

Representative Gage Froerer proposes the following substitute bill:

ASSOCIATION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill modifies provisions of the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the requirements and prohibitions that apply to rules of an association or an association of unit owners;
- ▶ modifies the method by which an association or an association of unit owners may restrict or prohibit rentals;
- ▶ modifies the circumstances under which an association or an association of unit owners may assess a fine;
- ▶ clarifies the procedures by which a lot owner or a unit owner may appeal an assessed fine; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

30 **57-8-10.1**, as enacted by Laws of Utah 2014, Chapter 397

31 **57-8-37**, as last amended by Laws of Utah 2014, Chapter 116

32 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

33 **57-8a-208**, as last amended by Laws of Utah 2014, Chapter 116

34 **57-8a-209**, as last amended by Laws of Utah 2014, Chapter 397

35 **57-8a-218**, as enacted by Laws of Utah 2011, Chapter 355

36 ENACTS:

37 **57-8-8.1**, Utah Code Annotated 1953



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

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

41 **57-8-3. Definitions.**

42 As used in this chapter:

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

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

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

47 Subsection **57-8-43(9)(g)**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

71 (6) "Common expenses" means:

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

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

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

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

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

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

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

86 (10) "Condominium project" means a real estate condominium project; a plan or
87 project whereby two or more units, whether contained in existing or proposed apartments,

88 commercial or industrial buildings or structures, or otherwise, are separately offered or
89 proposed to be offered for sale. Condominium project also means the property when the
90 context so requires.

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

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

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

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

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

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

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

117 (18) "Governing documents":

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

119 (i) exercise powers; or
120 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
121 association of unit owners; and

122 (b) includes:

- 123 (i) articles of incorporation;
- 124 (ii) bylaws;
- 125 (iii) a plat;
- 126 (iv) a declaration of covenants, conditions, and restrictions; and
- 127 (v) rules of the association of unit owners.

128 (19) "Independent third party" means a person that:

- 129 (a) is not related to the unit owner;
- 130 (b) shares no pecuniary interests with the unit owner; and
- 131 (c) purchases the unit in good faith and without the intent to defraud a current or future
132 lienholder.

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

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

141 (22) "Majority" or "majority of the unit owners," unless otherwise provided in the
142 declaration or lawful amendments to the declaration, means the owners of more than 50% in
143 the aggregate in interest of the undivided ownership of the common areas and facilities.

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

147 (24) (a) "Means of electronic communication" means an electronic system that allows
148 individuals to communicate orally in real time.

149 (b) "Means of electronic communication" includes:

- 150 (i) web conferencing;
- 151 (ii) video conferencing; and
- 152 (iii) telephone conferencing.

153 [~~(24)~~] (25) "Mixed-use condominium project" means a condominium project that has
154 both residential and commercial units in the condominium project.

155 [~~(25)~~] (26) "Par value" means a number of dollars or points assigned to each unit by the
156 declaration. Substantially identical units shall be assigned the same par value, but units located
157 at substantially different heights above the ground, or having substantially different views, or
158 having substantially different amenities or other characteristics that might result in differences
159 in market value, may be considered substantially identical within the meaning of this
160 subsection. If par value is stated in terms of dollars, that statement may not be considered to
161 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
162 fair market transaction at a different figure may affect the par value of any unit, or any
163 undivided interest in the common areas and facilities, voting rights in the unit owners'
164 association, liability for common expenses, or right to common profits, assigned on the basis
165 thereof.

166 [~~(26)~~] (27) "Person" means an individual, corporation, partnership, association, trustee,
167 or other legal entity.

168 [~~(27)~~] (28) "Property" means the land, whether leasehold or in fee simple, the building,
169 if any, all improvements and structures thereon, all easements, rights, and appurtenances
170 belonging thereto, and all articles of personal property intended for use in connection
171 therewith.

172 [~~(28)~~] (29) "Record," "recording," "recorded," and "recorder" have the meaning stated
173 in Title 57, Chapter 3, Recording of Documents.

174 (30) "Rentals" or "rental unit" means:

175 (a) a unit owned by an individual not described in Subsection (30)(b) that is occupied
176 by someone while no unit owner occupies the unit as the unit owner's primary residence; and

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

178 [~~(29)~~] (31) "Size" means the number of cubic feet, or the number of square feet of
179 ground or floor space, within each unit as computed by reference to the record of survey map
180 and rounded off to a whole number. Certain spaces within the units including attic, basement,

181 or garage space may be omitted from the calculation or be partially discounted by the use of a
 182 ratio, if the same basis of calculation is employed for all units in the condominium project and
 183 if that basis is described in the declaration.

