

Representative Gage Froerer proposes the following substitute bill:

CONDOMINIUM AND COMMUNITY ASSOCIATION

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Gage Froerer

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies and enacts provisions of the Condominium Ownership Act and the Community Association Act;
- ▶ enacts provisions relating to making changes to adjoining units or lots acquired by the same owner;
- ▶ enacts provisions relating to the responsibility for maintenance, repair, and replacement of common areas and units or lots;
- ▶ modifies reserve fund provisions;
- ▶ enacts a provision allowing management committee members and officers to be indemnified or to have their liability limited;
- ▶ enacts provisions allowing a preexisting association to make a later-enacted provision of law applicable to the association;
- ▶ provides a limit on plan fees;



- 26 ▶ modifies provisions relating to the organization of an association as a nonprofit
- 27 corporation or other entity;
- 28 ▶ modifies insurance provisions;
- 29 ▶ enacts a provision relating to the consolidation of associations;
- 30 ▶ enacts provisions relating to application of the rule against perpetuities and the rule
- 31 against unreasonable restraints on alienation;
- 32 ▶ enacts a provision relating to eminent domain of property that is part of a
- 33 community association; and
- 34 ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides effective dates.

39 This bill coordinates with S.B. 64, Homeowner Association Reserve Account

40 Amendments, by providing substantive and technical amendments.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **57-8-3**, as last amended by Laws of Utah 2012, Chapter 166

44 **57-8-7**, as last amended by Laws of Utah 2003, Chapter 265

45 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369

46 **57-8-23**, as enacted by Laws of Utah 1963, Chapter 111

47 **57-8-40**, as enacted by Laws of Utah 2008, Chapter 291

48 **57-8-43**, as enacted by Laws of Utah 2011, Chapter 355

49 **57-8a-102**, as last amended by Laws of Utah 2011, Chapter 355

50 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369

51 **57-8a-212**, as enacted by Laws of Utah 2011, Chapter 355

52 **57-8a-220**, as enacted by Laws of Utah 2011, Chapter 355

53 **57-8a-402**, as enacted by Laws of Utah 2011, Chapter 355

54 **57-8a-403**, as enacted by Laws of Utah 2011, Chapter 355

55 **57-8a-404**, as enacted by Laws of Utah 2011, Chapter 355

56 **57-8a-405**, as last amended by Laws of Utah 2012, Chapter 369

- 57 **57-8a-406**, as enacted by Laws of Utah 2011, Chapter 355
- 58 **57-8a-407**, as enacted by Laws of Utah 2011, Chapter 355
- 59 **76-6-206**, as last amended by Laws of Utah 2010, Chapter 334

60 ENACTS:

- 61 **57-8-4.5**, Utah Code Annotated 1953
- 62 **57-8-6.7**, Utah Code Annotated 1953
- 63 **57-8-10.3**, Utah Code Annotated 1953
- 64 **57-8-10.5**, Utah Code Annotated 1953
- 65 **57-8-55**, Utah Code Annotated 1953
- 66 **57-8a-107**, Utah Code Annotated 1953
- 67 **57-8a-108**, Utah Code Annotated 1953
- 68 **57-8a-109**, Utah Code Annotated 1953
- 69 **57-8a-222**, Utah Code Annotated 1953
- 70 **57-8a-223**, Utah Code Annotated 1953
- 71 **57-8a-224**, Utah Code Annotated 1953
- 72 **57-8a-501**, Utah Code Annotated 1953
- 73 **57-8a-502**, Utah Code Annotated 1953
- 74 **57-8a-601**, Utah Code Annotated 1953

75 **Utah Code Sections Affected by Coordination Clause:**

- 76 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369
- 77 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369



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

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

81 **57-8-3. Definitions.**

82 As used in this chapter:

- 83 (1) "Assessment" means any charge imposed by the association, including:
 - 84 (a) common expenses on or against a unit owner pursuant to the provisions of the
 - 85 declaration, bylaws, or this chapter; and
 - 86 (b) an amount that an association of unit owners assesses to a unit owner under
- 87 Subsection 57-8-43(9)(~~h~~)(g).

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

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

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

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

92 property.

93 (4) "Commercial condominium project" means a condominium project that has no

94 residential units within the project.

95 [~~(4)~~] (5) "Common areas and facilities" unless otherwise provided in the declaration or

96 lawful amendments to the declaration means:

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

98 simple;

99 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,

100 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

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

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

103 (e) installations of central services such as power, light, gas, hot and cold water,

104 heating, refrigeration, air conditioning, and incinerating;

105 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all

106 apparatus and installations existing for common use;

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

108 declaration; and

109 (h) all other parts of the property necessary or convenient to its existence, maintenance,

110 and safety, or normally in common use.

111 [~~(5)~~] (6) "Common expenses" means:

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

113 (b) expenses of administration, maintenance, repair, or replacement of the common

114 areas and facilities;

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

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

117 bylaws.

118 [~~(6)~~] (7) "Common profits," unless otherwise provided in the declaration or lawful

119 amendments to the declaration, means the balance of all income, rents, profits, and revenues
120 from the common areas and facilities remaining after the deduction of the common expenses.

121 ~~[(7)]~~ (8) "Condominium" means the ownership of a single unit in a multiunit project
122 together with an undivided interest in common in the common areas and facilities of the
123 property.

124 ~~[(8)]~~ (9) "Condominium plat" means a plat or plats of survey of land and units prepared
125 in accordance with Section 57-8-13.

126 ~~[(9)]~~ (10) "Condominium project" means a real estate condominium project; a plan or
127 project whereby two or more units, whether contained in existing or proposed apartments,
128 commercial or industrial buildings or structures, or otherwise, are separately offered or
129 proposed to be offered for sale. Condominium project also means the property when the
130 context so requires.

131 ~~[(10)]~~ (11) "Condominium unit" means a unit together with the undivided interest in
132 the common areas and facilities appertaining to that unit. Any reference in this chapter to a
133 condominium unit includes both a physical unit together with its appurtenant undivided interest
134 in the common areas and facilities and a time period unit together with its appurtenant
135 undivided interest, unless the reference is specifically limited to a time period unit.

136 ~~[(11)]~~ (12) "Contractible condominium" means a condominium project from which one
137 or more portions of the land within the project may be withdrawn in accordance with
138 provisions of the declaration and of this chapter. If the withdrawal can occur only by the
139 expiration or termination of one or more leases, then the condominium project is not a
140 contractible condominium within the meaning of this chapter.

141 ~~[(12)]~~ (13) "Convertible land" means a building site which is a portion of the common
142 areas and facilities, described by metes and bounds, within which additional units or limited
143 common areas and facilities may be created in accordance with this chapter.

144 ~~[(13)]~~ (14) "Convertible space" means a portion of the structure within the
145 condominium project, which portion may be converted into one or more units or common areas
146 and facilities, including limited common areas and facilities in accordance with this chapter.

147 ~~[(14)]~~ (15) "Declarant" means all persons who execute the declaration or on whose
148 behalf the declaration is executed. From the time of the recordation of any amendment to the
149 declaration expanding an expandable condominium, all persons who execute that amendment

150 or on whose behalf that amendment is executed shall also come within this definition. Any
151 successors of the persons referred to in this subsection who come to stand in the same relation
152 to the condominium project as their predecessors also come within this definition.

153 ~~[(15)]~~ (16) "Declaration" means the instrument by which the property is submitted to
154 the provisions of this act, as it from time to time may be lawfully amended.

155 ~~[(16)]~~ (17) "Expandable condominium" means a condominium project to which
156 additional land or an interest in it may be added in accordance with the declaration and this
157 chapter.

158 (18) "Governing documents":

159 (a) means a written instrument by which an association of unit owners may:

160 (i) exercise powers; or

161 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
162 association of unit owners; and

163 (b) includes:

164 (i) articles of incorporation;

165 (ii) bylaws;

166 (iii) a plat;

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

168 (v) rules of the association of unit owners.

169 ~~[(17)]~~ (19) "Leasehold condominium" means a condominium project in all or any
170 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
171 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
172 time. A condominium project including leased land, or an interest in the land, upon which no
173 units are situated or to be situated is not a leasehold condominium within the meaning of this
174 chapter.

175 ~~[(18)]~~ (20) "Limited common areas and facilities" means those common areas and
176 facilities designated in the declaration as reserved for use of a certain unit or units to the
177 exclusion of the other units.

178 ~~[(19)]~~ (21) "Majority" or "majority of the unit owners," unless otherwise provided in
179 the declaration or lawful amendments to the declaration, means the owners of more than 50%
180 in the aggregate in interest of the undivided ownership of the common areas and facilities.

181 [~~(20)~~] (22) "Management committee" means the committee as provided in the
182 declaration charged with and having the responsibility and authority to make and to enforce all
183 of the reasonable rules covering the operation and maintenance of the property.

184 (23) "Mixed-use condominium project" means a condominium project that has both
185 residential and commercial units in the condominium project.

186 [~~(21)~~] (24) "Par value" means a number of dollars or points assigned to each unit by the
187 declaration. Substantially identical units shall be assigned the same par value, but units located
188 at substantially different heights above the ground, or having substantially different views, or
189 having substantially different amenities or other characteristics that might result in differences
190 in market value, may be considered substantially identical within the meaning of this
191 subsection. If par value is stated in terms of dollars, that statement may not be considered to
192 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
193 fair market transaction at a different figure may affect the par value of any unit, or any
194 undivided interest in the common areas and facilities, voting rights in the unit owners'
195 association, liability for common expenses, or right to common profits, assigned on the basis
196 thereof.

