

Representative Earl D. Tanner proposes the following substitute bill:

ASSOCIATION RENTAL AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Earl D. Tanner

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Condominium Ownership Act and the Community Association Act relating to rental restrictions.

Highlighted Provisions:

This bill:

- ▶ provides that a condominium association or a homeowners association may only restrict or prohibit rentals in accordance with the provisions of this bill, regardless of when the association or the association of unit owners was created; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-10, as last amended by Laws of Utah 2011, Chapter 355

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



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

27 Section 1. Section **57-8-10** is amended to read:

28 **57-8-10. Contents of declaration.**

29 (1) [~~Prior to~~] Before the conveyance of any unit in a condominium project, a
30 declaration shall be recorded that contains the covenants, conditions, and restrictions relating to
31 the project that shall be enforceable equitable servitudes, where reasonable, and which shall run
32 with the land. Unless otherwise provided, these servitudes may be enforced by [~~any~~] a unit
33 owner [~~and his successors~~] or a unit owner's successor in interest.

34 (2) (a) For every condominium project, the declaration shall:

35 (i) [~~The declaration shall~~] include a description of the land or interests in real property
36 included within the project[-];

37 (ii) [~~The declaration shall~~] contain a description of any buildings[~~, which~~] that states
38 the number of storeys and basements, the number of units, the principal materials of which the
39 building is or is to be constructed, and a description of all other significant improvements
40 contained or to be contained in the project[-];

41 (iii) [~~The declaration shall~~] contain the unit number of each unit, the square footage of
42 each unit, and any other description or information necessary to properly identify each unit[-];

43 (iv) [~~The declaration shall~~] describe the common areas and facilities of the project[-];
44 and

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

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

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

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

56 (ii) If any use restrictions are to apply, the declaration shall state the purposes for which

57 the units are intended and ~~[restricted as to]~~ the use restrictions that apply.

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

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

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

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

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

70 (e) The initial recorded declaration shall include:

71 (i) an appointment of a trustee who qualifies under Subsection [57-1-21\(1\)\(a\)\(i\)](#) or (iv);
72 and

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

77 (3) (a) If the condominium project contains any convertible land, the declaration shall:

78 (i) ~~[The declaration shall]~~ contain a legal description by metes and bounds of each area
79 of convertible land within the condominium project~~[-];~~

80 (ii) ~~[The declaration shall]~~ state the maximum number of units that may be created
81 within each area of convertible land~~[-];~~

82 (iii) ~~[(A) The declaration shall]~~ state, with respect to each area of convertible land, the
83 maximum percentage of the aggregate land and floor area of all units that may be created and
84 the use of which will not or may not be restricted exclusively to residential purposes~~[- (B) The~~
85 ~~statements described in Subsection (3)(a)(iii)(A) need not be supplied if], unless~~ none of the
86 units on other portions of the land within the project are restricted exclusively to residential
87 use~~[-];~~

88 (iv) ~~[The declaration shall]~~ state the extent to which any structure erected on any
89 convertible land will be compatible with structures on other portions of the land within the
90 condominium project in terms of quality of construction, the principal materials to be used, and
91 architectural style~~[-];~~;

92 (v) ~~[The declaration shall]~~ describe all other improvements that may be made on each
93 area of convertible land within the condominium project~~[-];~~;

94 (vi) ~~[The declaration shall]~~ state that any units created within each area of convertible
95 land will be substantially identical to the units on other portions of the land within the project
96 or ~~[it shall]~~ describe in detail what other type of units may be created~~[-]; and~~

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

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

102 (4) If the condominium project is an expandable condominium project, the declaration
103 shall:

104 (a) (i) ~~[(A) The declaration shall]~~ contain an explicit reservation of an option to expand
105 the project~~[-];~~

106 ~~[(B) (ii) [The declaration shall]~~ include a statement of any limitations on the option to
107 expand, including a statement as to whether the consent of any unit owners ~~[shall be]~~ is
108 required and, a statement as to the method by which consent shall be ascertained, or a
109 statement that there are no such limitations~~[-];~~

110 ~~[(ii) (iii) [The declaration shall]~~ include a time limit, not exceeding seven years ~~[from~~
111 ~~the date of the recording of]~~ after the day on which the declaration is recorded, upon which the
112 option to expand the condominium project ~~[shall expire, together with]~~ expires and a statement
113 of any circumstances ~~[which]~~ that will terminate the option ~~[prior to]~~ before expiration of the
114 specified time limits~~[-];~~

