

1 **ASSOCIATION OPEN MEETING AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts and modifies provisions relating to meetings of the governing body of
10 an association of unit owners and an association of lot owners.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ provides that a management committee meeting and a board meeting shall be open
15 to each unit owner or lot owner;
- 16 ▶ provides certain circumstances under which a management committee or a board
17 may close a meeting;
- 18 ▶ requires that, upon request, the management committee or the board send written
19 notice of a meeting to each unit owner or lot owner by email;
- 20 ▶ requires each management committee meeting and each board meeting to include
21 time for comment from the unit owners or lot owners; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides a special effective date.

27 **Utah Code Sections Affected:**



28 AMENDS:

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

30 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

31 **57-8a-104**, as last amended by Laws of Utah 2011, Chapter 137

32 **57-8a-224**, as enacted by Laws of Utah 2013, Chapter 152

33 ENACTS:

34 **57-8-56**, Utah Code Annotated 1953

35 **57-8a-225**, Utah Code Annotated 1953



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

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

39 **57-8-3. Definitions.**

40 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

- 59 (c) the basements, yards, gardens, parking areas, and storage spaces;
- 60 (d) the premises for lodging of janitors or persons in charge of the property;
- 61 (e) installations of central services such as power, light, gas, hot and cold water,
62 heating, refrigeration, air conditioning, and incinerating;
- 63 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
64 apparatus and installations existing for common use;
- 65 (g) such community and commercial facilities as may be provided for in the
66 declaration; and
- 67 (h) all other parts of the property necessary or convenient to its existence, maintenance,
68 and safety, or normally in common use.
- 69 (6) "Common expenses" means:
 - 70 (a) all sums lawfully assessed against the unit owners;
 - 71 (b) expenses of administration, maintenance, repair, or replacement of the common
72 areas and facilities;
 - 73 (c) expenses agreed upon as common expenses by the association of unit owners; and
 - 74 (d) expenses declared common expenses by this chapter, or by the declaration or the
75 bylaws.
- 76 (7) "Common profits," unless otherwise provided in the declaration or lawful
77 amendments to the declaration, means the balance of all income, rents, profits, and revenues
78 from the common areas and facilities remaining after the deduction of the common expenses.
- 79 (8) "Condominium" means the ownership of a single unit in a multiunit project
80 together with an undivided interest in common in the common areas and facilities of the
81 property.
- 82 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in
83 accordance with Section [57-8-13](#).
- 84 (10) "Condominium project" means a real estate condominium project; a plan or
85 project whereby two or more units, whether contained in existing or proposed apartments,
86 commercial or industrial buildings or structures, or otherwise, are separately offered or
87 proposed to be offered for sale. Condominium project also means the property when the
88 context so requires.
- 89 (11) "Condominium unit" means a unit together with the undivided interest in the

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

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

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

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

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

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

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

115 (18) "Governing documents":

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

117 (i) exercise powers; or

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

120 (b) includes:

- 121 (i) articles of incorporation;
- 122 (ii) bylaws;
- 123 (iii) a plat;
- 124 (iv) a declaration of covenants, conditions, and restrictions; and
- 125 (v) rules of the association of unit owners.
- 126 (19) "Independent third party" means a person that:
 - 127 (a) is not related to the unit owner;
 - 128 (b) shares no pecuniary interests with the unit owner; and
 - 129 (c) purchases the unit in good faith and without the intent to defraud a current or future
 - 130 lienholder.
- 131 (20) "Leasehold condominium" means a condominium project in all or any portion of
- 132 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
- 133 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
- 134 condominium project including leased land, or an interest in the land, upon which no units are
- 135 situated or to be situated is not a leasehold condominium within the meaning of this chapter.
- 136 (21) "Limited common areas and facilities" means those common areas and facilities
- 137 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
- 138 other units.
- 139 (22) "Majority" or "majority of the unit owners," unless otherwise provided in the
- 140 declaration or lawful amendments to the declaration, means the owners of more than 50% in
- 141 the aggregate in interest of the undivided ownership of the common areas and facilities.
- 142 (23) "Management committee" means the committee as provided in the declaration
- 143 charged with and having the responsibility and authority to make and to enforce all of the
- 144 reasonable rules covering the operation and maintenance of the property.
- 145 (24) (a) "Means of electronic communication" means an electronic system that allows
- 146 individuals to communicate orally in real time.
- 147 (b) "Means of electronic communication" includes:
 - 148 (i) web conferencing;
 - 149 (ii) video conferencing; and
 - 150 (iii) telephone conferencing.
- 151 (25) "Meeting" means a gathering of a management committee, whether in person or

152 by means of electronic communication, at which the management committee can take binding
153 action.