197 [~~(22)~~] (25) "Person" means an individual, corporation, partnership, association, trustee,
198 or other legal entity.

199 [~~(23)~~] (26) "Property" means the land, whether leasehold or in fee simple, the building,
200 if any, all improvements and structures thereon, all easements, rights, and appurtenances
201 belonging thereto, and all articles of personal property intended for use in connection
202 therewith.

203 [~~(24)~~] (27) "Record," "recording," "recorded," and "recorder" have the meaning stated
204 in Title 57, Chapter 3, Recording of Documents.

205 [~~(25)~~] (28) "Size" means the number of cubic feet, or the number of square feet of
206 ground or floor space, within each unit as computed by reference to the record of survey map
207 and rounded off to a whole number. Certain spaces within the units including attic, basement,
208 or garage space may be omitted from the calculation or be partially discounted by the use of a
209 ratio, if the same basis of calculation is employed for all units in the condominium project and
210 if that basis is described in the declaration.

211 [~~(26)~~] (29) "Time period unit" means an annually recurring part or parts of a year

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

214 ~~[(27)]~~ (30) "Unit" means either a separate physical part of the property intended for any
215 type of independent use, including one or more rooms or spaces located in one or more floors
216 or part or parts of floors in a building or a time period unit, as the context may require. A
217 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
218 proposed condominium unit under an expandable condominium project, not constructed, is a
219 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

220 ~~[(28)]~~ (31) "Unit number" means the number, letter, or combination of numbers and
221 letters designating the unit in the declaration and in the record of survey map.

222 ~~[(29)]~~ (32) "Unit owner" means the person or persons owning a unit in fee simple and
223 an undivided interest in the fee simple estate of the common areas and facilities in the
224 percentage specified and established in the declaration or, in the case of a leasehold
225 condominium project, the person or persons whose leasehold interest or interests in the
226 condominium unit extend for the entire balance of the unexpired term or terms.

227 Section 2. Section **57-8-4.5** is enacted to read:

228 **57-8-4.5. Removing or altering partition between adjoining units.**

229 (1) Subject to the declaration, a unit owner may, after acquiring an adjoining unit that
230 shares a common wall with the unit owner's unit:

231 (a) remove or alter a partition between the unit owner's unit and the acquired unit, even
232 if the partition is entirely or partly common areas and facilities; or

233 (b) create an aperture to the adjoining unit or portion of a unit.

234 (2) A unit owner may not take an action under Subsection (1) if the action would:

235 (a) impair the structural integrity or mechanical systems of the building or either unit;

236 (b) reduce the support of any portion of the common areas and facilities or another
237 unit; or

238 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
239 government land use ordinance, or a building code.

240 (3) The management committee may require a unit owner to submit, at the unit owner's
241 expense, a registered professional engineer's or registered architect's opinion stating that a
242 proposed change to the unit owner's unit will not:

- 243 (a) impair the structural integrity or mechanical systems of the building or either unit;
- 244 (b) reduce the support or integrity of common areas and facilities; or
- 245 (c) compromise structural components.

246 (4) The management committee may require a unit owner to pay all of the legal and
247 other expenses of the association of unit owners related to a proposed alteration to the unit or
248 building under this section.

249 (5) An action under Subsection (1) does not change an assessment or voting right
250 attributable to the unit owner's unit or the acquired unit, unless the declaration provides
251 otherwise.

252 Section 3. Section **57-8-6.7** is enacted to read:

253 **57-8-6.7. Limit on fee for approval of plans.**

254 (1) As used in this section:

255 (a) "Plan fee" means a fee that an association of unit owners charges for review and
256 approval of unit plans.

257 (b) "Unit plans" means plans:

258 (i) for the construction or improvement of a unit; and

259 (ii) that are required to be approved by the association of unit owners before the unit
260 construction or improvement may occur.

261 (2) An association of unit owners may not charge a plan fee that exceeds the actual cost
262 of reviewing and approving the unit plans.

263 Section 4. Section **57-8-7** is amended to read:

264 **57-8-7. Common areas and facilities.**

265 (1) As used in this section:

266 (a) "Emergency repairs" means any repairs [~~which~~] that, if not made in a timely
267 manner, will likely result in immediate and substantial damage to the common areas and
268 facilities or to another unit or units[~~; and~~].

269 (b) "Reasonable notice" means:

270 (i) written notice [~~which~~] that is hand delivered to the unit at least 24 hours prior to the
271 proposed entry[~~:~~]; or

272 (ii) in the case of emergency repairs, notice that is reasonable under the circumstances.

273 (2) Each unit owner shall be entitled to an undivided interest in the common areas and

274 facilities in the percentages or fractions expressed in the declaration. The declaration may
275 allocate to each unit an undivided interest in the common areas and facilities proportionate to
276 either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an
277 equal undivided interest in the common areas and facilities, subject to the following exception:
278 each convertible space depicted on the condominium plat shall be allocated an undivided
279 interest in the common areas and facilities proportionate to the size of the space vis-a-vis the
280 aggregate size of all units so depicted, while the remaining undivided interest in the common
281 areas and facilities shall be allocated equally among the other units so depicted. The undivided
282 interest in the common areas and facilities allocated in accordance with this Subsection (2)
283 shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal
284 undivided interest in the common areas and facilities is allocated to each unit, the declaration
285 may simply state that fact and need not express the fraction or percentage so allocated.
286 Otherwise, the undivided interest allocated to each unit shall be reflected by a table in the
287 declaration, or by an exhibit or schedule accompanying the declaration and recorded
288 simultaneously with it, containing columns. The first column shall identify the units, listing
289 them serially or grouping them together in the case of units to which identical undivided
290 interests are allocated. Corresponding figures in the second and third columns shall set forth
291 the respective sizes or par values of those units and the fraction or percentage of undivided
292 interest in the common areas and facilities allocated thereto.

293 (3) Except as otherwise expressly provided by this act, the undivided interest of each
294 unit owner in the common areas and facilities as expressed in the declaration shall have a
295 permanent character and shall not be altered without the consent of two-thirds of the unit
296 owners expressed in an amended declaration duly recorded. The undivided interest in the
297 common areas and facilities shall not be separated from the unit to which it appertains and shall
298 be considered to be conveyed or encumbered or released from liens with the unit even though
299 such interest is not expressly mentioned or described in the conveyance or other instrument. A
300 time period unit may not be further divided into shorter time periods by a conveyance or
301 disclaimer.

302 (4) The common areas and facilities shall remain undivided and no unit owner or any
303 other person shall bring any action for partition or division of any part thereof, unless the
304 property has been removed from the provisions of this act as provided in Sections 57-8-22 and

305 57-8-31. Any covenants to the contrary shall be null and void.

306 (5) Each unit owner may use the common areas and facilities in accordance with the
307 purpose for which they were intended without hindering or encroaching upon the lawful rights
308 of the other unit owners.

309 (6) The necessary work of maintenance, repair, and replacement of the common areas
310 and facilities and the making of any additions or improvements thereon shall be carried out
311 only as provided in this ~~[act]~~ chapter or in the declaration or bylaws.

312 (7) Except as otherwise provided in the declaration or Section 57-8-43:

313 (a) an association of unit owners is responsible for the maintenance, repair, and
314 replacement of common areas and facilities; and

315 (b) a unit owner is responsible for the maintenance, repair, and replacement of the unit
316 owner's unit.

317 ~~[(7) The]~~ (8) After reasonable notice to the occupant of the unit being entered, the
318 manager or management committee ~~[shall have the right to have]~~ may access ~~[to each]~~ a unit:

319 (a) from time to time during reasonable hours ~~[and after reasonable notice to the~~
320 ~~occupant of the unit being entered]~~, as may be necessary for the maintenance, repair, or
321 replacement of any of the common areas and facilities; or

322 (b) for making emergency repairs ~~[necessary to prevent damage to the common areas~~
323 ~~and facilities or to another unit or units, provided that a reasonable effort is made to provide~~
324 ~~notice to the occupant of the unit prior to entry].~~

325 (9) (a) An association of unit owners is liable to repair damage it causes to the common
326 areas and facilities or to a unit the association of unit owners uses to access the common areas
327 and facilities.

328 (b) An association of unit owners shall repair damage described in Subsection (9)(a)
329 within a time that is reasonable under the circumstances.

330 Section 5. Section **57-8-7.5** is amended to read:

331 **57-8-7.5. Reserve analysis -- Reserve fund.**

332 (1) As used in this section~~[;]~~:

333 (a) "Reserve analysis" means an analysis to determine:

334 ~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
335 replacing, and restoring common areas and facilities that have a useful life of three years or

336 more and a remaining useful life of less than 30 years, but excluding any cost that can
337 reasonably be funded from the general budget or other funds of the association of unit owners;
338 and

339 ~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

340 (b) "Reserve fund line item" means the line item in an association of unit owners'
341 budget that identifies the amount to be placed into a reserve fund.

342 (2) Except as otherwise provided in the declaration, a management committee shall:

343 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
344 less frequently than every six years; and

345 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
346 ~~analysis to be conducted before July 1, 2012; and]~~

347 (b) review and, if necessary, update a previously conducted reserve analysis no less
348 frequently than every three years.

349 (3) The management committee may conduct a reserve analysis itself or may engage a
350 reliable person or organization, as determined by the management committee, to conduct the
351 reserve analysis.