115 ~~[(iii) (iv) [The declaration shall]~~ contain a legal description by metes and bounds of all
116 land that may be added to the condominium project, which is known as additional land~~[-];~~

117 ~~[(iv) (v) [The declaration shall]~~ state:

118 (A) if any of the additional land is added to the condominium project, whether all of it

119 or any particular portion of it must be added;

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

121 (C) a statement that there are no such limitations[-];

122 ~~[(v)]~~ (vi) ~~[The declaration shall]~~ include a statement as to whether portions of the
123 additional land may be added to the condominium project at different times, ~~[together with]~~
124 including any limitations fixing the boundaries of those portions by legal descriptions setting
125 forth the metes and bounds of these lands and regulating the order in which they may be added
126 to the condominium project[-];

127 ~~[(vi)]~~ (vii) ~~[The declaration shall]~~ include a statement of any limitations ~~[as to]~~ on the
128 locations of any improvements that may be made on any portions of the additional land added
129 to the condominium project, or a statement that no assurances are made in that regard[-];

130 ~~[(vii)]~~ (viii) (A) ~~[The declaration shall]~~ state the maximum number of units that may be
131 created on the additional land~~[- If];~~

132 (B) if portions of the additional land may be added to the condominium project and the
133 boundaries of those portions are fixed in accordance with Subsection (4)(a)~~[(v)]~~(vi), the
134 declaration shall also state the maximum number of units that may be created on each portion
135 added to the condominium project~~[- If]; and~~

136 (C) if portions of the additional land may be added to the condominium project and the
137 boundaries of those portions are not fixed in accordance with Subsection (4)(a)~~[(v)]~~(vi), ~~[then~~
138 ~~the declaration shall also]~~ state the maximum number of units per acre that may be created on
139 any portion added to the condominium project[-];

140 ~~[(viii)]~~ (ix) ~~[With]~~ with respect to the additional land and to any portion of ~~[it]~~ the
141 additional land that may be added to the condominium project, ~~[the declaration shall]~~ state the
142 maximum percentage of the aggregate land and floor area of all units that may be created on it,
143 the use of which will not or may not be restricted exclusively to residential purposes[-
144 ~~However, these statements need not be supplied if], unless~~ none of the units on the land
145 originally within the project are restricted exclusively to residential use[-];

146 ~~[(ix)]~~ (x) ~~[The declaration shall]~~ state the extent to which any structures erected on any
147 portion of the additional land added to the condominium project will be compatible with
148 structures on the land originally within the project in terms of quality of construction, the
149 principal materials to be used, and architectural style~~[- The declaration may also state], or that~~

150 no assurances are made in those regards[-];

151 ~~[(*) (xi) [The declaration shall]~~ describe all other improvements that will be made on
152 any portion of the additional land added to the condominium project, ~~[or it shall contain a~~
153 ~~statement of]~~ including any limitations ~~[as to]~~ on what other improvements may be made on ~~[it.~~
154 ~~The declaration may also]~~ the additional land, or state that no assurances are made in that
155 regard[-];

156 ~~[(xi) (xii) [The declaration shall]~~ contain a statement that any units created on any
157 portion of the additional land added to the condominium project will be substantially identical
158 to the units on the land originally within the project, ~~[or]~~ a statement of any limitations ~~[as to]~~
159 on what types of units may be created on ~~[it. The declaration may also contain]~~ the additional
160 land, or a statement that no assurances are made in that regard[-]; and

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

166 (b) The condominium plat recorded with the declaration may provide or supplement
167 the information required under Subsections (4)(a)~~[(iii)](iv)~~ through ~~[(a)(vi)] (vii)~~ and
168 ~~(a)~~[(ix)](x)~~~~ through ~~[(a)(xii)] (xiii)~~.

