

## SB0090S01 compared with SB0090

~~text~~ shows text that was in SB0090 but was deleted in SB0090S01.

text shows text that was not in SB0090 but was inserted into SB0090S01.

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Senator J. Stuart Adams proposes the following substitute bill:

### CONDOMINIUM AND COMMUNITY ASSOCIATION

#### AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: J. Stuart Adams**

House Sponsor: \_\_\_\_\_

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#### 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 ~~the improvement, alteration, or combination of~~ making changes to adjoining units or lots acquired by same owner;
- ▶ enacts provisions relating to the responsibility for maintenance, repair, and

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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 relating to an owner's request to make modifications to the owner's unit or lot;~~

- ‡
- ▶ enacts provisions allowing a preexisting association to make a later-enacted provision of law applicable to the association;
  - ▶ modifies provisions relating to the organization of an association as a nonprofit corporation or other entity;

~~{ → enacts provisions for resolving conflicting provisions of law and other applicable documents;~~

- ‡
- ▶ modifies insurance provisions;

~~{ → enacts provisions relating to the powers, meetings, and actions of a management committee or board;~~

~~→ enacts provisions relating to a community association's governing documents, including application of the rule against perpetuities and the rule against unreasonable restraints on alienation;~~

- ‡
- ▶ enacts a provision relating to the ~~{organization of a community association;~~

~~→ enacts a provision relating to a lot owner's improvement or alteration to a lot}~~consolidation of associations;

- ▶ enacts provisions relating to application of the rule against perpetuities and the rule against unreasonable restraints on alienation;

- ▶ enacts a provision relating to eminent domain of property that is part of a community association;~~{~~

~~→ enacts provisions relating to the consolidation and termination of a community association;~~

~~→ repeals an obsolete provision;}~~ and

- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

- 57-8-3, as last amended by Laws of Utah 2012, Chapter 166
- 57-8-7, as last amended by Laws of Utah 2003, Chapter 265
- 57-8-7.5, as last amended by Laws of Utah 2012, Chapters 83 and 369
- 57-8-23, as enacted by Laws of Utah 1963, Chapter 111
- 57-8-40, as enacted by Laws of Utah 2008, Chapter 291
- 57-8-43, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-102, as last amended by Laws of Utah 2011, Chapter 355
- 57-8a-211, as last amended by Laws of Utah 2012, Chapters 83 and 369
- 57-8a-212, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-220, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-402, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-403, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-404, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-405, as last amended by Laws of Utah 2012, Chapter 369
- 57-8a-406, as enacted by Laws of Utah 2011, Chapter 355
- 57-8a-407, as enacted by Laws of Utah 2011, Chapter 355
- 76-6-206, as last amended by Laws of Utah 2010, Chapter 334

#### ENACTS:

- 57-8-4.5, Utah Code Annotated 1953
- 57-8-10.3, Utah Code Annotated 1953
- 57-8-10.5, Utah Code Annotated 1953
- ~~{ 57-8-40.5, Utah Code Annotated 1953~~
- † 57-8-55, Utah Code Annotated 1953
- ~~{ 57-8-56, Utah Code Annotated 1953~~
- ~~— 57-8-57, Utah Code Annotated 1953~~
- † 57-8a-107, Utah Code Annotated 1953
- 57-8a-108, Utah Code Annotated 1953

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- ~~{ 57-8a-109, Utah Code Annotated 1953~~
- { 57-8a-222, Utah Code Annotated 1953
- 57-8a-223, Utah Code Annotated 1953
- 57-8a-224, Utah Code Annotated 1953
- 57-8a-501, Utah Code Annotated 1953
- 57-8a-502, Utah Code Annotated 1953
- ~~{ 57-8a-503, Utah Code Annotated 1953~~
- ~~— 57-8a-504, Utah Code Annotated 1953~~
- { 57-8a-601, Utah Code Annotated 1953

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

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

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

As used in this chapter:

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

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

(b) an amount that an association of unit owners assesses to a unit owner under

Subsection 57-8-43(9)~~(h)~~(g).

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

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

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

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

(4) "Commercial condominium project" means a condominium project that has no residential units within the project.

~~(4)~~ (5) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(6)]~~ (7) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

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

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

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

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

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

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

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

~~[(14)]~~ (15) "Declarant" means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.

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

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

(18) "Governing documents":

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

(i) exercise powers; or

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

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association of unit owners; and

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association of unit owners.