154 ~~[(24)]~~ (26) "Mixed-use condominium project" means a condominium project that has
155 both residential and commercial units in the condominium project.

156 ~~[(25)]~~ (27) "Par value" means a number of dollars or points assigned to each unit by the
157 declaration. Substantially identical units shall be assigned the same par value, but units located
158 at substantially different heights above the ground, or having substantially different views, or
159 having substantially different amenities or other characteristics that might result in differences
160 in market value, may be considered substantially identical within the meaning of this
161 subsection. If par value is stated in terms of dollars, that statement may not be considered to
162 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
163 fair market transaction at a different figure may affect the par value of any unit, or any
164 undivided interest in the common areas and facilities, voting rights in the unit owners'
165 association, liability for common expenses, or right to common profits, assigned on the basis
166 thereof.

167 (28) "Period of administrative control" means the period of control described in
168 Subsection 57-8-16.5(1).

169 ~~[(26)]~~ (29) "Person" means an individual, corporation, partnership, association, trustee,
170 or other legal entity.

171 ~~[(27)]~~ (30) "Property" means the land, whether leasehold or in fee simple, the building,
172 if any, all improvements and structures thereon, all easements, rights, and appurtenances
173 belonging thereto, and all articles of personal property intended for use in connection
174 therewith.

175 ~~[(28)]~~ (31) "Record," "recording," "recorded," and "recorder" have the meaning stated
176 in Title 57, Chapter 3, Recording of Documents.

177 ~~[(29)]~~ (32) "Size" means the number of cubic feet, or the number of square feet of
178 ground or floor space, within each unit as computed by reference to the record of survey map
179 and rounded off to a whole number. Certain spaces within the units including attic, basement,
180 or garage space may be omitted from the calculation or be partially discounted by the use of a
181 ratio, if the same basis of calculation is employed for all units in the condominium project and
182 if that basis is described in the declaration.

183 ~~[(30)]~~ (33) "Time period unit" means an annually recurring part or parts of a year
 184 specified in the declaration as a period for which a unit is separately owned and includes a
 185 timeshare estate as defined in Subsection 57-19-2(19).

186 ~~[(31)]~~ (34) "Unit" means either a separate physical part of the property intended for any
 187 type of independent use, including one or more rooms or spaces located in one or more floors
 188 or part or parts of floors in a building or a time period unit, as the context may require. A
 189 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
 190 proposed condominium unit under an expandable condominium project, not constructed, is a
 191 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

192 ~~[(32)]~~ (35) "Unit number" means the number, letter, or combination of numbers and
 193 letters designating the unit in the declaration and in the record of survey map.

194 ~~[(33)]~~ (36) "Unit owner" means the person or persons owning a unit in fee simple and
 195 an undivided interest in the fee simple estate of the common areas and facilities in the
 196 percentage specified and established in the declaration or, in the case of a leasehold
 197 condominium project, the person or persons whose leasehold interest or interests in the
 198 condominium unit extend for the entire balance of the unexpired term or terms.

199 Section 2. Section 57-8-56 is enacted to read:

200 **57-8-56. Management committee meetings -- Open meetings.**

201 (1) (a) At least 48 hours before a meeting, the association of unit owners shall give
 202 written notice of the meeting via email to each unit owner who requests notice of a meeting,
 203 unless:

204 (i) notice of the meeting is included in a meeting schedule that was previously provided
 205 to the unit owner; or

206 (ii) (A) the meeting is to address an emergency; and

207 (B) each management committee member receives notice of the meeting less than 48
 208 hours before the meeting.

209 (b) A notice described in Subsection (1)(a) shall:

210 (i) be delivered to the unit owner by email, to the email address that the unit owner
 211 provides to the management committee or the association of unit owners;

212 (ii) state the time and date of the meeting;

213 (iii) state the location of the meeting; and

214 (iv) if a management committee member may participate by means of electronic
215 communication, provide the information necessary to allow the unit owner to participate by the
216 available means of electronic communication.

217 (2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each unit
218 owner or the unit owner's representative if the representative is designated in writing.