352 (4) (a) A management committee may not use money in a reserve fund:

353 (i) for daily maintenance expenses, unless a majority of the members of the association
354 of unit owners vote to approve the use of reserve fund money for that purpose; or

355 (ii) for any purpose other than the purpose for which the reserve fund was established.

356 (b) A management committee shall maintain ~~[a]~~ reserve ~~[fund]~~ funds separate from
357 other funds of the association of unit owners.

358 (c) This Subsection (4) may not be construed to limit a management committee from
359 prudently investing money in a reserve fund, subject to any investment constraints imposed by
360 the declaration.

361 (5) An association of unit owners shall:

362 (a) annually provide unit owners a summary of the most recent reserve analysis or
363 update; and

364 (b) provide a copy of the complete reserve analysis or update to a unit owner who
365 requests a copy.

366 (6) In formulating its budget each year, an association of unit owners shall include a

367 reserve fund line item in:

368 (a) an amount the management committee determines, based on the reserve analysis, to
369 be prudent; or

370 (b) an amount required by the declaration, if the declaration requires an amount higher
371 than the amount determined under Subsection (6)(a).

372 [~~(5)~~] (7) Subsections (2)[~~;~~ (3), (4), and] through (6) do not apply to an association of
373 unit owners during the period of declarant [management] control described in Subsection
374 57-8-16.5(1).

375 [~~(6) An association of unit owners shall:~~]

376 [~~(a) annually, at the annual meeting of unit owners or at a special meeting of unit~~
377 ~~owners:~~]

378 [~~(i) present the reserve study; and]~~

379 [~~(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether~~
380 ~~to fund a reserve fund and, if so, how to fund it and in what amount; and]~~

381 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~
382 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

383 [~~(7)~~] (8) This section applies to each association of unit owners, regardless of when the
384 association of unit owners was created.

385 Section 6. Section **57-8-10.3** is enacted to read:

386 **57-8-10.3. Indemnification and limit of liability.**

387 Notwithstanding any conflict with the declaration or recorded bylaws, the
388 organizational documents of an association of unit owners may indemnify and limit
389 management committee member and officer liability to the extent permitted by the law under
390 which the association of unit owners is organized.

391 Section 7. Section **57-8-10.5** is enacted to read:

392 **57-8-10.5. Amending the declaration to make provisions of this chapter**
393 **applicable.**

394 (1) An association of unit owners may amend the declaration to make applicable to the
395 association of unit owners a provision of this chapter that is enacted after the creation of the
396 association of unit owners, by complying with:

397 (a) the amendment procedures and requirements specified in the declaration and

398 applicable provisions of this chapter; or

399 (b) the amendment procedures and requirements of this chapter, if the declaration
400 being amended does not contain amendment procedures and requirements.

401 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

402 (a) the amendment grants a right, power, or privilege permitted by that specific section;
403 and

404 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

405 Section 8. Section **57-8-23** is amended to read:

406 **57-8-23. Removal no bar to subsequent resubmission.**

407 The removal provided for in Section 57-8-22 [~~shall~~] does not bar the subsequent
408 resubmission of the property to the provisions of this [~~act~~] chapter.

409 Section 9. Section **57-8-40** is amended to read:

410 **57-8-40. Organization of an association of unit owners under other law --**
411 **Reorganization.**

412 (1) As used in this section, "organizational documents" means the documents related to
413 the formation or operation of a nonprofit corporation or other legal entity formed by the
414 management committee or the declarant.

415 (2) If permitted, required, or acknowledged by the declaration, the management
416 committee may organize an association of unit owners [~~into~~] as:

417 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
418 Nonprofit Corporation Act[~~;~~]; or [~~other~~]

419 (b) any other entity organized under other law.

420 (3) Organizational documents for a nonprofit corporation or other entity formed in
421 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
422 obligations found in the declaration and any of the association's bylaws recorded at the time of
423 the formation of a nonprofit corporation or other entity [~~under Subsection (2)~~].

424 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
425 organizational documents of [~~an~~] a nonprofit corporation or other entity formed in accordance
426 with Subsection (2) may include any additional indemnification and liability limitation
427 provision [~~for the management committee members and officers of the association that is~~
428 ~~permitted by the chapter under which the association is organized~~] for:

429 (a) board members, directors, and officers[;]; or

430 (b) similar persons in a position of control.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

468 Section 10. Section **57-8-43** is amended to read:

469 **57-8-43. Insurance.**

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

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

474 [~~(a)~~] (i) issued or renewed on or after July 1, 2011; and

475 [~~(b)~~] (ii) issued to or renewed by:

476 [~~(i)~~] (A) a unit owner; or

477 [~~(ii)~~] (B) an association of unit owners, regardless of when the association of unit
478 owners is formed.

479 (b) Unless otherwise provided in the declaration, this section does not apply to a
480 commercial condominium project insured under a policy or combination of policies issued or
481 renewed on or after July 1, 2013.

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

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

489 (b) subject to Subsection (10), liability insurance~~[, including medical payments~~
490 ~~insurance]~~ covering all occurrences commonly insured against for death, bodily injury, and

491 property damage arising out of or in connection with the use, ownership, or maintenance of the
492 common areas and facilities.

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

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

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

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

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

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

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

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

509 (7) An insurer under a property insurance policy or liability insurance policy obtained
510 by an association of unit owners under this section waives the insurer's right to subrogation
511 under the policy against ~~[any unit owner or member of the unit owner's household:]~~:

512 (a) any person residing with the unit owner, if the unit owner resides in the unit; and

513 (b) the unit owner.

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

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

518 (c) ~~[A]~~ Neither the governing documents nor a property insurance or liability insurance
519 policy issued to an association of unit owners may [not] prevent a unit owner from obtaining
520 insurance for the unit owner's own benefit.

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

522 (3)(a).

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

525 ~~[(c)]~~ (b) The total amount of coverage provided by blanket property insurance or
526 guaranteed replacement cost insurance may not be less than 100% of the full replacement cost
527 of the insured property at the time the insurance is purchased and at each renewal date,
528 excluding:

529 (i) items normally excluded from property insurance policies[-]; and

530 (ii) unless otherwise provided in the declaration, any commercial condominium unit in
531 a mixed-use condominium project, including any fixture, improvement, or betterment in a
532 commercial condominium unit in a mixed-use condominium project.

533 ~~[(d)]~~ (c) Property insurance shall include coverage for any fixture, improvement, or
534 betterment installed ~~[by a unit owner to a]~~ at any time to a unit or to a limited common area
535 associated with a unit, whether installed in the original construction or in any remodel or later
536 alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or
537 plumbing fixture, paint, wall covering, window, and any other item permanently part of or
538 affixed to a unit or to a limited common element associated with a unit.

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

542 (i) another unit; or

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

544 ~~[(f)]~~ (e) Each unit owner is an insured person under a property insurance policy.

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

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

548 (ii) notwithstanding Subsection (9)~~[(g)]~~(f)(i)[-] and subject to Subsection (9)(g):

549 (A) the unit owner is responsible for the deductible of the association of unit owners;

550 and

551 (B) building property coverage, often referred to as coverage A, of the unit owner's
552 policy applies to that portion of the loss attributable to the policy deductible of the association

553 of unit owners.

554 ~~(h)~~ (g) (i) As used in this Subsection (9)~~(h)~~(g) and Subsection (9)(j):

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

557 (B) "Unit damage" means damage to a unit or to a limited common area or facility
558 ~~[applicable]~~ appurtenant to that unit, or both.

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

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

565 (iii) If a unit owner does not pay the amount required under Subsection (9)~~(h)~~(g)(ii)
566 within 30 days after substantial completion of the repairs to the unit or limited common areas
567 and facilities appurtenant to that unit, an association of unit owners may levy an assessment
568 against the unit owner for that amount.

569 ~~(i)~~ (h) An association of unit owners shall set aside an amount equal to the amount of
570 the association's property insurance policy deductible or, if the policy deductible exceeds
571 \$10,000, [whichever is less] an amount not less than \$10,000.

572 ~~(j)~~ (i) (i) An association of unit owners shall provide notice in accordance with
573 Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)~~(h)~~(g)
574 for the association's policy deductible and of any change in the amount of the deductible.

575 (ii) (A) An association of unit owners that fails to provide notice as provided in
576 Subsection (9)~~(j)~~(i)(i) is responsible for the ~~[amount]~~ portion of the deductible ~~[increase]~~ that
577 the association of unit owners could have assessed to a unit owner under Subsection
578 (9)~~(h)~~(g), but only to the extent that the unit owner does not have insurance coverage that
579 would otherwise apply under this Subsection (9).

580 (B) Notwithstanding Subsection (9)(i)(ii), an association of unit owners that provides
581 notice of the association's policy deductible, as required under Subsection (9)(i)(i), but fails to
582 provide notice of a later increase in the amount of the deductible is responsible only for the
583 amount of the increase for which notice was not provided.