169 (5) If the condominium project is a contractible condominium, the declaration shall:

170 (a) (i) ~~[The declaration shall]~~ contain an explicit reservation of an option to contract the
171 condominium project[-];

172 (ii) ~~[The declaration shall]~~ contain a statement of any limitations on the option to
173 contract, including a statement ~~[as to]~~ regarding whether the consent of any unit owners ~~[shall~~
174 ~~be]~~ is required, and if so, a statement ~~[as to]~~ regarding the method by which this consent shall
175 be ascertained~~[-. The declaration may also contain]~~, or a statement that there are no such
176 limitations[-];

177 (iii) ~~[The declaration shall]~~ state the time limit, not exceeding seven years ~~[from the~~
178 ~~recording of]~~ after the day on which the declaration is recorded, upon which the option to
179 contract the condominium project ~~[shall expire]~~ expires, together with a statement of any
180 circumstances ~~[which]~~ that will terminate ~~[this]~~ the option ~~[prior to]~~ before expiration of the

181 specified time limit[-];

182 ~~[(b)(i)]~~ (iv) ~~[The declaration shall]~~ include a legal description by metes and bounds of
 183 all land that may be withdrawn from the condominium project, which is known as
 184 withdrawable land[-];

185 ~~[(ii)]~~ (v) ~~[The declaration shall]~~ include a statement as to whether portions of the
 186 withdrawable land may be withdrawn from the condominium project at different times,
 187 together with any limitations fixing the boundaries of those portions by legal descriptions
 188 setting forth the metes and bounds and regulating the order in which they may be withdrawn
 189 from the condominium project[-]; and

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

193 ~~[(c)]~~ (b) The condominium plat recorded with the declaration may provide or
 194 supplement the information required under ~~[Subsection (5)(b)]~~ Subsections (5)(a)(iv) through
 195 (vi).

196 (6) (a) If the condominium project is a leasehold condominium, ~~[then]~~ the declaration
 197 shall, with respect to any ground lease or other leases the expiration or termination of which
 198 will or may terminate or contract the condominium project:

199 (i) ~~[The declaration shall]~~ include recording information enabling the location of each
 200 lease in the official records of the county recorder[-];

201 (ii) ~~[The declaration shall]~~ include the date upon which each lease is due to expire[-];

202 (iii) ~~[The declaration shall]~~ state whether any land or improvements will be owned by
 203 the unit owners in fee simple~~[-If]~~;

204 (iv) if there is to be fee simple ownership of any land or improvement, as described in
 205 Subsection (6)(a)(iii), [the declaration shall] include:

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

208 (B) a statement of any rights the unit owners have to remove these improvements
 209 within a reasonable time after the expiration or termination of the lease or leases involved, or a
 210 statement that they shall have no such rights[-]; and

211 ~~[(iv)]~~ (v) ~~[The declaration shall]~~ include a statement of the rights the unit owners have

212 to extend or renew any of the leases or to redeem or purchase any of the reversions, or a
213 statement that they have no such rights.

214 (b) After the recording of the declaration, ~~[no]~~ a lessor who executed the declaration,
215 ~~[and no]~~ or the lessor's successor in interest ~~[to this lessor]~~, ~~[has any right or power to]~~ may not
216 terminate any part of the leasehold interest of any unit owner who:

217 (i) makes timely payment of ~~[his]~~ the unit owner's share of the rent to the persons
218 designated in the declaration for the receipt of the rent; and

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

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

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

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

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

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

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

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

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

241 (b) (i) Subject to Subsections (9)(c), (f), and ~~[(g)]~~ (h), an association of unit owners
242 may:

243 (A) [~~create restrictions on~~] restrict the number and term of rentals in a condominium
244 project; or

245 (B) prohibit rentals in the condominium project.

246 (ii) An association of unit owners that [~~creates a rental restriction or prohibition in~~
247 ~~accordance with Subsection (9)(b)(i)~~] restricts or prohibits rentals shall create the rental
248 restriction or prohibition in a declaration or by amending the declaration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

287 (g) Except as provided in Subsection (9)(h), the provisions of this Subsection (9) apply
288 regardless of when a condominium project's initial declaration is recorded.

289 ~~[(g)]~~ (h) ~~[This section does]~~ The provisions of this Subsection (9) do not apply to:

290 (i) a condominium project ~~[containing]~~ that contains a time period unit as defined in
291 Section 57-8-3; or

292 (ii) any other form of timeshare interest as defined in Section 57-19-2~~[, or]~~.

293 ~~[(iii) a condominium project in which the initial declaration is recorded before May 12,~~
294 ~~2009.]~~

295 ~~[(h)]~~ (i) Notwithstanding the provisions of this [section] Subsection (9), an association
296 of unit owners may, upon unanimous approval by all unit owners, restrict or prohibit rentals
297 without an exception described in Subsection (9)(c).

