

HB0098S01 compared with HB0098

~~deleted text~~ shows text that was in HB0098 but was deleted in HB0098S01.

inserted text shows text that was not in HB0098 but was inserted into HB0098S01.

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Representative Gage Froerer proposes the following substitute bill:

ASSOCIATION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

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;

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- ▶ 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:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

ENACTS:

57-8-8.1, Utah Code Annotated 1953

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

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

57-8-3. Definitions.

As used in this chapter:

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

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

(b) an amount that an association of unit owners assesses to a unit owner under Subsection 57-8-43(9)(g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Common expenses" means:

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

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

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

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

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

(8) "Condominium" means the ownership of a single unit in a multiunit project

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together with an undivided interest in common in the common areas and facilities of the property.

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

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

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

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

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

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

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

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

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

(18) "Governing documents":

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

(i) exercise powers; or

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

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association of unit owners.

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

(a) is not related to the unit owner;

(b) shares no pecuniary interests with the unit owner; and

(c) purchases the unit in good faith and without the intent to defraud a current or future lienholder.

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

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

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

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

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

(b) "Means of electronic communication" includes:

(i) web conferencing;

(ii) video conferencing; and

(iii) telephone conferencing.

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

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

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

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

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

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

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

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

~~[(29)]~~ (31) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number. Certain spaces within the units including attic, basement, or garage space may be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all units in the condominium project and if that basis is described in the declaration.

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

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

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

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

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

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

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

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

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

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provides to unit owners; and

(ii) differ between residential and nonresidential uses.

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

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

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

(ii) ~~if the rental unit owner retains the right to use the association of unit owners' common areas, even occasionally,~~ charge a rental unit owner a fee to use the common areas; or

(iii) include a provision in the association of unit owners' governing documents that:

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

(B) holds the tenant and the rental unit owner jointly and severally liable for a violation of a provision of the governing documents.

(3) (a) A rule may not interfere with the freedom of a unit owner to determine the composition of the unit owner's household.

(b) Notwithstanding Subsection (3)(a), an association of unit owners may:

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

or

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

(A) size and facilities; and

(B) fair use of the common areas.

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

(5) Unless otherwise provided in the declaration, an association of unit owners may by rule:

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

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

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(i) the use, rental, or operation of the common areas, except limited common areas; and
(ii) a service provided to a lot owner;
(c) impose a charge for a late payment of an assessment; or
(d) provide for the indemnification of the association of unit owners' officers and board
consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(6) A rule shall be reasonable.

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

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

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

57-8-10.1. Rental restrictions.

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

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

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

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

- (i) create restrictions on the number and term of rentals in a condominium project; or
- (ii) prohibit rentals in the condominium project.

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

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

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

- (i) a unit owner in the military for the period of the unit owner's deployment;
- (ii) a unit occupied by a unit owner's parent, child, or sibling;
- (iii) a unit owner whose employer has relocated the unit owner for no less than two
years; or

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

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trust or other estate planning entity was created for the estate of:

(A) a current resident of the unit; or

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

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

(i) the unit owner occupies the unit; 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 unit, occupies the unit; and

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

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

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

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

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

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

(c) 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.

[~~(5)~~] (4) 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.

[~~(6)~~] (5) A declaration or amendment to a declaration recorded 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 [~~(3)~~] (2)(a).

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

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

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57-8-3;

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

(c) a condominium project in which the initial declaration is recorded before May 12, 2009~~[-]~~, unless, on or after May 12, 2015, the association of unit owners:

(i) adopts a rental restriction or prohibition; or

(ii) amends an existing rental restriction or prohibition.

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

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

(a) obtain the association of unit owners' approval of a prospective renter; ~~[(or)]~~

(b) give the association of unit owners:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age~~[-]~~; or

(c) pay an additional assessment, fine, or fee because the unit is a rental unit.

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

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

(i) the information helps the association of unit owners determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration; and

(ii) the association of unit owners uses the information to determine whether the renter's occupancy of the unit complies with the association of unit owners' declaration.

(10) The provisions of Subsections (8) and (9) apply to an association of unit owners

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regardless of when the association of unit owners is created.

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

57-8-37. Fines.

(1) [~~(a) If authorized in the declaration, bylaws, or association rules, the~~] A management committee [~~of a residential condominium project~~] may assess a fine against a unit owner [~~after the requirements of Subsection (2) have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws~~] for a violation of the association of unit owners' governing documents in accordance with the provisions of this section.

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

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

(i) describes the violation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing before the management committee to ~~[protest or]~~ dispute the fine within 30 days ~~[from the date]~~ after the day on which the unit owner receives notice that the fine is assessed.

~~(b) } [The { management committee shall conduct a } hearing { } shall be conducted { } described in Subsection (4)(a)} in accordance with { }~~

~~(i) } the standards provided in the { } declaration, bylaws, or association rules. No] { association of unit owners' governing documents; or }~~

~~(ii) if the association of unit owners' governing documents do not provide standards~~

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~~for}b)~~ At a hearing described in Subsection (4)(a), the ~~standards established by the~~ management committee ~~in accordance with Subsection (4)(c).~~

~~(c) The standards described in Subsection (4)(b)(ii)}~~ shall:

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

(ii) allow the unit owner ~~or the management committee to elect to have the unit owner present the unit owner's position to the management committee}~~, ~~a committee member, or any other person involved in the hearing to participate in the hearing~~ by means of electronic communication.

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

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

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

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

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

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

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

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

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

57-8a-102. Definitions.

As used in this chapter:

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

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

(b) "Assessment" includes:

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

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

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

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

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

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

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

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

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

(5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.

(6) "Declarant":

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

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

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

- (i) exercise powers; or
- (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the

association.