219 (b) A management committee may close a meeting to:

220 (i) consult with an attorney for the purpose of obtaining legal advice;

221 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
222 proceedings;

223 (iii) discuss a personnel matter;

224 (iv) discuss a matter relating to contract negotiations, including review of a bid or
225 proposal;

226 (v) discuss a matter that involves an individual if the discussion is likely to cause the
227 individual undue embarrassment or violate the individual's reasonable expectation of privacy;

228 or

229 (vi) discuss a delinquent assessment or fine.

230 (3) (a) At each meeting, the management committee shall provide each unit owner a
231 reasonable opportunity to offer comments.

232 (b) The management committee may limit the comments described in Subsection (3)(a)
233 to one specific time period during the meeting.

234 (4) A management committee member may not avoid or obstruct the requirements of
235 this section.

236 (5) Nothing in this section shall affect the validity or enforceability of an action of a
237 management committee.

238 (6) The provisions of this section do not apply during the period of administrative
239 control.

240 (7) The provisions of this section apply regardless of when the condominium project's
241 initial declaration was recorded.

242 Section 3. Section **57-8a-102** is amended to read:

243 **57-8a-102. Definitions.**

244 As used in this chapter:

- 245 (1) (a) "Assessment" means a charge imposed or levied:
246 (i) by the association;
247 (ii) on or against a lot or a lot owner; and
248 (iii) pursuant to a governing document recorded with the county recorder.
249 (b) "Assessment" includes:
250 (i) a common expense; and
251 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
252 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
253 other legal entity, any member of which:
254 (i) is an owner of a residential lot located within the jurisdiction of the association, as
255 described in the governing documents; and
256 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
257 (A) real property taxes;
258 (B) insurance premiums;
259 (C) maintenance costs; or
260 (D) for improvement of real property not owned by the member.
261 (b) "Association" or "homeowner association" does not include an association created
262 under Title 57, Chapter 8, Condominium Ownership Act.
263 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
264 authority to manage the affairs of the association.
265 (4) "Common areas" means property that the association:
266 (a) owns;
267 (b) maintains;
268 (c) repairs; or
269 (d) administers.
270 (5) "Common expense" means costs incurred by the association to exercise any of the
271 powers provided for in the association's governing documents.
272 (6) "Declarant":
273 (a) means the person who executes a declaration and submits it for recording in the
274 office of the recorder of the county in which the property described in the declaration is
275 located; and

- 276 (b) includes the person's successor and assign.
- 277 (7) (a) "Governing documents" means a written instrument by which the association
- 278 may:
- 279 (i) exercise powers; or
- 280 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 281 association.
- 282 (b) "Governing documents" includes:
- 283 (i) articles of incorporation;
- 284 (ii) bylaws;
- 285 (iii) a plat;
- 286 (iv) a declaration of covenants, conditions, and restrictions; and
- 287 (v) rules of the association.
- 288 (8) "Independent third party" means a person that:
- 289 (a) is not related to the owner of the residential lot;
- 290 (b) shares no pecuniary interests with the owner of the residential lot; and
- 291 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 292 or future lienholder.
- 293 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 294 (a) for the nonpayment of an assessment; and
- 295 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 296 property; and
- 297 (ii) as provided in Part 3, Collection of Assessments.
- 298 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 299 (a) by a person or persons other than the owner; and
- 300 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 301 gratuity, or emolument.
- 302 (11) "Limited common areas" means common areas described in the declaration and
- 303 allocated for the exclusive use of one or more lot owners.
- 304 (12) "Lot" means:
- 305 (a) a lot, parcel, plot, or other division of land:
- 306 (i) designated for separate ownership or occupancy; and

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

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

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

- 316 (i) web conferencing;
- 317 (ii) video conferencing; and
- 318 (iii) telephone conferencing.

319 (14) "Meeting" means a gathering of a board, whether in person or by means of
 320 electronic communication, at which the board can take binding action.

321 [~~13~~] (15) "Mixed-use project" means a project under this chapter that has both
 322 residential and commercial lots in the project.

323 [~~14~~] (16) "Nonjudicial foreclosure" means the sale of a lot:

- 324 (a) for the nonpayment of an assessment; and
- 325 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
- 326 57-1-34; and
- 327 (ii) as provided in Part 3, Collection of Assessments.

328 (17) "Period of administrative control" means the period during which the person who
 329 filed the association's governing documents or the person's successor in interest retains
 330 authority to:

- 331 (a) appoint or remove members of the association's board of directors; or
- 332 (b) exercise power or authority assigned to the association under the association's
 333 governing documents.

334 [~~15~~] (18) "Residential lot" means a lot, the use of which is limited by law, covenant,
 335 or otherwise to primarily residential or recreational purposes.