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

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

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

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

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

~~[(21)]~~ (24) "Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or

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fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.

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

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

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

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

~~[(26)]~~ (29) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in Subsection 57-19-2(19).

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

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

~~[(29)]~~ (32) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the



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percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

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

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

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

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

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

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

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

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

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

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

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

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

(c) compromise structural components.

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

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

Section 3. Section **57-8-7** is amended to read:

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

(1) As used in this section:

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

(b) "Reasonable notice" means:

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

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

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

(3) Except as otherwise expressly provided by this act, the undivided interest of each unit owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of two-thirds of the unit owners expressed in an amended declaration duly recorded. The undivided interest in the

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common areas and facilities shall not be separated from the unit to which it appertains and shall be considered to be conveyed or encumbered or released from liens with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. A time period unit may not be further divided into shorter time periods by a conveyance or disclaimer.

(4) The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this act as provided in Sections 57-8-22 and 57-8-31. Any covenants to the contrary shall be null and void.

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

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

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

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

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

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

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

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

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

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

Section 4. Section **57-8-7.5** is amended to read:

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

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

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

~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and

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

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

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

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

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

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

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

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

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

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

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

(c) This Subsection (4) may not be construed to limit a management committee from

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prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

(5) An association of unit owners shall:

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

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

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

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

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

~~(b) Within 45 days after the date of the meeting at which the association of unit owners' budget is adopted, unit owners may disapprove a reserve fund line item:~~

~~(i) at a special meeting that unit owners call for that purpose; and~~

~~(ii) by a vote of at least 51% of the allocated voting interests in the association of unit owners:~~

~~(c) If unit owners disapprove a reserve fund line item under Subsection (6)(b), the last reserve fund line item that was not disapproved continues to be the budgeted amount to be placed into a reserve fund until the management committee presents another reserve fund line item that is not disapproved under Subsection (6)(b):~~

~~(d) An association of unit owners shall prepare and keep minutes of each special meeting of unit owners held under this Subsection (6) and indicate in the minutes any decision made relating to the funding of a reserve fund.~~

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

~~An association of unit owners shall:~~

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

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

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

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

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

Section 5. Section **57-8-10.3** is enacted to read:

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

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

Section 6. Section **57-8-10.5** is enacted to read:

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

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

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

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

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

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

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

Section 7. Section **57-8-23** is amended to read:

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

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

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

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

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

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

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

(b) any other entity organized under other law.

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

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

(a) for:

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

(ii) similar persons in a position of control[;]; and

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

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

~~⌘~~(b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized controls over a conflicting provision in any of the sources

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listed in Subsections (5)(c) through (f);~~{}~~

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

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

~~{}~~(e) the bylaws control over a conflicting provision in association rules; and~~{}~~

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

~~\_\_\_\_\_ (b) that is permitted by the law under which the nonprofit corporation or other entity is organized.~~

~~\_\_\_\_\_ [(6)] (5)~~

~~(6) Immediately upon the legal formation of ~~{}~~an ~~{}~~a nonprofit corporation or other entity in compliance with this section, the association ~~{}~~of unit owners and unit owners are subject to any right, obligation, procedure, and remedy applicable to that ~~{}~~entity nonprofit corporation or other entity, subject to Section 57-8-40.5.~~

~~\_\_\_\_\_ [(7)] (6) (a) A form ["set of"] entity.~~

~~(7) (a) A form "articles of incorporation ~~{}~~" ~~{}~~ or similar organizational document ~~{}~~attached ~~{}~~recorded with or attached as an exhibit to a declaration ~~{}~~or other recorded governing document may be modified by the management committee for filing or ~~{}~~re-filing ~~{}~~refiling if the modified version ~~{}~~is otherwise consistent with this section's provisions ~~{}~~complies with this section.~~

~~(b) An organizational document ~~{}~~attached ~~{}~~concerning the organization of a nonprofit corporation or other entity, that is recorded with or attached as an exhibit to a declaration ~~{}~~that is filed and concerns the organization of an entity ~~{}~~ may be amended in accordance with its own terms or any applicable law, ~~{}~~notwithstanding the fact that ~~{}~~even though the organizational document ~~{}~~might be recorded ~~{}~~has been recorded or attached as an exhibit to a declaration or other recorded governing document.~~

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



## SB0090S01 compared with SB0090

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

~~—— (7) An association of unit owners that is terminated or dissolved without the possibility of reinstatement may be reorganized by complying with the requirements of this section.~~

~~—— {(9)} (8)}~~

(9) (a) This section applies to ~~{}~~all~~{}~~ ~~{a}~~ condominium ~~{}~~projects, whether established before or after May 5, 2008 ~~{}~~project, regardless of when the condominium project is established~~}~~.

