

1 **HOMEOWNER AND CONDOMINIUM**
2 **ASSOCIATION MODIFICATIONS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Carol Spackman Moss

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to a homeowner association's governing
11 documents.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ addresses the procedures, requirements, limitations, and enforcement mechanisms
16 that apply to a request to inspect or copy association records;
- 17 ▶ addresses the requirements for an association to amend the association's governing
18 documents;
- 19 ▶ prohibits certain restrictions on the time at which an association may amend the
20 association's governing documents;
- 21 ▶ provides that the provisions of this bill apply regardless of when the association is
22 created; and
- 23 ▶ makes technical and conforming changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 This bill provides a coordination clause to reconcile conflicts between this bill and
28 other legislation.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

32 **57-8-7.5**, as last amended by Laws of Utah 2014, Chapter 189

33 **57-8-39**, as enacted by Laws of Utah 2007, Chapter 223

34 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

35 **57-8a-104**, as last amended by Laws of Utah 2011, Chapter 137

36 **57-8a-217**, as enacted by Laws of Utah 2011, Chapter 355

37 **57-8a-224**, as enacted by Laws of Utah 2013, Chapter 152

38 ENACTS:

39 **57-8a-225**, Utah Code Annotated 1953

40 REPEALS AND REENACTS:

41 **57-8-17**, as last amended by Laws of Utah 2011, Chapter 95

42 **Utah Code Sections Affected by Coordination Clause:**

43 **57-8-56**, Utah Code Annotated 1953

44 **57-8a-225**, Utah Code Annotated 1953



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

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

48 **57-8-3. Definitions.**

49 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78 (6) "Common expenses" means:

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

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

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

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

85 (7) "Common profits," unless otherwise provided in the declaration or lawful

86 amendments to the declaration, means the balance of all income, rents, profits, and revenues
87 from the common areas and facilities remaining after the deduction of the common expenses.

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

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

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

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

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

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

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

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

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

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

124 (18) "Governing documents":

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

126 (i) exercise powers; or

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

129 (b) includes:

130 (i) articles of incorporation;

131 (ii) bylaws;

132 (iii) a plat;

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

134 (v) rules of the association of unit owners.

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

136 (a) is not related to the unit owner;

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

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

140 (20) "Leasehold condominium" means a condominium project in all or any portion of
141 which each unit owner owns an estate for years in his unit, or in the land upon which that unit

142 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
143 condominium project including leased land, or an interest in the land, upon which no units are
144 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

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

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

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

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

156 (25) "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 (26) "Period of administrative control" means the period of control described in
168 Subsection 57-8-16.5(1).

169 [~~26~~] (27) "Person" means an individual, corporation, partnership, association, trustee,

170 or other legal entity.

171 ~~[(27)]~~ (28) "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)]~~ (29) "Record," "recording," "recorded," and "recorder" have the meaning stated
176 in Title 57, Chapter 3, Recording of Documents.

177 ~~[(29)]~~ (30) "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)]~~ (31) "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)]~~ (32) "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)]~~ (33) "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)]~~ (34) "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 **57-8-7.5** is amended to read:

200 **57-8-7.5. Reserve analysis -- Reserve fund.**

201 (1) As used in this section:

202 (a) "Reserve analysis" means an analysis to determine:

203 (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
204 replacing, or restoring common areas and facilities that have a useful life of three years or more
205 and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from
206 the general budget or other funds of the association of unit owners; and

207 (ii) the appropriate amount of any reserve fund.

208 (b) "Reserve fund line item" means the line item in an association of unit owners'
209 annual budget that identifies the amount to be placed into a reserve fund.

210 (2) Except as otherwise provided in the declaration, a management committee shall:

211 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

212 (b) review and, if necessary, update a previously conducted reserve analysis no less
213 frequently than every three years.

214 (3) The management committee may conduct a reserve analysis itself or may engage a
215 reliable person or organization, as determined by the management committee, to conduct the
216 reserve analysis.

217 (4) A reserve fund analysis shall include:

218 (a) a list of the components identified in the reserve analysis that will reasonably
219 require reserve funds;

220 (b) a statement of the probable remaining useful life, as of the date of the reserve
221 analysis, of each component identified in the reserve analysis;

222 (c) an estimate of the cost to repair, replace, or restore each component identified in the
223 reserve analysis;

224 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
225 cost to repair, replace, or restore each component identified in the reserve analysis during the

226 component's useful life and at the end of the component's useful life; and

227 (e) a reserve funding plan that recommends how the association of unit owners may
228 fund the annual contribution described in Subsection (4)(d).

229 (5) An association of unit owners shall:

230 (a) annually provide unit owners a summary of the most recent reserve analysis or
231 update; and

232 (b) provide a copy of the complete reserve analysis or update to a unit owner who
233 requests a copy.

234 (6) In formulating its budget each year, an association of unit owners shall include a
235 reserve fund line item in:

236 (a) an amount the management committee determines, based on the reserve analysis, to
237 be prudent; or

238 (b) an amount required by the declaration, if the declaration requires an amount higher
239 than the amount determined under Subsection (6)(a).

240 (7) (a) Within 45 days after the day on which an association of unit owners adopts its
241 annual budget, the unit owners may veto the reserve fund line item by a 51% vote of the
242 allocated voting interests in the association of unit owners at a special meeting called by the
243 unit owners for the purpose of voting whether to veto a reserve fund line item.

244 (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a
245 reserve fund line item exists in a previously approved annual budget of the association of unit
246 owners that was not vetoed, the association of unit owners shall fund the reserve account in
247 accordance with that prior reserve fund line item.

