

HB0089S01 compared with HB0089

~~{deleted text}~~ shows text that was in HB0089 but was deleted in HB0089S01.

inserted text shows text that was not in HB0089 but was inserted into HB0089S01.

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~~{CONDOMINIUM OWNERS}~~ 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 ~~{Title 57, Chapter 8,}~~the Condominium Ownership Act~~{,}~~ and the Community Association Act relating to ~~{the contents of a declaration}~~rental restrictions.

Highlighted Provisions:

This bill:

- ▶ provides that ~~{if}~~ a condominium ~~{project's initial declaration was recorded before May 12, 2009,}~~ 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 ~~{may not prohibit or restrict a unit owner's ability to rent the unit owner's unit to any greater extent than is described in the declaration that was recorded at the time the unit owner purchased the unit~~

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~~owner's unit, unless the unit owner provides written consent;~~ 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

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

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

57-8-10. Contents of declaration.

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

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

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

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

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

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

and

(v) [~~The declaration shall~~] describe any limited common areas and facilities and shall

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state to which units the use of the common areas and facilities is reserved.

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

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

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

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

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

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

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

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

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

(e) The initial recorded declaration shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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required and, a statement as to the method by which consent shall be ascertained, or a statement that there are no such limitations[-];

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

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

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

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

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

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

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

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

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

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

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

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any portion added to the condominium project[-];

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) (i) Subject to Subsections (9)(c), (f), and ~~[(g)-(j)]~~ and except as provided in Subsection (10)(h), an association of unit owners may:

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

(B) prohibit rentals in the condominium project.

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

(c) ~~[[If]]~~ Subject to Subsection (9)(h), if an association of unit owners prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

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

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

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

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

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

(I) a current resident of the unit; or

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

(ii) a provision ~~[allowing]~~ that allows a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (9)(b)(i) is

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recorded with the county recorder of the county in which the condominium project is located to continue renting until:

(A) the unit owner occupies the unit; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(iii) a condominium project in which the initial declaration is recorded before May 12,

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~~2009.]~~

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

~~[(10) If a condominium project's initial declaration was recorded before May 12, 2009, the (j)]~~ An association of unit owners may ~~[(not)] only restrict or prohibit rentals if the restriction or prohibition is permitted under this Subsection (9).~~

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

57-8a-209. Rental restrictions.

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

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

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

(2) (a) Subject to Subsections (2)(b), (6), and [(7)] (8), an association may:

(i) [create restrictions on] restrict the number and term of rentals in an association; or

(ii) prohibit rentals in the association.

(b) An association that [creates a rental restriction or prohibition in accordance with Subsection (1)(a)(i)] restricts or prohibits rentals shall create the rental restriction or prohibition in a recorded declaration of covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions.

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

(a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner's lot:

(i) a lot owner in the military for the period of the lot owner's deployment;

(ii) a lot occupied by a lot owner's parent, child, or sibling;

(iii) a lot owner whose employer has relocated the lot owner for no less than two years;

or

(iv) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:

(A) the estate of a current resident of the lot; or

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(B) the parent, child, or sibling of the current resident of the lot;

(b) a provision [allowing] that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:

(i) the lot owner occupies the lot; or

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

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (3)(a) and (b); and

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

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

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

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

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

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

(6) The declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded prior to the transfer of the first lot from the initial declarant may prohibit or restrict~~{ a unit owner's ability to lease or rent the unit owner's unit to any greater extent than is described in the declaration that was recorded at the time the unit owner purchased the unit owner's unit, unless the unit owner provides written consent.~~

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Legislative Review Note

~~as of 1-6-14 3:16 PM~~

~~Office of Legislative Research and General Counsel;~~ rentals without providing for the exceptions, provisions, and procedures required under Subsection (3)(a).

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

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

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

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

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

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

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