(b) This section does not validate or invalidate the organization of an association ~~{of unit owners }~~that occurred before May ~~{}~~5, 2008 ~~{14, 2013}~~, whether or not the association~~{ of unit owners }~~ was otherwise in compliance with this section.

~~{ —— Section 9. Section 57-8-40.5 is enacted to read:~~

~~—— 57-8-40.5. Resolution of conflicting governing document provisions.~~

~~—— (1) A conflict involving the application of provisions of the governing documents shall be resolved by applying those provisions in the following order of priority, unless the declaration provides otherwise:~~

~~—— (a) a recorded plat;~~

~~—— (b) a recorded declaration;~~

~~—— (c) (i) the articles of incorporation, if the association of unit owners is organized as a nonprofit corporation; or~~

~~—— (ii) the organizational document establishing the entity that the association of unit owners is organized as, if the association of unit owners is organized as an entity other than a nonprofit corporation;~~

~~—— (d) the bylaws, if applicable;~~

~~—— (e) the rules of the association of unit owners; and~~

~~—— (f) any other written instrument through which the association of unit owners exercises powers or manages, maintains, or otherwise affects the real estate and personal property under the association of unit owners' authority;~~

~~—— (2) This section applies to a condominium project, regardless of when the condominium project is established:~~

## SB0090S01 compared with SB0090

‡ Section ~~{10}9~~. Section 57-8-43 is amended to read:

### 57-8-43. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

## SB0090S01 compared with SB0090

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

- (i) an additional type of insurance than otherwise required; or
- (ii) a policy with greater coverage than otherwise required.

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

- (a) void a property insurance policy under Subsection (3)(a) or a liability insurance policy under Subsection (3)(b); or
- (b) be a condition to recovery under a policy.

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

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

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

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

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

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

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

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

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

## SB0090S01 compared with SB0090

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

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

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

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

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

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

- (i) the association's policy provides primary insurance coverage; and
- (ii) notwithstanding Subsection (9)~~[(g)](f)(i)[;]~~ and subject to Subsection (9)(g):
  - (A) the unit owner is responsible for the deductible of the association of unit owners;

and

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

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

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

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

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

## SB0090S01 compared with SB0090

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

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

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

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

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

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

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

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

(i) [the] a unit owner's policy is considered the policy for primary coverage [to the

## SB0090S01 compared with SB0090

~~amount of the policy deductible of the association of unit owners]~~ for a loss occurring to the unit owner's unit or to a limited common area or facility appurtenant to the unit;

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

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

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

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

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

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

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

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

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

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

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

## SB0090S01 compared with SB0090

- (i) the association of unit owners;
- (ii) a unit owner, upon the unit owner's written request; and
- (iii) a holder of a security interest, upon the holder's written request.

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

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

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

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

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

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

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

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

(c) Each unit owner is an insured person under a liability insurance policy that an association of unit owners obtains ~~[that insures against]~~, but only for liability arising from:

- (i) the unit owner's ownership interest in the common areas and facilities ~~[or from] ~~{,}~~~~;
- (ii) maintenance, repair, or replacement of common areas and facilities; and
- (iii) the unit owner's membership in the association of unit owners.

Section ~~{H}~~ 10. Section **57-8-55** is enacted to read:

~~{~~ ~~57-8-55. Meetings of the management committee or subcommittee.~~

~~\_\_\_\_\_~~ (1) As used in this section:

~~\_\_\_\_\_~~ (a) "Emergency" means a set of circumstances that:

## SB0090S01 compared with SB0090

- ~~—— (i) could not have been reasonably foreseen;~~
- ~~—— (ii) requires immediate attention and possible management committee action; and~~
- ~~—— (iii) makes it impracticable to provide the notice required under this section.~~
- ~~—— (b) "Meeting" means a gathering of management committee or subcommittee members:~~
  - ~~—— (i) in person; or~~
  - ~~—— (ii) by telephonic or other means, as provided in Subsection (9);~~
  - ~~—— (c) "Subcommittee" means a committee, other than the management committee, that a governing document designates and authorizes to take action for an association of unit owners.~~
- ~~—— (2) Unless otherwise provided in a declaration or bylaws, Subsections (3) through (13) do not apply:~~
  - ~~—— (a) during the period of control provided for in Subsection 57-8-16.5(1); or~~
  - ~~—— (b) to a condominium project with fewer than 11 units.~~
- ~~—— (3) (a) Except as provided in Subsection (3)(b), an association of unit owners shall give notice of a meeting:~~
  - ~~—— (i) to:~~
    - ~~—— (A) each member of the management committee or subcommittee, as the case may be;~~
    - ~~and~~
    - ~~—— (B) unit owners;~~
  - ~~—— (ii) as permitted under Section 57-8-42; and~~
  - ~~—— (iii) at least two business days before the day of the meeting;~~
- ~~—— (b) Subsection (3)(a) does not apply if:~~
  - ~~—— (i) the meeting has been included in a schedule previously given to unit owners;~~
  - ~~—— (ii) the meeting has been called to deal with an emergency; or~~
  - ~~—— (iii) the action is taken under Section 57-8-57.~~
- ~~—— (c) A notice under Subsection (3)(a) shall:~~
  - ~~—— (i) state the time and date of the meeting; and~~
  - ~~—— (ii) state the location of the meeting or, if there is no physical location for the meeting, provide the information required under Subsection (9)(b);~~
- ~~—— (4) (a) Except as provided in Subsection (4)(b) and Section 57-8-57, a meeting shall be open to unit owners.~~



## SB0090S01 compared with SB0090

~~— (b) The management committee or a subcommittee may hold a closed session during a meeting if the purpose of the session is to:~~

~~— (i) consult with the association of unit owners' attorney to obtain legal advice;~~

~~— (ii) discuss existing or potential litigation, mediation, arbitration, or administrative proceeding;~~

~~— (iii) discuss a labor or personnel matter;~~

~~— (iv) discuss a matter relating to initial contract negotiations, including the review of a bid or proposal;~~

~~— (v) discuss a matter involving a person, if the management committee or subcommittee determines that public knowledge of the matter would violate the person's privacy; or~~

~~— (vi) discuss a delinquent assessment;~~

~~— (5) Members of a management committee or subcommittee may not use incidental or social gatherings to evade the requirement of Subsection (4)(a):~~

~~— (6) A meeting may be called by:~~

~~— (a) a majority of the members of a management committee or subcommittee; or~~

~~— (b) a person designated in a governing document to call a meeting;~~

~~— (7) Unless otherwise provided in the declaration or bylaws, the management committee shall meet at least once per year:~~

~~— (8) A physical meeting at which some or all of the management committee or subcommittee members appear in person shall be:~~

~~— (a) at the association of unit owners, if possible in a common area or facility; or~~

~~— (b) in the county in which the condominium project is located;~~

~~— (9) If a member of the management committee or subcommittee is permitted to participate in a meeting by telephone or other means of communication by which all persons participating in the meeting are able to hear each other during the meeting, the association of unit owners shall provide:~~

~~— (a) a physical location with adequate facilities to permit those entitled to attend the meeting to hear the proceedings; or~~

~~— (b) information to enable those entitled to attend to call into the meeting using a telephone to access the meeting from anywhere in the contiguous United States without incurring any access or long distance charge.~~

## SB0090S01 compared with SB0090

~~(10) At a meeting, the management committee or subcommittee, as the case may be:~~  
~~(a) shall provide unit owners a reasonable opportunity to offer comments; and~~  
~~(b) may limit the time for unit owners to offer comments to one specific period of time during the meeting.~~

~~(11) A management committee or subcommittee shall, through a means permitted by Section 57-8-42, send a written notice to unit owners of the action taken at a meeting.~~

~~(12) (a) An association of unit owners that enters a contract with a third party in violation of this section is bound by the contract if the third party:~~

~~(i) relies on an action of the management committee; and~~

~~(ii) had no knowledge at the time of entering the contract that the action violates this section.~~

~~(b) Notwithstanding noncompliance with this section, a management committee action is binding and valid unless a court sets the action aside.~~

~~(13) For a unit owner to challenge the validity of a management committee or subcommittee action based on a failure to comply with a provision of this section, the unit owner shall:~~

~~(a) (i) within 90 days after notice of the action is sent to unit owners, give written notice to the association of unit owners objecting to and identifying the noncompliant action; and~~