298 (j) An association of unit owners may only restrict or prohibit rentals if the restriction
299 or prohibition is permitted under this Subsection (9).

300 Section 2. Section **57-8a-209** is amended to read:

301 **57-8a-209. Rental restrictions.**

302 (1) As used in this section, "rentals" or "rental lot" means:

303 (a) a lot owned by an individual not described in Subsection (1)(b) that is occupied by
304 someone while no lot owner occupies the lot as the lot owner's primary residence; and

305 (b) a lot owned by an entity or trust, regardless of who occupies the lot.
306 (2) (a) Subject to Subsections (2)(b), (6), and ~~[(7)]~~ (8), an association may:
307 (i) ~~[create restrictions on]~~ restrict the number and term of rentals in an association; or
308 (ii) prohibit rentals in the association.
309 (b) An association that ~~[creates a rental restriction or prohibition in accordance with~~
310 Subsection (1)(a)(i)] restricts or prohibits rentals shall create the rental restriction or prohibition
311 in a recorded declaration of covenants, conditions, and restrictions, or by amending the
312 recorded declaration of covenants, conditions, and restrictions.
313 (3) If an association prohibits or imposes restrictions on the number and term of
314 rentals, the restrictions shall include:
315 (a) a provision that requires the association to exempt from the rental restrictions the
316 following lot owner and the lot owner's lot:
317 (i) a lot owner in the military for the period of the lot owner's deployment;
318 (ii) a lot occupied by a lot owner's parent, child, or sibling;
319 (iii) a lot owner whose employer has relocated the lot owner for no less than two years;
320 or
321 (iv) a lot owned by a trust or other entity created for estate planning purposes if the
322 trust or other estate planning entity was created for:
323 (A) the estate of a current resident of the lot; or
324 (B) the parent, child, or sibling of the current resident of the lot;
325 (b) a provision ~~[allowing]~~ that allows a lot owner who has a rental in the association
326 before the time the rental restriction described in Subsection (2)(a) is recorded with the county
327 recorder of the county in which the association is located to continue renting until:
328 (i) the lot owner occupies the lot; or
329 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a
330 similar position of ownership or control of an entity or trust that holds an ownership interest in
331 the lot, occupies the lot; and
332 (c) a requirement that the association create, by rule or resolution, procedures to:
333 (i) determine and track the number of rentals and lots in the association subject to the
334 provisions described in Subsections (3)(a) and (b); and
335 (ii) ensure consistent administration and enforcement of the rental restrictions.

336 (4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the
337 following occur:

338 (a) the conveyance, sale, or other transfer of a lot by deed;

339 (b) the granting of a life estate in the lot; or

340 (c) if the lot is owned by a limited liability company, corporation, partnership, or other
341 business entity, the sale or transfer of more than 75% of the business entity's share, stock,
342 membership interests, or partnership interests in a 12-month period.

343 (5) This section does not limit or affect residency age requirements for an association
344 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.
345 3607.

346 (6) The declaration of covenants, conditions, and restrictions or amendments to the
347 declaration of covenants, conditions, and restrictions recorded prior to the transfer of the first
348 lot from the initial declarant may prohibit or restrict rentals without providing for the
349 exceptions, provisions, and procedures required under Subsection (3)(a).

350 (7) Except as provided in Subsection (8), the provisions of this section apply regardless
351 of when an association's initial declaration of covenants, conditions, and restrictions is
352 recorded.

353 [~~(7)~~] (8) [~~This~~] The provisions of this section [~~does~~] do not apply to:

354 (a) an association containing a time period unit as defined in Section 57-8-3; or

355 (b) any other form of timeshare interest as defined in Section 57-19-2[; or].

356 [~~(c) an association in which the initial declaration of covenants, conditions, and~~
357 ~~restrictions is recorded before May 12, 2009.]~~

358 [~~(8)~~] (9) Notwithstanding the provisions of this section, an association may, upon
359 unanimous approval by all lot owners, restrict or prohibit rentals without an exception
360 described in Subsection (3).

361 (10) An association of unit owners may only restrict or prohibit rentals if the restriction
362 or prohibition is permitted under this section.