184 ~~[(30)]~~ (32) "Time period unit" means an annually recurring part or parts of a year
 185 specified in the declaration as a period for which a unit is separately owned and includes a
 186 timeshare estate as defined in Subsection 57-19-2(19).

187 ~~[(31)]~~ (33) "Unit" means either a separate physical part of the property intended for any
 188 type of independent use, including one or more rooms or spaces located in one or more floors
 189 or part or parts of floors in a building or a time period unit, as the context may require. A
 190 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
 191 proposed condominium unit under an expandable condominium project, not constructed, is a
 192 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

193 ~~[(32)]~~ (34) "Unit number" means the number, letter, or combination of numbers and
 194 letters designating the unit in the declaration and in the record of survey map.

195 ~~[(33)]~~ (35) "Unit owner" means the person or persons owning a unit in fee simple and
 196 an undivided interest in the fee simple estate of the common areas and facilities in the
 197 percentage specified and established in the declaration or, in the case of a leasehold
 198 condominium project, the person or persons whose leasehold interest or interests in the
 199 condominium unit extend for the entire balance of the unexpired term or terms.

200 Section 2. Section 57-8-8.1 is enacted to read:

201 **57-8-8.1. Equal treatment by rules required -- Limits on rules.**

202 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated unit
 203 owners similarly.

204 (b) Notwithstanding Subsection (1)(a), a rule may:

205 (i) vary according to the level and type of service that the association of unit owners
 206 provides to unit owners; and

207 (ii) differ between residential and nonresidential uses.

208 (2) (a) If a unit owner owns a rental unit and is in compliance with the association of
 209 unit owners' governing documents and any rule that the association of unit owners adopts under
 210 Subsection (4), a rule may not treat the unit owner differently because the unit owner owns a
 211 rental unit.

212 (b) Notwithstanding Subsection (2)(a), a rule may:
213 (i) limit or prohibit a rental unit owner from using the common areas for purposes other
214 than attending an association meeting or managing the rental unit;
215 (ii) if the rental unit owner retains the right to use the association of unit owners'
216 common areas, even occasionally, charge a rental unit owner a fee to use the common areas; or
217 (iii) include a provision in the association of unit owners' governing documents that:
218 (A) requires each tenant of a rental unit to abide by the terms of the governing
219 documents; and
220 (B) holds the tenant and the rental unit owner jointly and severally liable for a violation
221 of a provision of the governing documents.
222 (3) (a) A rule may not interfere with the freedom of a unit owner to determine the
223 composition of the unit owner's household.
224 (b) Notwithstanding Subsection (3)(a), an association of unit owners may:
225 (i) require that all occupants of a dwelling be members of a single housekeeping unit;
226 or
227 (ii) limit the total number of occupants permitted in each residential dwelling on the
228 basis of the residential dwelling's:
229 (A) size and facilities; and
230 (B) fair use of the common areas.
231 (4) Unless contrary to a declaration, a rule may require a minimum lease term.
232 (5) Unless otherwise provided in the declaration, an association of unit owners may by
233 rule:
234 (a) regulate the use, maintenance, repair, replacement, and modification of common
235 areas;
236 (b) impose and receive any payment, fee, or charge for:
237 (i) the use, rental, or operation of the common areas, except limited common areas; and
238 (ii) a service provided to a lot owner;
239 (c) impose a charge for a late payment of an assessment; or
240 (d) provide for the indemnification of the association of unit owners' officers and board
241 consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
242 (6) A rule shall be reasonable.

243 (7) A declaration, or an amendment to a declaration, may vary any of the requirements
244 of Subsections (1) through (5), except Subsection (1)(b)(ii).

245 (8) This section applies to an association regardless of when the association is created.

246 Section 3. Section **57-8-10.1** is amended to read:

247 **57-8-10.1. Rental restrictions.**

248 [~~(1) As used in this section, "rentals" or "rental unit" means:~~]

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

251 [~~(b) a unit owned by an entity or trust, regardless of who occupies the unit.]~~

252 [~~(2)~~] (1) (a) Subject to Subsections [~~(2)~~] (1)(b), [~~(6)~~] (5), and [~~(7)~~] (6), an association of
253 unit owners may:

254 (i) create restrictions on the number and term of rentals in a condominium project; or

255 (ii) prohibit rentals in the condominium project.