(b) "Governing documents" includes:

- (i) articles of incorporation;
- (ii) bylaws;
- (iii) a plat;
- (iv) a declaration of covenants, conditions, and restrictions; and
- (v) rules of the association.

(8) "Independent third party" means a person that:

- (a) is not related to the owner of the residential lot;
- (b) shares no pecuniary interests with the owner of the residential lot; and
- (c) purchases the residential lot in good faith and without the intent to defraud a current

or future lienholder.

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

- (a) for the nonpayment of an assessment; and
- (b) (i) in the manner provided by law for the foreclosure of a mortgage on real

property; and

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

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

- (a) by a person or persons other than the owner; and
- (b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.

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

(12) "Lot" means:

- (a) a lot, parcel, plot, or other division of land:
 - (i) designated for separate ownership or occupancy; and
 - (ii) (A) shown on a recorded subdivision plat; or

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

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

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

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

(b) "Means of electronic communication" includes:

(i) web conferencing;

(ii) video conferencing; and

(iii) telephone conferencing.

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

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

(a) for the nonpayment of an assessment; and

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

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

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

(a) a lot owned by an individual not described in Subsection (16)(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.

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

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

57-8a-208. Fines.

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

(2) (a) Before assessing a fine under Subsection (1), the board shall give the lot owner

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a written warning that:

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

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

(i) describes the violation;

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

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

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

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

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

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

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

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

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

(3) [(a)] A fine assessed under Subsection (1) shall:

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

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

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~~the violation~~]; and

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

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

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

~~{(b) [A] The board shall conduct a hearing [requested under] described in} [(b) A hearing requested under Subsection (4)(a) ~~{}~~ shall be conducted ~~{}~~ in accordance with ~~{}~~ standards provided in the association's governing documents.] ~~{}~~~~

~~{(i) the standards provided in the association's governing documents; or~~

~~—— (ii) if the association's governing documents do not provide standards for} (b) At a hearing described in Subsection (4)(a), the ~~{standards established by the} board in accordance with Subsection (4)(c).~~~~

~~—— (c) The standards described in Subsection (4)(b)(ii)} shall:~~

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

~~(ii) allow the lot owner or the board to elect to have the lot owner present the lot owner's position to the board; a board member, or any other person involved in the hearing to participate in the hearing by means of electronic communication.~~

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

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

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

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

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Subsection (4) expires.

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

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

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

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

- (i) create restrictions on 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)~~[(1)]~~ 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)]~~ (2) 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:

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

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

(b) a provision that allows a lot owner who has a rental in the association before the time the rental restriction described in Subsection ~~[(2)]~~ (1)(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)]~~ (2)(a) and (b); and

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

~~[(4)]~~ (3) For purposes of Subsection ~~[(3)]~~ (2)(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)]~~ (4) 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]~~ (5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection ~~[(3)]~~ (2)(a).

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

(a) an association that contains a time period unit as defined in Section 57-8-3;

(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

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restrictions is recorded before May 12, 2009~~[-]~~, unless, on or after May 12, 2015, the association:

(i) adopts a rental restriction or prohibition; or

(ii) amends an existing rental restriction or prohibition.

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

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

(a) obtain the association's approval of a prospective renter; ~~[or]~~

(b) give the association:

(i) a copy of a rental application;

(ii) a copy of a renter's or prospective renter's credit information or credit report;

(iii) a copy of a renter's or prospective renter's background check; or

(iv) documentation to verify the renter's age~~[-]~~; or

(c) pay an additional assessment, fine, or fee because the lot is a rental lot.

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

(b) If an association's declaration of covenants, conditions, and restrictions lawfully prohibits or restricts occupancy of the lots by a certain class of individuals, the association may require a lot owner who owns a rental lot to give the association the information described in Subsection ~~[(9)]~~ (8)(b), if:

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

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

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

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

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

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

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

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

(ii) differ between residential and nonresidential uses.

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

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

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

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

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

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

(B) holds the tenant and the rental lot owner jointly and severally liable for a violation of a provision of the governing documents.

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

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

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

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

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

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

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

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

(i) require that all occupants of a dwelling be members of a single housekeeping unit;
[~~and~~] or

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

(A) size and facilities; and

(B) fair use of the common areas.

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

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

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

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

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

(C) generates excessive noise or traffic;

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

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

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

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

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

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

(i) change the common areas available to a lot owner;

(ii) adopt generally applicable rules for the use of common areas; or

(iii) deny use privileges to a lot owner who:

(A) is delinquent in paying assessments;

(B) abuses the common areas; or

(C) violates the governing documents.

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

- (i) alters the method of levying assessments; or
- (ii) increases the amount of assessments as provided in the declaration.

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

- (i) prohibit the transfer of a lot; or
- (ii) require the consent of the association or board to transfer a lot.

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

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

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

- (i) applies during the period of the lot owner's ownership of the lot; and
- (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection [~~(8)~~] (9)(a).

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

- (a) the project; or
- (b) other properties in the vicinity of the project.

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

- (a) the use or operation of an amenity that the association does not own or control; or
- (b) the exercise of a right associated with an easement.

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

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

- (a) regulate the use, maintenance, repair, replacement, and modification of common areas;
- (b) impose and receive any payment, fee, or charge for:
 - (i) the use, rental, or operation of the common areas, except limited common areas; and

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- (ii) a service provided to a lot owner;
- (c) impose a charge for a late payment of an assessment; or
- (d) provide for the indemnification of [its] the association's officers and board

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

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

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

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

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

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Legislative Review Note

~~as of 12-3-14 10:07 AM~~

~~Office of Legislative Research and General Counsel~~