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

586 ~~[(~~k~~)]~~ (j) If, in the exercise of the business judgment rule, the management committee
587 determines that a ~~[claim]~~ covered loss is likely not to exceed the property insurance policy
588 deductible of the association of unit owners and until it becomes apparent the covered loss
589 exceeds the deductible of the property insurance of the association of unit owners and a claim
590 is submitted to the property insurance insurer of the association of unit owners:

591 (i) ~~[the]~~ a unit owner's policy is considered the policy for primary coverage ~~[to the~~
592 ~~amount of the policy deductible of the association of unit owners]~~ for a loss occurring to the
593 unit owner's unit or to a limited common area or facility appurtenant to the unit;

594 (ii) the association of unit owners is responsible for any covered loss to any common
595 areas and facilities;

596 ~~[(~~+~~)]~~ (iii) a unit owner who does not have a policy to cover the ~~[property insurance~~
597 ~~policy deductible of the association of unit owners is responsible for the loss to the amount of~~
598 ~~the policy deductible of the association of unit owners, as provided in Subsection (9)(h)]~~
599 damage to that unit owner's unit and appurtenant limited common areas and facilities is
600 responsible for that damage, and the association of unit owners may, as provided in Subsection
601 (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit
602 and appurtenant limited common areas and facilities; and

603 ~~[(~~+~~)]~~ (iv) the association of unit owners need not tender the claim to the association's
604 insurer.

605 ~~[(~~+~~)]~~ (k) (i) An insurer under a property insurance policy issued to an association of unit
606 owners shall adjust with the association of unit owners a loss covered under the association's
607 policy.

608 (ii) Notwithstanding Subsection (9)(~~+~~)(~~k~~)(i), the insurance proceeds for a loss under a
609 property insurance policy of an association of unit owners:

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

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

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

615 (iv) (A) ~~[Insurance]~~ If damaged property is to be repaired or restored, insurance
616 proceeds shall be disbursed first for the repair or restoration of the damaged property.

617 (B) After the disbursements described in Subsection (9)~~(k)~~(iv)(A) are made and the
618 damaged property has been completely repaired or restored or the project terminated, any
619 surplus proceeds are payable to the association of unit owners, unit owners, and lien holders, as
620 provided in the declaration.

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

623 (i) the association of unit owners;

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

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

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

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

631 (o) (i) Unless required in the declaration, property insurance coverage is not required
632 for fixtures, improvements, or betterments in a commercial unit or limited common areas and
633 facilities appurtenant to a commercial unit in a mixed-use condominium project.

634 (ii) Notwithstanding any other provision of this section, an association of unit owners
635 may obtain property insurance for fixtures, improvements, or betterments in a commercial unit
636 in a mixed-use condominium project if allowed or required in the declaration.

637 (p) (i) This Subsection (9) does not prevent a person suffering a loss as a result of
638 damage to property from asserting a claim, either directly or through subrogation, for the loss
639 against a person at fault for the loss.

640 (ii) Subsection (9)(p)(i) does not affect Subsection (7).

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

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

645 (c) Each unit owner is an insured person under a liability insurance policy that an

646 association of unit owners obtains [~~that insures against~~], but only for liability arising from:

647 (i) the unit owner's ownership interest in the common areas and facilities [~~or from~~];

648 (ii) maintenance, repair, or replacement of common areas and facilities; and

649 (iii) the unit owner's membership in the association of unit owners.

650 Section 11. Section **57-8-55** is enacted to read:

651 **57-8-55. Consolidation of multiple associations of unit owners.**

652 (1) Two or more associations of unit owners may be consolidated into a single

653 association of unit owners as provided in Title 16, Chapter 6a, Part 11, Merger, and this

654 section.

655 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of

656 consolidation between two or more associations of unit owners to consolidate into a single

657 association of unit owners is not effective unless it is approved by the unit owners of each of

658 the consolidating associations of unit owners, by the highest percentage of allocated voting

659 interests of the unit owners required by each association of unit owners to amend its respective

660 declaration, articles, or bylaws.

661 (3) A declaration of consolidation under Subsection (2) shall:

662 (a) be prepared, executed, and certified by the president of the association of each of

663 the consolidating associations of unit owners; and

664 (b) provide for the reallocation of the allocated interests in the consolidated association

665 by stating:

666 (i) the reallocations of the allocated interests in the consolidated association of unit

667 owners or the formulas used to reallocate the allocated interests; or

668 (ii) (A) the percentage of overall allocated interests of the consolidated association of

669 unit owners that are allocated to all of the units comprising each of the consolidating

670 associations of unit owners; and

671 (B) that the portion of the percentages allocated to each unit formerly comprising a part

672 of a consolidating association of unit owners is equal to the percentages of allocated interests

673 allocated to the unit by the declaration of the consolidating association of unit owners.

674 (4) A declaration of consolidation under Subsection (2) is not effective until it is

675 recorded in the office of each applicable county recorder.

676 (5) Unless otherwise provided in the declaration of consolidation, the consolidated

677 association of unit owners resulting from a consolidation under this section:

678 (a) is the legal successor for all purposes of all of the consolidating associations of unit
679 owners;

680 (b) the operations and activities of all of the consolidating associations of unit owners
681 shall be consolidated into the consolidated association of unit owners; and

682 (c) the consolidated association of unit owners holds all powers, rights, obligations,
683 assets, and liabilities of all consolidating associations of unit owners.

684 Section 12. Section **57-8a-102** is amended to read:

685 **57-8a-102. Definitions.**

686 As used in this chapter:

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

688 (i) by the association;

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

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

691 (b) "Assessment" includes:

692 (i) a common expense; and

693 (ii) an amount assessed against a lot owner under Subsection 57-8a-405~~(8)~~(7).

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

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

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

699 (A) real property taxes;

700 (B) insurance premiums;

701 (C) maintenance costs; or

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

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

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

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

- 708 (a) owns;
- 709 (b) maintains;
- 710 (c) repairs; or
- 711 (d) administers.
- 712 (5) "Common expense" means costs incurred by the association to exercise any of the
- 713 powers provided for in the association's governing documents.
- 714 (6) "Declarant":
- 715 (a) means the person who executes a declaration and submits it for recording in the
- 716 office of the recorder of the county in which the property described in the declaration is
- 717 located; and
- 718 (b) includes the person's successor and assign.
- 719 (7) (a) "Governing documents" means a written instrument by which the association
- 720 may:
- 721 (i) exercise powers; or
- 722 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 723 association.
- 724 (b) "Governing documents" includes:
- 725 (i) articles of incorporation;
- 726 (ii) bylaws;
- 727 (iii) a plat;
- 728 (iv) a declaration of covenants, conditions, and restrictions; and
- 729 (v) rules of the association.
- 730 (8) "Judicial foreclosure" means a foreclosure of a lot:
- 731 (a) for the nonpayment of an assessment; and
- 732 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 733 property; and
- 734 (ii) as provided in Part 3, Collection of Assessments.
- 735 (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 736 (a) by a person or persons other than the owner; and
- 737 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 738 gratuity, or emolument.

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

741 (11) "Lot" means:

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

743 (i) designated for separate ownership or occupancy; and

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

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

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

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

750 (12) "Mixed-use project" means a project under this chapter that has both residential
751 and commercial lots in the project.

752 [~~12~~] (13) "Nonjudicial foreclosure" means the sale of a lot:

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

754 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
755 57-1-34; and

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

757 [~~13~~] (14) "Residential lot" means a lot, the use of which is limited by law, covenant,
758 or otherwise to primarily residential or recreational purposes.

759 Section 13. Section **57-8a-107** is enacted to read:

760 **57-8a-107. Amending the declaration to make provisions of this chapter**
761 **applicable.**

762 (1) An association may amend the declaration to make applicable to the association a
763 provision of this chapter that is enacted after the creation of the association, by complying with:

764 (a) the amendment procedures and requirements specified in the declaration and
765 applicable provisions of this chapter; or

766 (b) the amendment procedures and requirements of this chapter, if the declaration
767 being amended does not contain amendment procedures and requirements.

768 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

769 (a) the amendment grants a right, power, or privilege permitted by that specific section;

770 and

771 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

772 Section 14. Section **57-8a-108** is enacted to read:

773 **57-8a-108. Rules against perpetuities and unreasonable restraints -- Insubstantial**
774 **failure to comply.**

775 (1) The rule against perpetuities and the rule against unreasonable restraints on
776 alienation of real estate may not defeat a provision of a governing document.

777 (2) (a) A declaration that fails to comply with this chapter does not render a title to a lot
778 and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

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

780 Section 15. Section **57-8a-109** is enacted to read:

781 **57-8a-109. Limit on fee for approval of plans.**

782 (1) As used in this section:

783 (a) "Lot plans" means plans:

784 (i) for the construction or improvement of a lot; and

785 (ii) that are required to be approved by the association before the lot construction or
786 improvement may occur.

787 (b) "Plan fee" means a fee that an association charges for review and approval of lot
788 plans.

789 (2) An association may not charge a plan fee that exceeds the actual cost of reviewing
790 and approving the lot plans.

791 Section 16. Section **57-8a-211** is amended to read:

792 **Part 2. Administrative Provisions**

793 **57-8a-211. Reserve analysis -- Reserve fund.**

794 (1) As used in this section[;]:

795 (a) "Reserve analysis" means an analysis to determine:

796 [~~(a)~~] (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
797 replacing, and restoring common areas that have a useful life of three years or more and a
798 remaining useful life of less than 30 years, but excluding any cost that can reasonably be

799 funded from the association's general budget or from other association funds; and

800 [~~(b)~~] (ii) the appropriate amount of any reserve fund.

801 (b) "Reserve fund line item" means the line item in an association's budget that
802 identifies the amount to be placed into a reserve fund.

803 (2) Except as otherwise provided in the governing documents, a board shall:

804 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
805 less frequently than every six years; and

806 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
807 ~~analysis to be conducted before July 1, 2012; and]~~

808 (b) review and, if necessary, update a previously conducted reserve analysis no less
809 frequently than every three years.