256 (b) An association of unit owners that creates a rental restriction or prohibition in
257 accordance with Subsection [~~(2)~~] (1)(a) shall create the rental restriction or prohibition in a
258 declaration or by amending the declaration.

259 [~~(3)~~] (2) If an association of unit owners prohibits or imposes restrictions on the
260 number and term of rentals, the restrictions shall include:

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

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

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

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

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

269 (A) a current resident of the unit; or

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

271 (b) a provision that allows a unit owner who has a rental in the condominium project
272 before the time the rental restriction described in Subsection [~~(2)~~] (1)(a) is recorded with the
273 county recorder of the county in which the condominium project is located to continue renting

274 until:

275 (i) the unit owner occupies the unit; or

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

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

281 (i) determine and track the number of rentals and units in the condominium project
282 subject to the provisions described in Subsections ~~[(3)]~~ (2)(a) and (b); and

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

284 ~~[(4)]~~ (3) For purposes of Subsection ~~[(3)]~~ (2)(b), a transfer occurs when one or more of
285 the following occur:

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

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

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

291 ~~[(5)]~~ (4) This section does not limit or affect residency age requirements for an
292 association of unit owners that complies with the requirements of the Housing for Older
293 Persons Act, 42 U.S.C. Sec. 3607.

294 ~~[(6)]~~ (5) A declaration or amendment to a declaration recorded before transfer of the
295 first unit from the initial declarant may prohibit or restrict rentals without providing for the
296 exceptions, provisions, and procedures required under Subsection ~~[(3)]~~ (2)(a).

297 ~~[(7)]~~ (6) Subsections ~~[(2)]~~ (1) through ~~[(6)]~~ (5) do not apply to:

298 (a) a condominium project that contains a time period unit as defined in Section

299 [57-8-3](#);

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

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

302 2009[-], unless, on or after May 12, 2015, the association of unit owners:

303 (i) adopts a rental restriction or prohibition; or

304 (ii) amends an existing rental restriction or prohibition.

305 ~~[(8)]~~ (7) Notwithstanding this section, an association of unit owners may, upon
 306 unanimous approval by all unit owners, restrict or prohibit rentals without an exception
 307 described in Subsection ~~[(3)]~~ (2).

308 ~~[(9)]~~ (8) Except as provided in Subsection ~~[(10)]~~ (9), an association of unit owners may
 309 not require a unit owner who owns a rental unit to:

- 310 (a) obtain the association of unit owners' approval of a prospective renter; ~~[or]~~
 311 (b) give the association of unit owners:
 312 (i) a copy of a rental application;
 313 (ii) a copy of a renter's or prospective renter's credit information or credit report;
 314 (iii) a copy of a renter's or prospective renter's background check; or
 315 (iv) documentation to verify the renter's age~~[-];~~ or
 316 (c) pay an additional assessment, fine, or fee because the unit is a rental unit.

317 ~~[(10)]~~ (9) (a) A unit owner who owns a rental unit shall give an association of unit
 318 owners the documents described in Subsection ~~[(9)]~~ (8)(b) if the unit owner is required to
 319 provide the documents by court order or as part of discovery under the Utah Rules of Civil
 320 Procedure.

321 (b) If an association of unit owners' declaration lawfully prohibits or restricts
 322 occupancy of the units by a certain class of individuals, the association of unit owners may
 323 require a unit owner who owns a rental unit to give the association of unit owners the
 324 information described in Subsection ~~[(9)]~~ (8)(b), if:

- 325 (i) the information helps the association of unit owners determine whether the renter's
 326 occupancy of the unit complies with the association of unit owners' declaration; and
 327 (ii) the association of unit owners uses the information to determine whether the
 328 renter's occupancy of the unit complies with the association of unit owners' declaration.

329 (10) The provisions of Subsections (8) and (9) apply to an association of unit owners
 330 regardless of when the association of unit owners is created.

331 Section 4. Section **57-8-37** is amended to read:

332 **57-8-37. Fines.**

333 (1) ~~[(a) If authorized in the declaration, bylaws, or association rules, the]~~ A
 334 management committee ~~[of a residential condominium project]~~ may assess a fine against a unit
 335 owner ~~[after the requirements of Subsection (2) have been met for a violation of the rules and~~

336 ~~regulations of the association of unit owners which have been promulgated in accordance with~~
337 ~~this chapter and the declaration and bylaws]~~ for a violation of the association of unit owners'
338 governing documents in accordance with the provisions of this section.