336 Section 4. Section 57-8a-104 is amended to read:

337 **57-8a-104. Limitation on requirements for amending governing documents --**

338 **Limitation on contracts.**

339 ~~[(1) As used in this section, "period of administrative control" means the period during~~
340 ~~which the person who filed the association's governing documents or a successor in interest~~
341 ~~retains authority to:]~~

342 ~~[(a) appoint or remove members of the association's board of directors; or]~~

343 ~~[(b) exercise power or authority assigned to the association under its governing~~
344 ~~documents.]~~

345 ~~[(2)]~~ (1) (a) (i) Governing documents may not require that an amendment to the
346 governing documents adopted after the period of administrative control be approved by more
347 than 67% of the voting interests.

348 (ii) The vote required to adopt an amendment to governing documents may not be
349 greater than 67% of the voting interests, notwithstanding a provision of the governing
350 documents requiring a greater percentage and regardless of whether the governing documents
351 were adopted before, on, or after May 10, 2011.

352 (b) Subsection ~~[(2)]~~ (1)(a) does not apply to an amendment affecting only:

353 (i) lot boundaries; or

354 (ii) members' voting rights.

355 ~~[(3)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,
356 or snow removal executed on behalf of the association during a period of administrative control
357 is binding beyond the period of administrative control unless terminated by the board of
358 directors after the period of administrative control ends.

359 (b) Subsection ~~[(3)]~~ (2)(a) does not apply to golf course and amenity management,
360 utilities, cable services, and other similar services that require an investment of infrastructure
361 or capital.

362 ~~[(4)]~~ (3) Voting interests under ~~[Subsections (2) and (3)]~~ Subsection (1) are calculated
363 in the manner required by the governing documents.

364 ~~[(5)]~~ (4) Nothing in this section affects any other rights reserved by the person who
365 filed the association's original governing documents or a successor in interest.

366 Section 5. Section **57-8a-224** is amended to read:

367 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
368 **common area and lots.**

369 (1) As used in this section:

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

372 (b) "Reasonable notice" means:

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

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

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

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

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

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

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

386 (b) for making an emergency repair.

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

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

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

393 Section 6. Section **57-8a-225** is enacted to read:

394 **57-8a-225. Board meetings -- Open meetings.**

395 (1) (a) At least 48 hours before a meeting, the association shall give written notice of
396 the meeting via email to each lot owner who requests notice of a meeting, unless:

397 (i) notice of the meeting is included in a meeting schedule that was previously provided
398 to the lot owner; or

399 (ii) (A) the meeting is to address an emergency; and

400 (B) each board member receives notice of the meeting less than 48 hours before the
401 meeting.

402 (b) A notice described in Subsection (1)(a) shall:

403 (i) be delivered to the lot owner by email, to the email address that the lot owner
404 provides to the board or the association;

405 (ii) state the time and date of the meeting;

406 (iii) state the location of the meeting; and

407 (iv) if a board member may participate by means of electronic communication, provide
408 the information necessary to allow the lot owner to participate by the available means of
409 electronic communication.

410 (2) (a) Except as provided in Subsection (2)(b), a meeting shall be open to each lot
411 owner or the lot owner's representative if the representative is designated in writing.

412 (b) A board may close a meeting to:

413 (i) consult with an attorney for the purpose of obtaining legal advice;

414 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
415 proceedings;

416 (iii) discuss a personnel matter;

417 (iv) discuss a matter relating to contract negotiations, including review of a bid or
418 proposal;

419 (v) discuss a matter that involves an individual if the discussion is likely to cause the
420 individual undue embarrassment or violate the individual's reasonable expectation of privacy;
421 or

422 (vi) discuss a delinquent assessment or fine.

423 (3) (a) At each meeting, the board shall provide each lot owner a reasonable
424 opportunity to offer comments.

425 (b) The board may limit the comments described in Subsection (3)(a) to one specific
426 time period during the meeting.

427 (4) A board member may not avoid or obstruct the requirements of this section.

428 (5) Nothing in this section shall affect the validity or enforceability of an action of a
429 board.

430 (6) The provisions of this section do not apply during the period of administrative

431 control.

432 (7) The provisions of this section apply regardless of when the association's first
433 governing document was recorded.

434 Section 7. **Effective date.**

435 This bill takes effect on July 1, 2015.

Legislative Review Note

as of 9-24-14 2:28 PM

Office of Legislative Research and General Counsel