810 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
811 organization, as determined by the board, to conduct the reserve analysis.

812 (4) (a) A board may not use money in a reserve fund:

813 (i) for daily maintenance expenses, unless a majority of association members vote to
814 approve the use of reserve fund money for that purpose; or

815 (ii) for any purpose other than the purpose for which the reserve fund was established.

816 (b) A board shall maintain [a] reserve [~~fund~~] funds separate from other association
817 funds.

818 (c) This Subsection (4) may not be construed to limit a board from prudently investing
819 money in a reserve fund, subject to any investment constraints imposed by the governing
820 documents.

821 (5) An association shall:

822 (a) annually provide lot owners a summary of the most recent reserve analysis or
823 update; and

824 (b) provide a copy of the complete reserve analysis or update to a lot owner who
825 requests a copy.

826 (6) In formulating its budget each year, an association shall include a reserve fund line
827 item in:

828 (a) an amount the board determines, based on the reserve analysis, to be prudent; or

829 (b) an amount required by the governing documents, if the governing documents
830 require an amount higher than the amount determined under Subsection (6)(a)(i).

831 ~~[(5)]~~ (7) Subsections (2)~~[(3), (4), and]~~ through (6) do not apply to an association

832 during the period of administrative control.

833 [~~(6) An association shall:~~]

834 [~~(a) annually, at the annual meeting of lot owners or at a special meeting of lot~~
835 ~~owners:]~~

836 [~~(i) present the reserve study; and]~~

837 [~~(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to~~
838 ~~fund a reserve fund and, if so, how to fund it and in what amount; and]~~

839 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~
840 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

841 [~~(7)~~] (8) This section applies to each association, regardless of when the association
842 was created.

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

844 **57-8a-212. Content of a declaration.**

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

846 (a) the name of the project;

847 (b) the name of the association;

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

849 (d) a statement indicating any portions of the project that contain condominiums
850 governed by Chapter 8, Condominium Ownership Act;

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

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

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

855 (h) a description of any limited common areas and any real estate that is or is required
856 to become common areas;

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

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

860 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
861 U.C.A. Sections 57-1-20 and [~~57-8a-402~~] 57-8a-302 to (name of trustee), with power of sale,
862 the lot and all improvements to the lot for the purpose of securing payment of assessments

863 under the terms of the declaration."

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

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

869 Section 18. Section **57-8a-220** is amended to read:

870 **57-8a-220. Creditor approval may be required for lot owner or association action**
871 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**
872 **creditor or creditor's successor.**

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

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

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

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

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

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

885 (iii) prevent an insurance trustee or the association from receiving or distributing
886 insurance proceeds under Subsection 57-8a-405[~~(12)~~](11).

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

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

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

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

- 894 (i) an association formed before, on, or after May 10, 2011; and
895 (ii) documents created and recorded before, on, or after May 10, 2011.
- 896 (2) Subject to this chapter and applicable law, a lender who has extended credit to an
897 association secured by an assignment of income or an encumbrance of the common areas may
898 enforce the lender's security agreement as provided in the agreement.
- 899 (3) (a) Subject to Subsection (4), a security holder's consent that is required under
900 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:
- 901 (i) the association sends written notice of the proposed amendment or action by
902 certified or registered mail to the security holder's address stated in a recorded document
903 evidencing the security interest; and
- 904 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security
905 holder's response does not receive a response within 60 days after the association sends notice
906 under Subsection (3)(a)(i).
- 907 (b) If a security holder's address for receiving notice is not stated in a recorded
908 document evidencing the security interest, an association:
- 909 (i) shall use reasonable efforts to find a mailing address for the security holder; and
910 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).
- 911 (4) If a security holder responds in writing within 60 days after the association sends
912 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to
913 another person, the association:
- 914 (a) shall:
- 915 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the
916 security interest at the address provided by the security holder in the security holder's response;
917 or
- 918 (ii) if no address is provided:
- 919 (A) use reasonable efforts to find a mailing address for the person assigned or
920 conveyed the security interest; and
- 921 (B) send notice by certified or registered mail to the person at the address that the
922 association finds under Subsection (4)(a)(ii)(A); and
- 923 (b) may not presume the security holder's consent under Subsection (3)(a) unless the
924 person designated in a notice under Subsection (4)(a) to receive the response from the person

925 assigned or conveyed the security interest does not receive a response within 60 days after the
926 association sends the notice.

927 Section 19. Section **57-8a-222** is enacted to read:

928 **57-8a-222. Removing or altering partition between dwelling units on adjoining**
929 **lots.**

930 (1) Subject to the declaration, a lot owner may, after acquiring an adjoining lot with a
931 dwelling unit that shares a common wall with a dwelling unit on the lot owner's lot:

932 (a) remove or alter a partition between the lot owner's lot and the acquired lot, even if
933 the partition is entirely or partly common areas; or

934 (b) create an aperture to the adjoining lot or portion.

935 (2) A lot owner may not take an action under Subsection (1) if the action would:

936 (a) impair the structural integrity or mechanical systems of the building or either lot;

937 (b) reduce the support of any portion of the common areas or another lot; or

938 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
939 government land use ordinance, or a building code.

940 (3) The board may require a lot owner to submit, at the lot owner's expense, a
941 registered professional engineer's or registered architect's opinion stating that a proposed
942 change to the lot owner's lot will not:

943 (a) impair the structural integrity or mechanical systems of the building or either lot;

944 (b) reduce the support or integrity of common areas; or

945 (c) compromise structural components.

946 (4) The board may require a lot owner to pay all of the association's legal and other
947 expenses related to a proposed alteration to the lot or building under this section.

948 (5) An action under Subsection (1) does not change an assessment or voting right
949 attributable to the lot owner's lot or the acquired lot, unless the declaration provides otherwise.

950 Section 20. Section **57-8a-223** is enacted to read:

951 **57-8a-223. Eminent domain -- Common area.**

952 Unless the declaration provides otherwise:

953 (1) if part of the common area is taken by eminent domain:

954 (a) the entity taking part of the common area shall pay to the association the portion of
955 the compensation awarded for the taking that is attributable to the common area; and

956 (b) the association shall equally divide any portion of the award attributable to the
957 taking of a limited common area among the owners of the lots to which the limited common
958 area was allocated at the time of the taking; and

959 (2) an association shall submit for recording to each applicable county recorder the
960 court judgment or order in an eminent domain action that results in the taking of some or all of
961 the common area.

962 Section 21. Section **57-8a-224** is enacted to read:

963 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
964 **common area and lots.**

965 (1) As used in this section:

966 (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely
967 result in immediate and substantial damage to a common area or to another lot.

968 (b) "Reasonable notice" means:

969 (i) written notice that is hand delivered to the lot at least 24 hours before the proposed
970 entry; or

971 (ii) in the case of an emergency repair, notice that is reasonable under the
972 circumstances.

973 (2) Except as otherwise provided in the declaration or Part 4, Insurance:

974 (a) an association is responsible for the maintenance, repair, and replacement of
975 common areas; and

976 (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot
977 owner's lot.

978 (3) After reasonable notice to the occupant of the lot being entered, the board may
979 access a lot:

980 (a) from time to time during reasonable hours, as necessary for the maintenance, repair,
981 or replacement of any of the common areas; or

982 (b) for making an emergency repair.

983 (4) (a) An association is liable to repair damage it causes to the common areas or to a
984 lot the association uses to access the common areas.

985 (b) An association shall repair damage described in Subsection (4)(a) within a time that
986 is reasonable under the circumstances.

987 (5) Subsections (2), (3), and (4) do not apply during the period of administrative
988 control as defined in Section 57-8a-104.

989 Section 22. Section **57-8a-402** is amended to read:

990 **57-8a-402. Applicability of part.**

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

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

993 (b) issued to or renewed by:

994 (i) a lot owner; or

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

996 (2) ~~[This]~~ Unless otherwise provided in the declaration, this part does not apply to a
997 project if all of the project's lots are restricted to entirely nonresidential use.

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

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

1000 (b) the project includes attached dwellings; and

1001 (c) the declaration requires each lot owner to insure the lot owner's dwelling.

1002 (4) (a) An association ~~[that is subject to a declaration recorded before January 1, 2012]~~
1003 to which this part does not apply under Subsection (3) may amend the declaration, as provided
1004 in the declaration and applicable law, to subject the association to this part.

1005 (b) During the period of administrative control, an amendment under Subsection (4)(a)
1006 requires the consent of the declarant.

1007 Section 23. Section **57-8a-403** is amended to read:

1008 **57-8a-403. Property and liability insurance required -- Notice if insurance not**
1009 **reasonably available.**

1010 (1) Beginning not later than the day on which the first lot is conveyed to a person other
1011 than a declarant, an association shall maintain, to the extent reasonably available:

1012 (a) subject to Section 57-8a-405, blanket property insurance or guaranteed replacement
1013 cost insurance on the physical structure of all attached dwellings, limited common areas
1014 appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks
1015 of direct physical loss commonly insured against, including fire and extended coverage perils;
1016 and

1017 (b) subject to Section 57-8a-406, liability insurance~~[-including medical payments~~

1018 insurance] covering all occurrences commonly insured against for death, bodily injury, and
1019 property damage arising out of or in connection with the use, ownership, or maintenance of the
1020 common areas.