~~(ii) initiate an action within 60 days after the conclusion of the 90-day period described in Subsection (13)(a)(i); or~~

~~(b) if the association of unit owners does not provide notice to unit owners as required under Subsection (11), initiate an action within 18 months after the action of the management committee or subcommittee.~~

~~Section 12. Section 57-8-56 is enacted to read:~~

~~**57-8-56. Management committee's action without a meeting.**~~

~~A management committee may act without a meeting:~~

~~(1) by following the procedures of Section 16-6a-813; or~~

~~(2) to undertake ministerial actions or to implement an action that the management committee previously agreed to in an open meeting.~~

~~Section 13. Section 57-8-57 is enacted to read:~~

## SB0090S01 compared with SB0090

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

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

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

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

(a) be prepared, executed, and certified by the president of the association of each of the consolidating associations of unit owners; and

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

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

(ii) (A) the percentage of overall allocated interests of the consolidated association of unit owners that are allocated to all of the units comprising each of the consolidating associations of unit owners; and

(B) that the portion of the percentages allocated to each unit formerly comprising a part of a consolidating association of unit owners is equal to the percentages of allocated interests allocated to the unit by the declaration of the consolidating association of unit owners.

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

(5) Unless otherwise provided in the declaration of consolidation, the consolidated association of unit owners resulting from a consolidation under this section:

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

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

## SB0090S01 compared with SB0090

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

Section ~~{14}~~11. Section **57-8a-102** is amended to read:

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

As used in this chapter:

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

- (i) by the association;
- (ii) on or against a lot or a lot owner; and
- (iii) pursuant to a governing document recorded with the county recorder.

(b) "Assessment" includes:

- (i) a common expense; and
- (ii) an amount assessed against a lot owner under Subsection 57-8a-405~~[(8)]~~(7).

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

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

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

- (A) real property taxes;
- (B) insurance premiums;
- (C) maintenance costs; or
- (D) for improvement of real property not owned by the member.

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

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

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

- (a) owns;
- (b) maintains;
- (c) repairs; or
- (d) administers.

(5) "Common expense" means costs incurred by the association to exercise any of the

## **SB0090S01 compared with SB0090**

powers provided for in the association's governing documents.

(6) "Declarant":

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

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

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

(i) exercise powers; or

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

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association.

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

(a) for the nonpayment of an assessment; and

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

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

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

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

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

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

(11) "Lot" means:

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

(i) designated for separate ownership or occupancy; and

## SB0090S01 compared with SB0090

- (ii) (A) shown on a recorded subdivision plat; or
- (B) the boundaries of which are described in a recorded governing document; or
- (b) (i) a unit in a condominium association if the condominium association is a part of a development; or
- (ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.

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

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

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

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

Section ~~{15}~~ 12. Section **57-8a-107** is enacted to read:

~~{~~ **57-8a-107. Resolution of conflicting governing document provisions.**

~~\_\_\_\_\_~~ (1) A conflict involving the application of provisions of the governing documents shall be resolved by applying those provisions in the following order of priority, unless the declaration provides otherwise:

~~\_\_\_\_\_~~ (a) a recorded plat;

~~\_\_\_\_\_~~ (b) a recorded declaration;

~~\_\_\_\_\_~~ (c) the association's articles;

~~\_\_\_\_\_~~ (d) the bylaws;

~~\_\_\_\_\_~~ (e) the association rules; and

~~\_\_\_\_\_~~ (f) any other written instrument through which the association exercises powers or manages, maintains, or otherwise affects the real estate and personal property under the association's authority.

~~\_\_\_\_\_~~ (2) (a) A board may modify a form set of articles of incorporation or similar organizational document attached to a recorded declaration for the purpose of filing or refiling the modified articles or other organizational document if the modified articles or organizational

## SB0090S01 compared with SB0090

document is consistent with this section:

~~(b) Articles of incorporation or bylaws attached to a recorded declaration may be amended as provided by the articles or bylaws and applicable law, even though the articles or bylaws have been recorded.~~

~~(3) This section applies to an association regardless of when it is established.~~

~~Section 16. Section ~~57-8a-108~~ is enacted to read:~~

† ~~{57-8a-108}~~57-8a-107. **Amending the declaration to make provisions of this chapter applicable.**

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

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

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

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

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

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

Section ~~{17}~~13. Section ~~{57-8a-109}~~57-8a-108 is enacted to read:

~~{57-8a-109}~~57-8a-108. **Rules against perpetuities and unreasonable restraints -- Insubstantial failure to comply.**

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

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

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

Section ~~{18}~~14. Section **57-8a-211** is amended to read:

### **Part 2. Administrative Provisions**

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

(1) As used in this section<sup>[7]</sup>:

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

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~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas that have a useful life of three years or more and a remaining useful life of less than 30 years, but excluding any cost that can reasonably be funded from the association's general budget or from other association funds; and

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

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

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

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

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

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

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

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

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

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

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

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

(5) An association shall:

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

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

(6) ~~[(a)]~~ In formulating its budget each year, an association shall include a reserve



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fund line item in:

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

~~(fi)b~~ an amount required by the governing documents, if the governing documents

require an amount higher than the amount determined under Subsection (6)(a)(i).

~~{ (b) Within 45 days after the date of the meeting at which the association budget is adopted, lot owners may disapprove a reserve fund line item:~~

~~— (i) at a special meeting that lot owners call for that purpose; and~~

~~— (ii) by a vote of at least 51% of the allocated voting interests in the association.~~

~~— (c) If lot owners disapprove a reserve fund line item under Subsection (6)(b), the last reserve fund line item that was not disapproved continues to be the budgeted amount to be placed into a reserve fund until the board presents another reserve fund line item that is not disapproved under Subsection (6)(b):~~

~~— (d) An association shall prepare and keep minutes of each special meeting of lot owners held under this Subsection (6) and indicate in the minutes any decision made relating to the funding of a reserve fund.~~

~~† (5) (7) Subsections (2)[, (3), (4), and] through (6) do not apply to an association during the period of administrative control.~~

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

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

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

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

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

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

Section ~~{19}~~15. Section **57-8a-212** is amended to read:

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

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

(a) the name of the project;

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- (b) the name of the association;
- (c) a statement that the project is not a cooperative;
- (d) a statement indicating any portions of the project that contain condominiums governed by Chapter 8, Condominium Ownership Act;
- (e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;
- (f) the name of each county in which any part of the project is located;
- (g) a legally sufficient description of the real estate included in the project;
- (h) a description of any limited common areas and any real estate that is or is required to become common areas;
- (i) any restriction on the alienation of a lot, including a restriction on leasing; and
- (j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
- (ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and [~~57-8a-402~~] 57-8a-302 to (name of trustee), with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."

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

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

Section ~~20~~16. Section **57-8a-220** is amended to read:

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

- (1) (a) Subject to Subsection (1)(b), a declaration may:
  - (i) condition the effectiveness of lot owners' actions specified in the declaration on the approval of a specified number or percentage of lenders holding a security interest in the lots; or
  - (ii) condition the effectiveness of association actions specified in the declaration on the

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approval of a specified number or percentage of lenders that have extended credit to the association.

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

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

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

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

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

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

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

(d) This Subsection (1) applies to:

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

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

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

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

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

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

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

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- (i) shall use reasonable efforts to find a mailing address for the security holder; and
- (ii) may send the notice to any address obtained under Subsection (3)(b)(i).

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

(a) shall:

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

(ii) if no address is provided:

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

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

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

Section ~~{21}~~17. Section **57-8a-222** is enacted to read:

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

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

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

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

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

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

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

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

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

- (a) impair the structural integrity or mechanical systems of the building or either lot;
- (b) reduce the support or integrity of common areas; or
- (c) compromise structural components.

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

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

Section ~~{22}~~18. Section **57-8a-223** is enacted to read:

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

Unless the declaration provides otherwise:

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

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

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

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

Section ~~{23}~~19. Section **57-8a-224** is enacted to read:

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

(1) As used in this section:

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

(b) "Reasonable notice" means:

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

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

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

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

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

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

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

(b) for making an emergency repair.

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

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

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

Section ~~{24}~~20. Section **57-8a-402** is amended to read:

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

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

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

(b) issued to or renewed by:

(i) a lot owner; or

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

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

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

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

(b) the project includes attached dwellings; and

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

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

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

Section ~~{25}~~21. Section **57-8a-403** is amended to read:

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

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

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

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

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

Section ~~{26}~~22. Section **57-8a-404** is amended to read:

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

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

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

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- (i) an additional type of insurance than otherwise required; or
- (ii) a policy with greater coverage than otherwise required.

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

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

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

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

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

(b) the lot owner.