339 ~~[(b) The management committee of a nonresidential condominium project may not~~
340 ~~assess a fine against a unit owner.]~~

341 (2) (a) Before assessing a fine under Subsection (1), the management committee shall
342 give ~~[notice to the unit owner of the violation and inform the owner that a fine will be imposed~~
343 ~~if the violation is not cured within the time provided in the declaration, bylaws, or association~~
344 ~~rules, which shall be at least 48 hours.]~~ the unit owner a written warning that:

345 (i) describes the violation;

346 (ii) states the rule or provision of the association of unit owners' governing documents
347 that the unit owner's conduct violates;

348 (iii) states that the management committee may assess a fine against the unit owner if a
349 continuing violation is not cured or if the unit owner commits a similar violation within one
350 year after the day on which the management committee gives the unit owner the written
351 warning; and

352 (iv) if the violation is a continuing violation, states a time that is not less than 48 hours
353 after the day on which the management committee gives the unit owner the written warning by
354 which the unit owner shall cure the violation.

355 (b) A management committee may assess a fine against a unit owner if:

356 (i) within one year after the day on which the management committee gives the unit
357 owner a written warning described in Subsection (2)(a), the unit owner commits another
358 violation of the same rule or provision identified in the written warning; or

359 (ii) for a continuing violation, the unit owner does not cure the violation within the
360 time period that is stated in the written warning described in Subsection (2)(a).

361 (c) If permitted by the association of unit owners' governing documents, after a
362 management committee assesses a fine against a unit owner under this section, the
363 management committee may, without further warning under this Subsection (2), assess an
364 additional fine against the unit owner each time the unit owner:

365 (i) commits a violation of the same rule or provision within one year after the day on
366 which the management committee assesses the initial fine; or

367 (ii) allows a violation to continue for 10 days or longer after the day on which the
368 management committee assesses the initial fine.

369 (d) The aggregate amount of fines assessed against a unit owner for violations of the
370 same rule or provision of the governing documents may not exceed \$500 in any one calendar
371 month.

372 (3) ~~(a)~~ A fine assessed under Subsection (1) shall:

373 ~~(i)~~ (a) be made only for a violation of a rule ~~[or regulation which is specifically listed~~
374 ~~in the declaration, bylaws, or association rules as an offense which is subject to a fine],~~
375 covenant, condition, or restriction that is in the association of unit owners' governing
376 documents;

377 ~~(ii)~~ (b) be in the amount ~~[specifically] provided for in the [declaration, bylaws, or~~
378 ~~association rules for that specific type of violation, not to exceed \$500]~~ association of unit
379 owners' governing documents and in accordance with Subsection (2)(d); and

380 ~~(iii)~~ (c) accrue interest and late fees as provided in the ~~[declaration, bylaws, or~~
381 ~~association rules]~~ association of unit owners' governing documents.

382 ~~(b) Cumulative fines for a continuing violation may not exceed \$500 per month.]~~

383 (4) (a) A unit owner who is assessed a fine under Subsection (1) may request an
384 informal hearing before the management committee to ~~[protest or]~~ dispute the fine within 30
385 days ~~[from the date]~~ after the day on which the unit owner receives notice that the fine is
386 assessed. [The hearing shall be conducted in accordance with the standards provided in the
387 declaration, bylaws, or association rules. No]

388 (b) At a hearing described in Subsection (4)(a), the management committee shall:

389 (i) provide the unit owner a reasonable opportunity to present the unit owner's position
390 to the management committee; and

391 (ii) allow the unit owner, a committee member, or any other person involved in the
392 hearing to participate in the hearing by means of electronic communication.

393 (c) If a unit owner timely requests an informal hearing under Subsection (4)(a), no
394 interest or late fees may accrue until after the management committee conducts the hearing [has
395 been conducted] and the unit owner receives a final decision [has been rendered].

396 (5) A unit owner may appeal a fine ~~[issued]~~ assessed under Subsection (1) by initiating
397 a civil action within 180 days after:

398 ~~[(a) a hearing has been held and a final decision has been rendered by the management~~
399 ~~committee under Subsection (4); or]~~

400 (a) if the unit owner timely requests an informal hearing under Subsection (4), the day
401 on which the unit owner receives a final decision from the management committee; or

402 (b) if the unit owner does not timely request an informal hearing under Subsection (4),
403 the day on which the time to request an informal hearing under Subsection (4) [has expired
404 without the unit owner making such a request] expires.