1021 (2) If an association becomes aware that property insurance under Subsection (1)(a) or
1022 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,
1023 within seven calendar days after becoming aware, give all lot owners notice, as provided in
1024 Section ~~[57-8a-215]~~ 57-8a-214, that the insurance is not reasonably available.

1025 Section 24. Section **57-8a-404** is amended to read:

1026 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**
1027 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

1028 (1) (a) The declaration or bylaws may require the association to carry other types of
1029 insurance in addition to those described in Section 57-8a-403.

1030 (b) In addition to any type of insurance coverage or limit of coverage provided in the
1031 declaration or bylaws and subject to the requirements of this part, an association may, as the
1032 board considers appropriate, obtain:

1033 (i) an additional type of insurance than otherwise required; or

1034 (ii) a policy with greater coverage than otherwise required.

1035 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf
1036 of an association, a lot owner's act or omission may not:

1037 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability
1038 insurance policy under Subsection 57-8a-403(1)(b); or

1039 (b) be a condition to recovery under a policy.

1040 (3) An insurer under a property insurance policy or liability insurance policy obtained
1041 by an association under this part waives its right to subrogation under the policy against ~~[any~~
1042 ~~lot owner or member of the lot owner's household.];~~

1043 (a) any person residing with a lot owner, if the lot owner resides on the lot; and

1044 (b) the lot owner.

1045 (4) (a) An insurance policy issued to an association may not be inconsistent with any
1046 provision of this part.

1047 (b) A provision of a governing document that is contrary to a provision of this part has
1048 no effect.

1049 (c) ~~[A]~~ Neither the governing documents nor a property insurance or liability insurance
 1050 policy issued to an association may ~~[not]~~ prevent a lot owner from obtaining insurance for the
 1051 lot owner's own benefit.

1052 Section 25. Section **57-8a-405** is amended to read:

1053 **57-8a-405. Property insurance.**

1054 (1) This section applies to property insurance required under Subsection
 1055 57-8a-403(1)(a).

1056 ~~[(2) The property covered by property insurance shall include any property that, under
 1057 the declaration, is required to become common areas.]~~

1058 ~~[(3)]~~ (2) The total amount of coverage provided by blanket property insurance or
 1059 guaranteed replacement cost insurance may not be less than 100% of the full replacement cost
 1060 of the insured property at the time the insurance is purchased and at each renewal date,
 1061 excluding:

1062 (a) items normally excluded from property insurance policies~~[-]; and~~

1063 (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use
 1064 project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use
 1065 project.

1066 ~~[(4)]~~ (3) Property insurance shall include coverage for any fixture, improvement, or
 1067 betterment installed ~~[by a lot owner]~~ at any time to an attached dwelling or to a limited
 1068 common area appurtenant to a dwelling on a lot, whether installed in the original construction
 1069 or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical
 1070 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
 1071 permanently part of or affixed to an attached dwelling or to a limited common area.

1072 ~~[(5)]~~ (4) Notwithstanding anything in this part and unless otherwise provided in the
 1073 declaration, an association is not required to obtain property insurance for a loss to a dwelling
 1074 that is not physically attached to another dwelling or to a common area structure.

1075 ~~[(6)]~~ (5) Each lot owner is an insured person under a property insurance policy.

1076 ~~[(7)]~~ (6) If a loss occurs that is covered by a property insurance policy in the name of
 1077 an association and another property insurance policy in the name of a lot owner:

1078 (a) the association's policy provides primary insurance coverage; and

1079 (b) notwithstanding Subsection ~~[(7)]~~ (6)(a) and subject to Subsection ~~[(8)]~~ (7):

1080 (i) ~~[a]~~ the lot owner is responsible for the association's policy deductible; and
1081 (ii) building property coverage, often referred to as coverage A, of the lot owner's
1082 policy applies to that portion of the loss attributable to the association's policy deductible.

1083 ~~[(8)]~~ (7) (a) As used in this Subsection ~~[(8)]~~ (7) and Subsection (10):

1084 (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is
1085 covered by an association's property insurance policy.

1086 (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a
1087 limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

1088 (iii) "Lot damage percentage" means the percentage of total damage resulting in a
1089 covered loss that is attributable to lot damage.

1090 (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is
1091 responsible for an amount calculated by applying the lot damage percentage for that lot to the
1092 amount of the deductible under the association's property insurance policy.

1093 (c) If a lot owner does not pay the amount required under Subsection ~~[(8)]~~ (7)(b) within
1094 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the
1095 lot, or the limited common area appurtenant to the lot, an association may levy an assessment
1096 against a lot owner for that amount.

1097 ~~[(9)]~~ (8) An association shall set aside an amount equal to the amount of the
1098 association's property insurance policy deductible or, if the policy deductible exceeds \$10,000,
1099 [whichever is less] an amount not less than \$10,000.

1100 ~~[(10)]~~ (9) (a) An association shall provide notice in accordance with Section 57-8a-214
1101 to each lot owner of the lot owner's obligation under Subsection ~~[(8)]~~ (7) for the association's
1102 policy deductible and of any change in the amount of the deductible.

1103 (b) (i) An association that fails to provide notice as provided in Subsection ~~[(10)]~~ (9)(a)
1104 is responsible for the ~~[amount]~~ portion of the deductible ~~[increase]~~ that the association could
1105 have assessed to a lot owner under Subsection ~~[(8)]~~ (7), but only to the extent that the lot owner
1106 does not have insurance coverage that would otherwise apply under this section.

1107 (ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the
1108 association's policy deductible, as required under Subsection (9)(a), but fails to provide notice
1109 of a later increase in the amount of the deductible is responsible only for the amount of the
1110 increase for which notice was not provided.

1111 (c) An association's failure to provide notice as provided in Subsection ~~[(10)]~~ (9)(a)
1112 may not be construed to invalidate any other provision of this part.

1113 ~~[(11)]~~ (10) If, in the exercise of the business judgment rule, the board determines that a
1114 ~~[claim]~~ covered loss is likely not to exceed the association's property insurance policy
1115 deductible, and until it becomes apparent the covered loss exceeds the association's property
1116 insurance deductible and a claim is submitted to the association's property insurance insurer:

1117 (a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for
1118 primary coverage ~~[to the amount of the association's policy deductible]~~ for the damage to that
1119 lot;

1120 (b) the association is responsible for any covered loss to any common area;

1121 ~~[(b)]~~ (c) a lot owner who does not have a policy to cover the ~~[association's property~~
1122 ~~insurance policy deductible]~~ damage to that lot owner's lot is responsible for ~~[the loss to the~~
1123 ~~amount of the association's policy deductible, as provided in Subsection (8)]~~ that lot damage,
1124 and the association may, as provided in Subsection (7)(c), recover any payments the association
1125 makes to remediate that lot; and

1126 ~~[(c)]~~ (d) the association need not tender the claim to the association's insurer.

1127 ~~[(12)]~~ (11) (a) An insurer under a property insurance policy issued to an association
1128 shall adjust with the association a loss covered under the association's policy.

1129 (b) Notwithstanding Subsection ~~[(12)]~~ (11)(a), the insurance proceeds for a loss under
1130 an association's property insurance policy:

1131 (i) are payable to an insurance trustee that the association designates or, if no trustee is
1132 designated, to the association; and

1133 (ii) may not be payable to a holder of a security interest.

1134 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for
1135 the association, lot owners, and lien holders.

1136 (d) (i) ~~[Insurance]~~ If damaged property is to be repaired or restored, insurance proceeds
1137 shall be disbursed first for the repair or restoration of the damaged property.

1138 (ii) After the disbursements described in Subsection ~~[(12)]~~ (11)(d)(i) are made and the
1139 damaged property has been completely repaired or restored or the project terminated, any
1140 surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the
1141 declaration.

1142 ~~[(13)]~~ (12) An insurer that issues a property insurance policy under this part, or the
1143 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

- 1144 (a) the association;
- 1145 (b) a lot owner, upon the lot owner's written request; and
- 1146 (c) a holder of a security interest, upon the holder's written request.

1147 ~~[(14)]~~ (13) A cancellation or nonrenewal of a property insurance policy under this
1148 section is subject to the procedures stated in Section 31A-21-303.

1149 ~~[(15)]~~ (14) A board that acquires from an insurer the property insurance required in this
1150 section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of
1151 the full replacement cost of the insured property at the time of the loss.

1152 (15) (a) Unless required in the declaration, property insurance coverage is not required
1153 for fixtures, improvements, or betterments in a commercial lot or limited common areas
1154 appurtenant to a commercial lot in a mixed-use project.

1155 (b) Notwithstanding any other provision of this part, an association may obtain
1156 property insurance for fixtures, improvements, and betterments in a commercial lot in a
1157 mixed-use project if allowed or required in the declaration.

1158 (16) (a) This section does not prevent a person suffering a loss as a result of damage to
1159 property from asserting a claim, either directly or through subrogation, for the loss against a
1160 person at fault for the loss.

1161 (b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

1162 Section 26. Section **57-8a-406** is amended to read:

1163 **57-8a-406. Liability insurance.**

1164 (1) This section applies to a liability insurance policy required under Subsection
1165 57-8a-403(1)(b).

1166 (2) A liability insurance policy shall be in an amount determined by the board but not
1167 less than an amount specified in the declaration or bylaws.

