail a copy of the notice to the lot owner.

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

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

(ii) until the association notifies the tenant under Subsection (6) that the amount owing is paid.

(b) A lot owner:

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

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

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

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

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

(i) the amount owing is paid; and

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

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

Section ~~38~~37. Section **57-8a-311** is enacted to read:

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

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

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

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

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

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Section ~~{39}~~38. Section **57-8a-401** is enacted to read:

### Part 4. Insurance

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

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

Section ~~{40}~~39. Section **57-8a-402** is enacted to read:

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

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

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

(b) issued to or renewed by:

(i) a lot owner; or

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

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

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

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

(b) the project includes attached dwellings; and

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

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

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

Section ~~{41}~~40. Section **57-8a-403** is enacted to read:

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

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

(a) subject to Section 57-8a-405, property insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks of direct physical loss commonly insured against,

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including fire and extended coverage perils; and

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

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

Section ~~{42}~~41. Section **57-8a-404** is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{43}~~42. Section **57-8a-405** is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the association's property insurance policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An insurance trustee or an association shall hold any insurance proceeds in trust for the association, lot owners, and lien holders.

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

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

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

(a) the association;

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

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

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

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

Section ~~{44}~~43. Section **57-8a-406** is enacted to read:

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

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

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

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

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Section ~~{45}~~44. Section 57-8a-407 is enacted to read:

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

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

(i) the project is terminated;

(ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or

(iii) (A) at least 75% of the allocated voting interests of the lot owners in the association vote not to rebuild; and

(B) each owner of a dwelling on a lot and the limited common area appurtenant to that lot that will not be rebuilt votes not to rebuild.

(b) If a portion of a project is not repaired or replaced because the project is terminated, the termination provisions of applicable law and the governing documents apply.

(2) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

(3) If the entire project is damaged or destroyed and not repaired or replaced:

(a) the association shall use the insurance proceeds attributable to the damaged common areas to restore the damaged area to a condition compatible with the remainder of the project;

(b) the association shall distribute the insurance proceeds attributable to lots and common areas that are not rebuilt to:

(i) the lot owners of the lots that are not rebuilt;

(ii) the lot owners of the lots to which those common areas that are not rebuilt were allocated; or

(iii) lien holders; and

(c) the association shall distribute the remainder of the proceeds to all the lot owners or lien holders in proportion to the common expense liabilities of all the lots.

(4) If the lot owners vote not to rebuild a lot:

(a) the lot's allocated interests are automatically reallocated upon the lot owner's vote as if the lot had been condemned; and



## SB0167S01 compared with SB0167

(b) the association shall prepare, execute, and submit for recording an amendment to the declaration reflecting the reallocations described in Subsection (4)(a).

Section ~~{46}~~45. **Repealer.**

This bill repeals:

Section **57-8-20, Lien for nonpayment of common expenses.**

Section **57-8-29, Insurance.**

Section **57-8a-202, Unpaid assessment -- Costs and attorney fees.**

Section **57-8a-203, Unpaid assessment -- Lien -- Foreclosure.**

Section **57-8a-204, Unpaid assessment -- Utility service -- Right of access and use.**

Section **57-8a-205, Unpaid assessment -- Future lease payments.**

Section **57-8a-207, Payment of unpaid assessment by encumbrancer.**

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**Legislative Review Note**

~~as of 2-18-11 6:17 AM~~

~~Office of Legislative Research and General Counsel~~