405 (6) (a) Subject to Subsection (6)(b), a management committee may delegate the
406 management committee's rights and responsibilities under this section to a managing agent.

407 (b) A management committee may not delegate the management committee's rights or
408 responsibilities described in Subsection (4)(b).

409 (7) The provisions of this section apply to an association of unit owners regardless of
410 when the association of unit owners is created.

411 Section 5. Section **57-8a-102** is amended to read:

412 **57-8a-102. Definitions.**

413 As used in this chapter:

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

415 (i) by the association;

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

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

418 (b) "Assessment" includes:

419 (i) a common expense; and

420 (ii) an amount assessed against a lot owner under Subsection [57-8a-405\(7\)](#).

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

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

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

426 (A) real property taxes;

427 (B) insurance premiums;

428 (C) maintenance costs; or

- 429 (D) for improvement of real property not owned by the member.
- 430 (b) "Association" or "homeowner association" does not include an association created
- 431 under Title 57, Chapter 8, Condominium Ownership Act.
- 432 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 433 authority to manage the affairs of the association.
- 434 (4) "Common areas" means property that the association:
- 435 (a) owns;
- 436 (b) maintains;
- 437 (c) repairs; or
- 438 (d) administers.
- 439 (5) "Common expense" means costs incurred by the association to exercise any of the
- 440 powers provided for in the association's governing documents.
- 441 (6) "Declarant":
- 442 (a) means the person who executes a declaration and submits it for recording in the
- 443 office of the recorder of the county in which the property described in the declaration is
- 444 located; and
- 445 (b) includes the person's successor and assign.
- 446 (7) (a) "Governing documents" means a written instrument by which the association
- 447 may:
- 448 (i) exercise powers; or
- 449 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 450 association.
- 451 (b) "Governing documents" includes:
- 452 (i) articles of incorporation;
- 453 (ii) bylaws;
- 454 (iii) a plat;
- 455 (iv) a declaration of covenants, conditions, and restrictions; and
- 456 (v) rules of the association.
- 457 (8) "Independent third party" means a person that:
- 458 (a) is not related to the owner of the residential lot;
- 459 (b) shares no pecuniary interests with the owner of the residential lot; and

460 (c) purchases the residential lot in good faith and without the intent to defraud a current
461 or future lienholder.

462 (9) "Judicial foreclosure" means a foreclosure of a lot:

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

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

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

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

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

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

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

473 (12) "Lot" means:

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

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

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

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

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

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

482 (13) (a) "Means of electronic communication" means an electronic system that allows
483 individuals to communicate orally in real time.

484 (b) "Means of electronic communication" includes:

485 (i) web conferencing;

486 (ii) video conferencing; and

487 (iii) telephone conferencing.

488 [~~13~~] (14) "Mixed-use project" means a project under this chapter that has both
489 residential and commercial lots in the project.

490 [~~14~~] (15) "Nonjudicial foreclosure" means the sale of a lot:

491 (a) for the nonpayment of an assessment; and
492 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
493 57-1-34; and

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

495 (16) "Rentals" or "rental lot" means:

496 (a) a lot owned by an individual not described in Subsection (16)(b) that is occupied by
497 someone while no lot owner occupies the lot as the lot owner's primary residence; and

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

499 ~~[(15)]~~ (17) "Residential lot" means a lot, the use of which is limited by law, covenant,
500 or otherwise to primarily residential or recreational purposes.

501 Section 6. Section 57-8a-208 is amended to read:

502 **57-8a-208. Fines.**

503 (1) ~~[Unless otherwise provided in the association's governing documents, the]~~ A board
504 ~~[of an association]~~ may assess a fine against a lot owner for a violation of the association's
505 governing documents ~~[after the requirements described in Subsection (2) are met]~~ in
506 accordance with the provisions of this section.

507 (2) (a) Before assessing a fine under Subsection (1), the board shall give the lot owner
508 a written warning that:

509 ~~[(a) notify the lot owner of the violation; and]~~

510 ~~[(b) inform the owner that a fine will be imposed if the violation is not remedied within~~
511 ~~the time provided in the association's governing documents, which shall be at least 48 hours.]~~

512 (i) describes the violation;

513 (ii) states the rule or provision of the association's governing documents that the lot
514 owner's conduct violates;

515 (iii) states that the board may assess a fine against the lot owner if a continuing
516 violation is not cured or if the lot owner commits a similar violation within one year after the
517 day on which the board gives the lot owner the written warning; and

518 (iv) if the violation is a continuing violation, states a time that is not less than 48 hours
519 after the day on which the board gives the lot owner the written warning by which the lot
520 owner shall cure the violation.