1168 (3) Each lot owner is an insured person under a liability insurance policy that an
1169 association obtains ~~[that insures against]~~, but only for liability arising from:

- 1170 (a) the lot owner's ownership interest in the common areas ~~[or from]~~;
- 1171 (b) maintenance, repair, or replacement of common areas; and
- 1172 (c) the lot owner's membership in the association.

1173 Section 27. Section **57-8a-407** is amended to read:

1174 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1175 (1) (a) If a portion of the project for which insurance is required under this part is
1176 damaged or destroyed, the association shall repair or replace the portion within a reasonable
1177 amount of time unless:

1178 (i) the project is terminated;

1179 (ii) repair or replacement would be illegal under a state statute or local ordinance
1180 governing health or safety; or

1181 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the
1182 association vote not to rebuild; and

1183 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that
1184 lot that will not be rebuilt votes not to rebuild.

1185 (b) If a portion of a project is not repaired or replaced because the project is terminated,
1186 the termination provisions of applicable law and the governing documents apply.

1187 (2) (a) The cost of repair or replacement of any lot in excess of insurance proceeds and
1188 reserves is a common expense[-] to the extent the association is required under this chapter to
1189 provide insurance coverage for the lot.

1190 (b) The cost of repair or replacement of any common area in excess of insurance
1191 proceeds and reserves is a common expense.

1192 (3) If the entire project is damaged or destroyed and not repaired or replaced:

1193 (a) the association shall use the insurance proceeds attributable to the damaged
1194 common areas to restore the damaged area to a condition compatible with the remainder of the
1195 project;

1196 (b) the association shall distribute the insurance proceeds attributable to lots and
1197 common areas that are not rebuilt to:

1198 (i) the lot owners of the lots that are not rebuilt;

1199 (ii) the lot owners of the lots to which those common areas that are not rebuilt were
1200 allocated; or

1201 (iii) lien holders; and

1202 (c) the association shall distribute the remainder of the proceeds to all the lot owners or
1203 lien holders in proportion to the common expense liabilities of all the lots.

1204 (4) If the lot owners vote not to rebuild a lot:
1205 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote
1206 as if the lot had been condemned; and
1207 (b) the association shall prepare, execute, and submit for recording an amendment to
1208 the declaration reflecting the reallocations described in Subsection (4)(a).

1209 Section 28. Section **57-8a-501** is enacted to read:

1210 **Part 5. Association Board**

1211 **57-8a-501. Board acts for association.**

1212 Except as limited in a declaration, the association bylaws, or other provisions of this
1213 chapter, a board acts in all instances on behalf of the association.

1214 Section 29. Section **57-8a-502** is enacted to read:

1215 **57-8a-502. Period of administrative control.**

1216 (1) Unless otherwise provided for in a declaration, a period of administrative control
1217 terminates on the first to occur of the following:

1218 (a) 60 days after 75% of the lots that may be created are conveyed to lot owners other
1219 than a declarant;

1220 (b) seven years after all declarants have ceased to offer lots for sale in the ordinary
1221 course of business; or

1222 (c) the day the declarant, after giving written notice to the lot owners, records an
1223 instrument voluntarily surrendering all rights to control activities of the association.

1224 (2) (a) A declarant may voluntarily surrender the right to appoint and remove a member
1225 of the board before the period of administrative control terminates under Subsection (1).

1226 (b) Subject to Subsection (2)(a), the declarant may require, for the duration of the
1227 period of administrative control, that actions of the association or board, as specified in a
1228 recorded instrument executed by the declarant, be approved by the declarant before they
1229 become effective.

1230 (3) (a) Upon termination of the period of administrative control, the lot owners shall
1231 elect a board consisting of an odd number of at least three members, a majority of whom shall
1232 be lot owners.

1233 (b) Unless the declaration provides for the election of officers by the lot owners, the
1234 board shall elect officers of the association.

1235 (c) The board members and officers shall take office upon election or appointment.

1236 Section 30. Section **57-8a-601** is enacted to read:

1237 **Part 6. Consolidation of Associations**

1238 **57-8a-601. Consolidation of multiple associations.**

1239 (1) Two or more associations may be consolidated into a single association as provided
1240 in Title 16, Chapter 6a, Part 11, Merger, and this section.

1241 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
1242 consolidation between two or more associations to consolidate into a single association is not
1243 effective unless it is approved by the lot owners of each of the consolidating associations by the
1244 highest percentage of allocated voting interests of the lot owners required by each association
1245 to amend its respective declaration, articles, or bylaws.

1246 (3) A declaration of consolidation under Subsection (2) shall:

1247 (a) be prepared, executed, and certified by the president of each of the consolidating
1248 associations; and

1249 (b) provide for the reallocation of the allocated interests in the consolidated association
1250 by stating:

1251 (i) the reallocations of the allocated interests in the consolidated association or the
1252 formulas used to reallocate the allocated interests; or

1253 (ii) (A) the percentage of overall allocated interests of the consolidated association that
1254 are allocated to all of the lots comprising each of the consolidating associations; and

1255 (B) that the portion of the percentages allocated to each lot formerly comprising a part
1256 of a consolidating association is equal to the percentages of allocated interests allocated to the
1257 lot by the declaration of the consolidating association.

1258 (4) A declaration of consolidation under Subsection (2) is not effective until it is
1259 recorded in the office of each applicable county recorder.

1260 (5) Unless otherwise provided in the declaration of consolidation:

1261 (a) the consolidated association resulting from a consolidation under this section is the
1262 legal successor for all purposes of all of the consolidating associations;

1263 (b) the operations and activities of all of the consolidating associations shall be
1264 consolidated into the consolidated association; and

1265 (c) the consolidated association holds all powers, rights, obligations, assets, and

1266 liabilities of all consolidating associations.

1267 Section 31. Section **76-6-206** is amended to read:

1268 **76-6-206. Criminal trespass.**

1269 (1) As used in this section, "enter" means intrusion of the entire body.

1270 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
1271 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section
1272 76-10-2402 regarding commercial obstruction:

1273 (a) the person enters or remains unlawfully on property and:

1274 (i) intends to cause annoyance or injury to any person or damage to any property,
1275 including the use of graffiti as defined in Section 76-6-107;

1276 (ii) intends to commit any crime, other than theft or a felony; or

1277 (iii) is reckless as to whether his presence will cause fear for the safety of another;

1278 (b) knowing the person's entry or presence is unlawful, the person enters or remains on
1279 property as to which notice against entering is given by:

1280 (i) personal communication to the actor by the owner or someone with apparent
1281 authority to act for the owner;

1282 (ii) fencing or other enclosure obviously designed to exclude intruders; or

1283 (iii) posting of signs reasonably likely to come to the attention of intruders; or

1284 (c) the person enters a condominium unit in violation of Subsection 57-8-7[(7)](8).

1285 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was
1286 committed in a dwelling, in which event it is a class A misdemeanor.

1287 (b) A violation of Subsection (2)(c) is an infraction.

1288 (4) It is a defense to prosecution under this section that:

1289 (a) the property was open to the public when the actor entered or remained; and

1290 (b) the actor's conduct did not substantially interfere with the owner's use of the
1291 property.

1292 Section 32. **Effective date.**

1293 (1) Except as provided in Subsection (2), this bill takes effect May 14, 2013.

1294 (2) The actions affecting the following sections take effective July 1, 2014:

1295 (a) Section 57-8-4.5;

1296 (b) Section 57-8-7;

- 1297 (c) Section 57-8-7.5;
 1298 (d) Section 57-8-10.3;
 1299 (e) Section 57-8-10.5;
 1300 (f) Section 57-8-23;
 1301 (g) Section 57-8-40;
 1302 (h) Section 57-8-55;
 1303 (i) Section 57-8a-107;
 1304 (j) Section 57-8a-108;
 1305 (k) Section 57-8a-211;
 1306 (l) Section 57-8a-212;
 1307 (m) Section 57-8a-220;
 1308 (n) Section 57-8a-222;
 1309 (o) Section 57-8a-223;
 1310 (p) Section 57-8a-224;
 1311 (q) Section 57-8a-501;
 1312 (r) Section 57-8a-502; ~~H~~→ [and] ←~~H~~
 1313 (s) Section 57-8a-601 ~~H~~→ [:] ; and
 1313a (t) Section 76-6-206. ←~~H~~

1314 Section 33. **Coordinating S.B. 90 with S.B. 64 -- Technical amendment.**

1315 If this S.B. 90 and S.B. 64, Homeowner Association Reserve Account Amendments,

1316 both pass and become law, it is the intent of the Legislature that the Office of Legislative

1317 Research and General Counsel, in preparing the Utah Code database for publication:

1318 (1) modify Section 57-8-7.5 on July 1, 2014, to read:

1319 "57-8-7.5. Reserve analysis -- Reserve fund.

1320 (1) As used in this section["reserve]:

1321 (a) "Reserve analysis" means an analysis to determine:

1322 [~~(a)~~] (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
 1323 replacing, [~~and~~] or restoring common areas and facilities that have a useful life of three years or
 1324 more[~~, but excluding any~~] and a remaining useful life of less than 30 years, if the cost cannot
 1325 cost that can reasonably be funded from the general budget or other funds of the association of
 1326 unit owners; and

1327 [~~(b)~~] (ii) the appropriate amount of any reserve fund.

1328 (b) "Reserve fund line item" means the line item in an association of unit owners'
1329 annual budget that identifies the amount to be placed into a reserve fund.