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

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

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

Section ~~{27}~~23. Section **57-8a-405** is amended to read:

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

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

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

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

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

(b) unless otherwise provided in the declaration, any commercial lot in a mixed-use



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project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use project.

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

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

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

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

- (a) the association's policy provides primary insurance coverage; and
- (b) notwithstanding Subsection ~~[(7)]~~ (6)(a) and subject to Subsection ~~[(8)]~~ (7):
  - (i) ~~[a]~~ the lot owner is responsible for the association's policy deductible; and
  - (ii) building property coverage, often referred to as coverage A, of the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

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

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

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

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

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

(c) If a lot owner does not pay the amount required under Subsection ~~[(8)]~~ (7)(b) within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the

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lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the association;

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

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

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

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

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

(b) Notwithstanding any other provision of this part, an association may obtain property insurance for fixtures, improvements, and betterments in a commercial lot in a

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~~mixed-use~~ mixed-used project if allowed or required in the declaration.

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

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

Section ~~28~~ 24. Section **57-8a-406** is amended to read:

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

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

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

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

(a) the lot owner's ownership interest in the common areas [or from];

(b) maintenance, repair, or replacement of common areas; and

(c) the lot owner's membership in the association.

Section ~~29~~ 25. Section **57-8a-407** is amended to read:

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

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

(i) the project is terminated;

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

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

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

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

(2) (a) The cost of repair or replacement of any lot in excess of insurance proceeds and

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reserves is a common expense[-] to the extent the association is required under this chapter to provide insurance coverage for the lot.

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

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

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

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

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

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

(iii) lien holders; and

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

(4) If the lot owners vote not to rebuild a lot:

(a) the lot's allocated interests are automatically reallocated upon the lot owner's vote as if the lot had been condemned; and

(b) the association shall prepare, execute, and submit for recording an amendment to the declaration reflecting the reallocations described in Subsection (4)(a).

Section ~~{30}~~26. Section **57-8a-501** is enacted to read:

### **Part 5. Association Board**

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

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

Section ~~{31}~~27. Section **57-8a-502** is enacted to read:

#### **57-8a-502. ~~f~~ Meetings of the board or subcommittee.**

~~(1) As used in this section:~~

~~(a) "Emergency" means a set of circumstances that:~~

~~(i) could not have been reasonably foreseen;~~

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- ~~— (ii) requires immediate attention and possible board action; and~~
- ~~— (iii) makes it impracticable to provide the notice required under this section.~~
- ~~— (b) "Meeting" means a gathering of board or subcommittee members:~~
  - ~~— (i) in person; or~~
  - ~~— (ii) by telephonic or other means, as provided in Subsection (9).~~
- ~~— (c) "Subcommittee" means a committee, other than the board, that a governing document designates and authorizes to take action for an association.~~
- ~~— (2) Unless otherwise provided in a declaration or bylaws, Subsections (3) through (13) do not apply:~~
  - ~~— (a) during the period of administrative control defined in Section 57-8a-104; or~~
  - ~~— (b) to an association that includes fewer than 11 lots.~~
- ~~— (3) (a) Except as provided in Subsection (3)(b), an association shall give notice of a meeting:~~
  - ~~— (i) to:~~
    - ~~— (A) each member of the board or subcommittee, as the case may be; and~~
    - ~~— (B) lot owners;~~
  - ~~— (ii) as permitted under Section 57-8a-214; and~~
  - ~~— (iii) at least two business days before the day of the meeting.~~
- ~~— (b) Subsection (3)(a) does not apply if:~~
  - ~~— (i) the meeting has been included in a schedule previously given to lot owners;~~
  - ~~— (ii) the meeting has been called to deal with an emergency; or~~
  - ~~— (iii) the action is taken under Section 57-8a-503.~~
- ~~— (c) A notice under Subsection (3)(a) shall:~~
  - ~~— (i) state the time and date of the meeting; and~~
  - ~~— (ii) state the location of the meeting or, if there is no physical location for the meeting, provide the information required under Subsection (9)(b).~~
- ~~— (4) (a) Except as provided in Subsection (4)(b) and Section 57-8a-503, a meeting shall be open to lot owners.~~
- ~~— (b) The board or a subcommittee may hold a closed session during a meeting if the purpose of the session is to:~~
  - ~~— (i) consult with the association's attorney to obtain legal advice;~~