521 (b) A board may assess a fine against a lot owner if:

522 (i) within one year after the day on which the board gives the lot owner a written
523 warning described in Subsection (2)(a), the lot owner commits another violation of the same
524 rule or provision identified in the written warning; or

525 (ii) for a continuing violation, the lot owner does not cure the violation within the time
526 period that is stated in the written warning described in Subsection (2)(a).

527 (c) If permitted by the association's governing documents, after the board assesses a
528 fine against a lot owner under this section, the board may, without further warning under this
529 Subsection (2), assess an additional fine against the lot owner each time the lot owner:

530 (i) commits a violation of the same rule or provision within one year after the day on
531 which the board assesses the initial fine; or

532 (ii) allows a violation to continue for 10 days or longer after the day on which the
533 board assesses the initial fine.

534 (3) ~~(a)~~ A fine assessed under Subsection (1) shall:

535 ~~(i)~~ (a) be made only for a violation of a rule, covenant, condition, or restriction that is
536 ~~[specifically listed]~~ in the association's governing documents;

537 ~~(ii)~~ (b) be in the amount ~~[specifically]~~ provided for in the association's governing
538 documents ~~[for that specific type of violation or in an amount commensurate with the nature of~~
539 ~~the violation]~~; and

540 ~~(iii)~~ (c) accrue interest and late fees as provided in the association's governing
541 documents.

542 ~~(b) Unpaid fines may be collected as an unpaid assessment as set forth in the~~
543 ~~association's governing documents or in this chapter.]~~

544 (4) (a) A lot owner who is assessed a fine under Subsection (1) may request an
545 informal hearing before the board to ~~[protest or]~~ dispute the fine within 30 days after the day on
546 which the lot owner receives notice that the fine is assessed.

547 ~~(b) A hearing requested under Subsection (4)(a) shall be conducted in accordance with~~
548 ~~standards provided in the association's governing documents.]~~

549 (b) At a hearing described in Subsection (4)(a), the board shall:

550 (i) provide the lot owner a reasonable opportunity to present the lot owner's position to
551 the board; and

552 (ii) allow the lot owner, a board member, or any other person involved in the hearing to

553 participate in the hearing by means of electronic communication.

554 (c) ~~[No]~~ If a lot owner timely requests an informal hearing under Subsection (4)(a), no
 555 interest or late fees may accrue until after the board conducts the hearing ~~[has been conducted]~~
 556 and the lot owner receives a final decision ~~[has been rendered].~~

557 (5) A lot owner may appeal a fine ~~[issued]~~ assessed under Subsection (1) by initiating a
 558 civil action within 180 days after:

559 (a) if the lot owner timely requests an informal hearing under Subsection (4), ~~[within~~
 560 ~~180 days after]~~ the day on which the lot owner receives a final decision from the ~~[informal~~
 561 ~~hearing is issued]~~ board; or

562 (b) if the lot owner does not timely request an informal hearing under Subsection (4),
 563 ~~[within 180 days after]~~ the day on which the time to request an informal hearing under
 564 Subsection (4) expires.

565 (6) (a) Subject to Subsection (6)(b), a board may delegate the board's rights and
 566 responsibilities under this section to a managing agent.

567 (b) A board may not delegate the board's rights or responsibilities described in
 568 Subsection (4)(b).

569 (7) The provisions of this section apply to an association regardless of when the
 570 association is created.

571 Section 7. Section **57-8a-209** is amended to read:

572 **57-8a-209. Rental restrictions.**

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

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

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

577 ~~[(2)]~~ (1) (a) Subject to Subsections ~~[(2)]~~ (1)(b), ~~[(6)]~~ (5), and ~~[(7)]~~ (6), an association
 578 may:

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

580 (ii) prohibit rentals in the association.

581 (b) An association that creates a rental restriction or prohibition in accordance with
 582 Subsection (1)(a)~~[(1)]~~ shall create the rental restriction or prohibition in a recorded declaration
 583 of covenants, conditions, and restrictions, or by amending the recorded declaration of

584 covenants, conditions, and restrictions.