1330 (2) Except as otherwise provided in the declaration, a management committee shall:

1331 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
1332 less frequently than every six years; and

1333 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
1334 ~~analysis to be conducted before July 1, 2012; and]~~

1335 (b) review and, if necessary, update a previously conducted reserve analysis no less
1336 frequently than every three years.

1337 (3) The management committee may conduct a reserve analysis itself or may engage a
1338 reliable person or organization, as determined by the management committee, to conduct the
1339 reserve analysis.

1340 (4) A reserve fund analysis shall include:

1341 (a) a list of the components identified in the reserve analysis that will reasonably
1342 require reserve funds;

1343 (b) a statement of the probable remaining useful life, as of the date of the reserve
1344 analysis, of each component identified in the reserve analysis;

1345 (c) an estimate of the cost to repair, replace, or restore each component identified in the
1346 reserve analysis;

1347 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
1348 cost to repair, replace, or restore each component identified in the reserve analysis during the
1349 component's useful life and at the end of the component's useful life; and

1350 (e) a reserve funding plan that recommends how the association of unit owners may
1351 fund the annual contribution described in Subsection (4)(d).

1352 (5) An association of unit owners shall:

1353 (a) annually provide unit owners a summary of the most recent reserve analysis or
1354 update; and

1355 (b) provide a copy of the complete reserve analysis or update to a unit owner who
1356 requests a copy.

1357 (6) In formulating its budget each year, an association of unit owners shall include a
1358 reserve fund line item in:

1359 (a) an amount the management committee determines, based on the reserve analysis, to
1360 be prudent; or

1361 (b) an amount required by the declaration, if the declaration requires an amount higher
1362 than the amount determined under Subsection (6)(a).

1363 (7) (a) Within 45 days after the day on which an association of unit owners adopts its
1364 annual budget, the unit owners may veto the reserve fund line item by a 51% vote of the
1365 allocated voting interests in the association of unit owners at a special meeting called by the
1366 unit owners for the purpose of voting whether to veto a reserve fund line item.

1367 (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a
1368 reserve fund line item exists in a previously approved annual budget of the association of unit
1369 owners that was not vetoed, the association of unit owners shall fund the reserve account in
1370 accordance with that prior reserve fund line item.

1371 (8) (a) Subject to Subsection (8)(b), if an association of unit owners does not comply
1372 with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance
1373 within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:

1374 (i) injunctive relief requiring the association of unit owners to comply with the
1375 requirements of Subsection (5), (6), or (7);

1376 (ii) \$500 or actual damages, whichever is greater;

1377 (iii) any other remedy provided by law; and

1378 (iv) reasonable costs and attorney fees.

1379 (b) No fewer than 90 days before the day on which a unit owner files a complaint under
1380 Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to
1381 the association of unit owners.

1382 (c) A notice under Subsection (8)(b) shall state:

1383 (i) the requirement in Subsection (5), (6), or (7) with which the association of unit
1384 owners has failed to comply;

1385 (ii) a demand that the association of unit owners come into compliance with the
1386 requirements; and

1387 (iii) a date, no fewer than 90 days after the day on which the unit owner delivers the
1388 notice, by which the association of unit owners shall remedy its noncompliance.

1389 (d) In a case filed under Subsection (8)(a), a court may order an association of unit

1390 owners to produce the summary of the reserve analysis or the complete reserve analysis on an
1391 expedited basis and at the association of unit owners' expense.

1392 [~~4~~] (9) (a) A management committee may not use money in a reserve fund:

1393 (i) for daily maintenance expenses, unless a majority of the members of the association
1394 of unit owners vote to approve the use of reserve fund money for that purpose; or

1395 (ii) for any purpose other than the purpose for which the reserve fund was established.

1396 (b) A management committee shall maintain a reserve fund separate from other funds
1397 of the association of unit owners.

1398 (c) This Subsection [~~4~~] (9) may not be construed to limit a management committee
1399 from prudently investing money in a reserve fund, subject to any investment constraints
1400 imposed by the declaration.

1401 [~~5~~] (10) Subsections (2)[~~, (3), (4), and (6)~~] through (9) do not apply to an association
1402 of unit owners during the period of declarant [~~management~~] control described in Subsection
1403 57-8-16.5(1).

1404 [~~(6) An association of unit owners shall:~~]

1405 [~~(a) annually, at the annual meeting of unit owners or at a special meeting of unit~~
1406 ~~owners:~~]

1407 [~~(i) present the reserve study; and]~~

1408 [~~(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether~~
1409 ~~to fund a reserve fund and, if so, how to fund it and in what amount; and]~~

1410 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~
1411 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

1412 [~~7~~] (11) This section applies to each association of unit owners, regardless of when
1413 the association of unit owners was created."; and

1414 (2) modify Section 57-8a-211 on July 1, 2014, to read:

1415 **"57-8a-211. Reserve analysis -- Reserve fund.**

1416 (1) As used in this section[~~, "reserve~~]:

1417 (a) "Reserve analysis" means an analysis to determine:

1418 [~~a~~] (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
1419 replacing, [~~and~~] or restoring common areas that have a useful life of three years or more[~~, but~~
1420 ~~excluding any cost that can~~] and a remaining useful life of less than 30 years, if the cost cannot

1421 reasonably be funded from the association's general budget or from other association funds;
1422 and

1423 ~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

1424 (b) "Reserve fund line item" means the line item in an association's annual budget that
1425 identifies the amount to be placed into a reserve fund.

1426 (2) Except as otherwise provided in the governing documents, a board shall:

1427 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
1428 less frequently than every six years; and

1429 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
1430 ~~analysis to be conducted before July 1, 2012; and]~~

1431 (b) review and, if necessary, update a previously conducted reserve analysis no less
1432 frequently than every three years.

1433 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
1434 organization, as determined by the board, to conduct the reserve analysis.

1435 (4) A reserve fund analysis shall include:

1436 (a) a list of the components identified in the reserve analysis that will reasonably
1437 require reserve funds;

1438 (b) a statement of the probable remaining useful life, as of the date of the reserve
1439 analysis, of each component identified in the reserve analysis;

1440 (c) an estimate of the cost to repair, replace, or restore each component identified in the
1441 reserve analysis;

1442 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
1443 cost to repair, replace, or restore each component identified in the reserve analysis during the
1444 component's useful life and at the end of the component's useful life; and

1445 (e) a reserve funding plan that recommends how the association may fund the annual
1446 contribution described in Subsection (4)(d).

1447 (5) An association shall:

1448 (a) annually provide lot owners a summary of the most recent reserve analysis or
1449 update; and

1450 (b) provide a copy of the complete reserve analysis or update to a lot owner who
1451 requests a copy.

1452 (6) In formulating its budget each year, an association shall include a reserve fund line
1453 item in:

1454 (a) an amount the board determines, based on the reserve analysis, to be prudent; or

1455 (b) an amount required by the governing documents, if the governing documents
1456 requires an amount higher than the amount determined under Subsection (6)(a).

1457 (7) (a) Within 45 days after the day on which an association adopts its annual budget,
1458 the lot owners may veto the reserve fund line item by a 51% vote of the allocated voting
1459 interests in the association at a special meeting called by the lot owners for the purpose of
1460 voting whether to veto a reserve fund line item.

1461 (b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve
1462 fund line item exists in a previously approved annual budget of the association that was not
1463 vetoed, the association shall fund the reserve account in accordance with that prior reserve fund
1464 line item.

1465 (8) (a) Subject to Subsection (8)(b), if an association does not comply with the
1466 requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance
1467 within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:

1468 (i) injunctive relief requiring the association to comply with the requirements of
1469 Subsection (5), (6), or (7);

1470 (ii) \$500 or the lot owner's actual damages, whichever is greater;

1471 (iii) any other remedy provided by law; and

1472 (iv) reasonable costs and attorney fees.

1473 (b) No fewer than 90 days before the day on which a lot owner files a complaint under
1474 Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to
1475 the association.

1476 (c) A notice under Subsection (8)(b) shall state:

1477 (i) the requirement in Subsection (5), (6), or (7) with which the association has failed to
1478 comply;

1479 (ii) a demand that the association come into compliance with the requirements; and

1480 (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the
1481 notice, by which the association shall remedy its noncompliance.

1482 (d) In a case filed under Subsection (8)(a), a court may order an association to produce

1483 the summary of the reserve analysis or the complete reserve analysis on an expedited basis and
1484 at the association's expense.

1485 [~~4~~] (9) (a) A board may not use money in a reserve fund:

1486 (i) for daily maintenance expenses, unless a majority of association members vote to

1487 approve the use of reserve fund money for that purpose; or

1488 (ii) for any purpose other than the purpose for which the reserve fund was established.

1489 (b) A board shall maintain a reserve fund separate from other association funds.

1490 (c) This Subsection [~~4~~] (9) may not be construed to limit a board from prudently

1491 investing money in a reserve fund, subject to any investment constraints imposed by the

1492 governing documents.

1493 [~~5~~] (10) Subsections (2)[~~, (3), (4), and (6)~~] through (9) do not apply to an association

1494 during the period of administrative control.

1495 [~~(6) An association shall:~~]

1496 [~~(a) annually, at the annual meeting of lot owners or at a special meeting of lot~~

1497 ~~owners:]~~

1498 [~~(i) present the reserve study; and]~~

1499 [~~(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to~~

1500 ~~fund a reserve fund and, if so, how to fund it and in what amount; and]~~

1501 [~~(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~

1502 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

1503 [~~7~~] (11) This section applies to each association, regardless of when the association

1504 was created."