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- ~~—— (ii) discuss existing or potential litigation, mediation, arbitration, or administrative proceeding;~~
- ~~—— (iii) discuss a labor or personnel matter;~~
- ~~—— (iv) discuss a matter relating to initial contract negotiations, including the review of a bid or proposal;~~
- ~~—— (v) discuss a matter involving a person, if the board or subcommittee determines that public knowledge of the matter would violate the person's privacy; or~~
- ~~—— (vi) discuss a delinquent assessment.~~
- ~~—— (5) Members of a board or subcommittee may not use incidental or social gatherings to evade the requirement of Subsection (4)(a).~~
- ~~—— (6) A meeting may be called by:~~
  - ~~—— (a) a majority of the members of a board or subcommittee; or~~
  - ~~—— (b) a person designated in a governing document to call a meeting.~~
- ~~—— (7) Unless otherwise provided in the declaration or bylaws, the board shall meet at least once per year.~~
- ~~—— (8) A physical meeting at which some or all of the board or subcommittee members appear in person shall be:~~
  - ~~—— (a) at the association, if possible in a common area; or~~
  - ~~—— (b) in a location convenient to the association.~~
- ~~—— (9) If a member of the board or subcommittee is permitted to participate in a meeting by telephone or other means of communication by which all persons participating in the meeting are able to hear each other during the meeting, the association shall provide:~~
  - ~~—— (a) a physical location with adequate facilities to permit those entitled to attend the meeting to hear the proceedings; or~~
  - ~~—— (b) information to enable those entitled to attend to call into the meeting using a telephone to access the meeting from anywhere in the contiguous United States without incurring any access or long distance charge.~~
- ~~—— (10) At a meeting, the board or subcommittee, as the case may be:~~
  - ~~—— (a) shall provide lot owners a reasonable opportunity to offer comments; and~~
  - ~~—— (b) may limit the time for lot owners to offer comments to one specific period of~~

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time during the meeting:

~~—— (11) A board or subcommittee shall, through a means permitted by Section 57-8a-214, send a written notice to lot owners of the action taken at a meeting:~~

~~—— (12) (a) An association that enters a contract with a third party in violation of this section is bound by the contract if the third party:~~

~~—— (i) relies on an action of the board; and~~

~~—— (ii) had no knowledge at the time of entering the contract that the action violates this section:~~

~~—— (b) Notwithstanding noncompliance with this section, a board action is binding and valid unless a court sets the action aside:~~

~~—— (13) For a lot owner to challenge the validity of a board or subcommittee action based on a failure to comply with a provision of this section, the lot owner shall:~~

~~—— (a) (i) within 90 days after notice of the action is sent to lot owners, give written notice to the association objecting to and identifying the noncompliant action; and~~

~~—— (ii) initiate an action within 60 days after the conclusion of the 90-day period described in Subsection (13)(a)(i); or~~

~~—— (b) if the association does not provide notice to lot owners as required under Subsection (11), initiate an action within 18 months after the action of the board or subcommittee:~~

~~—— Section 32. Section 57-8a-503 is enacted to read:~~

~~—— 57-8a-503. Board action without a meeting:~~

~~—— A board may act without a meeting:~~

~~—— (1) by following the procedures of Section 16-6a-813; or~~

~~—— (2) to undertake ministerial actions or to implement an action that the board previously agreed to in an open meeting:~~

~~—— Section 33. Section 57-8a-504 is enacted to read:~~

~~—— 57-8a-504.} Period of administrative control.~~

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

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



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

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

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

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

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

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

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

Section ~~34~~28. Section **57-8a-601** is enacted to read:

### **Part 6. Consolidation of Associations**

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

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

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

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

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

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

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

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

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

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

(5) Unless otherwise provided in the declaration of consolidation~~+~~

~~— (a) ~~+~~~~ the consolidated association resulting from a consolidation under this section:

(a) is the legal successor for all purposes of all of the consolidating associations;

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

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

Section ~~{35}~~29. Section **76-6-206** is amended to read:

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

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

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

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

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

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

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

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

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

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- (ii) fencing or other enclosure obviously designed to exclude intruders; or
- (iii) posting of signs reasonably likely to come to the attention of intruders; or
- (c) the person enters a condominium unit in violation of Subsection 57-8-7[(7)](8).

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

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

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

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

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

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**Legislative Review Note**

~~as of 3-1-13 11:53 AM~~

~~Office of Legislative Research and General Counsel~~