585 ~~[(3)]~~ (2) If an association prohibits or imposes restrictions on the number and term of
586 rentals, the restrictions shall include:

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

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

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

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

592 or

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

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

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

597 (b) a provision that allows a lot owner who has a rental in the association before the
598 time the rental restriction described in Subsection ~~[(2)]~~ (1)(a) is recorded with the county
599 recorder of the county in which the association is located to continue renting until:

600 (i) the lot owner occupies the lot; or

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

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

605 (i) determine and track the number of rentals and lots in the association subject to the
606 provisions described in Subsections ~~[(3)]~~ (2)(a) and (b); and

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

608 ~~[(4)]~~ (3) For purposes of Subsection ~~[(3)]~~ (2)(b), a transfer occurs when one or more of
609 the following occur:

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

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

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

615 ~~[(5)]~~ (4) This section does not limit or affect residency age requirements for an
 616 association that complies with the requirements of the Housing for Older Persons Act, 42
 617 U.S.C. Sec. 3607.

618 ~~[(6) The]~~ (5) A declaration of covenants, conditions, and restrictions or amendments
 619 to the declaration of covenants, conditions, and restrictions recorded before the transfer of the
 620 first lot from the initial declarant may prohibit or restrict rentals without providing for the
 621 exceptions, provisions, and procedures required under Subsection ~~[(3)]~~ (2)(a).

622 ~~[(7)]~~ (6) Subsections ~~[(2)]~~ (1) through ~~[(6)]~~ (5) do not apply to:

- 623 (a) an association that contains a time period unit as defined in Section 57-8-3;
- 624 (b) any other form of timeshare interest as defined in Section 57-19-2; or
- 625 (c) an association in which the initial declaration of covenants, conditions, and
 626 restrictions is recorded before May 12, 2009~~[-]~~, unless, on or after May 12, 2015, the
 627 association:

- 628 (i) adopts a rental restriction or prohibition; or
- 629 (ii) amends an existing rental restriction or prohibition.

630 ~~[(8)]~~ (7) Notwithstanding this section, an association may, upon unanimous approval
 631 by all lot owners, restrict or prohibit rentals without an exception described in Subsection ~~[(3)]~~
 632 (2).

633 ~~[(9)]~~ (8) Except as provided in Subsection ~~[(10)]~~ (9), an association may not require a
 634 lot owner who owns a rental lot to:

- 635 (a) obtain the association's approval of a prospective renter; ~~[or]~~
- 636 (b) give the association:
 - 637 (i) a copy of a rental application;
 - 638 (ii) a copy of a renter's or prospective renter's credit information or credit report;
 - 639 (iii) a copy of a renter's or prospective renter's background check; or
 - 640 (iv) documentation to verify the renter's age~~[-]~~; or
- 641 (c) pay an additional assessment, fine, or fee because the lot is a rental lot.

642 ~~[(10)]~~ (9) (a) A lot owner who owns a rental lot shall give an association the
 643 documents described in Subsection ~~[(9)]~~ (8)(b) if the lot owner is required to provide the
 644 documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

645 (b) If an association's declaration of covenants, conditions, and restrictions lawfully

646 prohibits or restricts occupancy of the lots by a certain class of individuals, the association may
647 require a lot owner who owns a rental lot to give the association the information described in
648 Subsection [~~(9)~~] (8)(b), if:

649 (i) the information helps the association determine whether the renter's occupancy of
650 the lot complies with the association's declaration of covenants, conditions, and restrictions;
651 and

652 (ii) the association uses the information to determine whether the renter's occupancy of
653 the lot complies with the association's declaration of covenants, conditions, and restrictions.

654 (10) The provisions of Subsections (8) and (9) apply to an association regardless of
655 when the association is created.

656 Section 8. Section **57-8a-218** is amended to read:

657 **57-8a-218. Equal treatment by rules required -- Limits on association rules and**
658 **design criteria.**

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

661 (b) Notwithstanding Subsection (1)(a), a rule may:

662 (i) vary according to the level and type of service that the association provides to lot
663 owners; and

664 (ii) differ between residential and nonresidential uses.

665 (2) (a) If a lot owner owns a rental lot and is in compliance with the association's
666 governing documents and any rule that the association adopts under Subsection (4), a rule may
667 not treat the lot owner differently because the lot owner owns a rental lot.

668 (b) Notwithstanding Subsection (2)(a), a rule may:

669 (i) limit or prohibit a rental lot owner from using the common areas for purposes other
670 than attending an association meeting or managing the rental lot;

671 (ii) if the rental lot owner retains the right to use the association's common areas, even
672 occasionally, charge a rental lot owner a fee to use the common areas; or

673 (iii) include a provision in the association's governing documents that:

674 (A) requires each tenant of a rental lot to abide by the terms of the governing
675 documents; and

676 (B) holds the tenant and the rental lot owner jointly and severally liable for a violation

677 of a provision of the governing documents.

678 [~~(2)~~] (3) (a) A rule criterion may not abridge the rights of a lot owner to display
679 religious and holiday signs, symbols, and decorations inside a dwelling on a lot.

680 (b) Notwithstanding Subsection [~~(2)~~] (3)(a), the association may adopt time, place, and
681 manner restrictions with respect to displays visible from outside the dwelling or lot.

682 [~~(3)~~] (4) (a) A rule may not regulate the content of political signs.

683 (b) Notwithstanding Subsection [~~(3)~~] (4)(a):

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

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

686 [~~(4)~~] (5) (a) A rule may not interfere with the freedom of a lot owner to determine the
687 composition of the lot owner's household.

688 (b) Notwithstanding Subsection [~~(4)~~] (5)(a), an association may:

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

690 [~~and~~] or

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

693 (A) size and facilities; and

694 (B) fair use of the common areas.

695 [~~(5)~~] (6) (a) A rule may not interfere with an activity of a lot owner within the confines
696 of a dwelling or lot, to the extent that the activity is in compliance with local laws and
697 ordinances.

698 (b) Notwithstanding Subsection [~~(5)~~] (6)(a), a rule may prohibit an activity within a
699 dwelling on an owner's lot if the activity:

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

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

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

703 (C) generates excessive noise or traffic;

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

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

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

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

710 [~~(6)~~] (7) (a) A rule may not, to the detriment of a lot owner and over the lot owner's
711 written objection to the board, alter the allocation of financial burdens among the various lots.

712 (b) Notwithstanding Subsection [~~(6)~~] (7)(a), an association may:

- 713 (i) change the common areas available to a lot owner;
- 714 (ii) adopt generally applicable rules for the use of common areas; or
- 715 (iii) deny use privileges to a lot owner who:

716 (A) is delinquent in paying assessments;

717 (B) abuses the common areas; or

718 (C) violates the governing documents.

719 (c) This Subsection [~~(6)~~] (7) does not permit a rule that:

720 (i) alters the method of levying assessments; or

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

722 [~~(7)~~] (8) (a) Subject to Subsection [~~(7)~~] (8)(b), a rule may not:

723 (i) prohibit the transfer of a lot; or

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

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

726 [~~(8)~~] (9) (a) A rule may not require a lot owner to dispose of personal property that was
727 in or on a lot before the adoption of the rule or design criteria if the personal property was in
728 compliance with all rules and other governing documents previously in force.

729 (b) The exemption in Subsection [~~(8)~~] (9)(a):

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

731 (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of
732 the rule described in Subsection [~~(8)~~] (9)(a).

733 [~~(9)~~] (10) A rule or action by the association or action by the board may not
734 unreasonably impede a declarant's ability to satisfy existing development financing for
735 community improvements and right to develop:

736 (a) the project; or

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

738 [~~(10)~~] (11) A rule or association or board action may not interfere with:

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

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

741 ~~[(11)]~~ (12) A rule may not divest a lot owner of the right to proceed in accordance with
742 a completed application for design review, or to proceed in accordance with another approval
743 process, under the terms of the governing documents in existence at the time the completed
744 application was submitted by the owner for review.

745 ~~[(12)]~~ (13) Unless otherwise provided in the declaration, an association may by rule:

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

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

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

750 (ii) a service provided to a lot owner;

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

752 (d) provide for the indemnification of ~~[its]~~ the association's officers and board

753 consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

754 ~~[(13)]~~ (14) A rule shall be reasonable.

755 ~~[(14)]~~ (15) A declaration, or an amendment to a declaration, may vary any of the
756 requirements of Subsections (1) through ~~[(12)]~~ (13), except Subsection (1)(b)(ii).

757 ~~[(15)]~~ (16) A rule may not be inconsistent with a provision of ~~[a]~~ the association's
758 declaration, bylaws, or articles of incorporation.

759 (17) This section applies to an association regardless of when the association is
760 created.