248 (8) (a) Subject to Subsection (8)(b), if an association of unit owners does not comply
249 with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance
250 within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:

251 (i) injunctive relief requiring the association of unit owners to comply with the
252 requirements of Subsection (5), (6), or (7);

253 (ii) \$500 or actual damages, whichever is greater;

254 (iii) any other remedy provided by law; and

255 (iv) reasonable costs and attorney fees.

256 (b) No fewer than 90 days before the day on which a unit owner files a complaint under
257 Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to
258 the association of unit owners.

259 (c) A notice under Subsection (8)(b) shall state:

260 (i) the requirement in Subsection (5), (6), or (7) with which the association of unit
261 owners has failed to comply;

262 (ii) a demand that the association of unit owners come into compliance with the
263 requirements; and

264 (iii) a date, no fewer than 90 days after the day on which the unit owner delivers the
265 notice, by which the association of unit owners shall remedy its noncompliance.

266 (d) In a case filed under Subsection (8)(a), a court may order an association of unit
267 owners to produce the summary of the reserve analysis or the complete reserve analysis on an
268 expedited basis and at the association of unit owners' expense.

269 (9) (a) A management committee may not use money in a reserve fund:

270 (i) for daily maintenance expenses, unless a majority of the members of the association
271 of unit owners vote to approve the use of reserve fund money for that purpose; or

272 (ii) for any purpose other than the purpose for which the reserve fund was established.

273 (b) A management committee shall maintain a reserve fund separate from other funds
274 of the association of unit owners.

275 (c) This Subsection (9) may not be construed to limit a management committee from
276 prudently investing money in a reserve fund, subject to any investment constraints imposed by
277 the declaration.

278 (10) Subsections (2) through (9) do not apply to an association of unit owners during
279 the period of [~~declarant~~] administrative control [~~described in Subsection 57-8-16.5(1)~~].

280 (11) This section applies to each association of unit owners, regardless of when the
281 association of unit owners was created.

282 Section 3. Section **57-8-17** is repealed and reenacted to read:

283 **57-8-17. Records -- Availability for examination.**

284 (1) (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make
285 documents available to unit owners in accordance with Sections **16-6a-1601** through **1603**,
286 **16-6a-1605**, **16-6a-1606**, and **16-6a-1610**, regardless of whether the association of unit owners
287 is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

288 (b) An association of unit owners may redact the following information from any
289 document the association of unit owners produces for inspection or copying:

290 (i) a Social Security number;

291 (ii) a bank account number; or

292 (iii) any communication subject to attorney-client privilege.

293 (2) (a) In addition to the requirements described in Subsection (1), an association of
294 unit owners shall make documents available to unit owners in accordance with the association
295 of unit owners' governing documents.

296 (b) If a provision of an association of unit owners' governing documents conflicts with
297 a provision of this section, the provision of this section governs.

298 (3) In a request to inspect or copy documents, a unit owner may:

299 (a) elect whether to inspect or copy the documents;

300 (b) if the unit owner elects to copy the documents, request hard copies or electronic
301 scans of the documents; or

302 (c) subject to Subsection (4), request that:

303 (i) the association of unit owners make the copies or electronic scans of the requested
304 documents;

305 (ii) a recognized third party duplicating service make the copies or electronic scans of
306 the requested documents; or

307 (iii) the unit owner be allowed to bring any necessary imaging equipment to the place
308 of inspection and make copies or electronic scans of the documents while inspecting the
309 documents.

310 (4) (a) An association of unit owners shall comply with a request described in
311 Subsection (3).

312 (b) If an association of unit owners produces the copies or electronic scans:

313 (i) the copies or electronic scans shall be legible and accurate; and

314 (ii) the unit owner shall pay the association of unit owners the reasonable cost of the
315 copies or electronic scans, which may not exceed:

316 (A) the actual cost that the association of unit owners paid to a recognized third party
317 duplicating service to make the copies or electronic scans; or

318 (B) if an employee, manager, or other agent of the association of unit owners makes the
319 copies or electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or
320 other agent's time making the copies or electronic scans.

321 (c) If a unit owner requests a recognized third party duplicating service make the copies
322 or electronic scans:

323 (i) the association of unit owners shall arrange for the delivery and pick up of the
324 original documents; and

325 (ii) the unit owner shall pay the duplicating service directly.

326 (d) If a unit owner requests to bring imaging equipment to the inspection, the
327 association of unit owners shall provide the necessary space, light, and power for the imaging
328 equipment.

329 (5) If, in response to a unit owner's request to inspect or copy documents, an
330 association of unit owners fails to comply with a provision of this section, the association of
331 unit owners shall pay:

332 (a) the reasonable costs of inspecting and copying the requested documents; and

333 (b) reasonable attorney fees and costs incurred by the unit owner in obtaining the
334 inspection and copies of the requested documents.

335 (6) (a) In addition to any remedy in the association of unit owners' governing
336 documents or as otherwise provided by law, a unit owner may file an action in court under this
337 section if:

338 (i) an association of unit owners fails to make documents available to the unit owner in
339 accordance with this section, the association of unit owners' governing documents, or as
340 otherwise provided by law; and

341 (ii) the association of unit owners fails to timely comply with a notice described in
342 Subsection (6)(d).

343 (b) In an action described in Subsection (6)(a):

344 (i) the unit owner may request:

345 (A) injunctive relief requiring the association of unit owners to comply with the
346 provisions of this section;

347 (B) \$500 or actual damage, whichever is greater; or

348 (C) any other relief provided by law; and

349 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,
350 including any reasonable attorney fees incurred before the action was filed that relate to the
351 request that is the subject of the action.

352 (c) (i) In an action described in Subsection (6)(a), upon motion by the unit owner,
353 notice to the association of unit owners, and a hearing in which the court finds a likelihood that
354 the association of unit owners failed to comply with a provision of this section, the court shall
355 order the association of unit owners to immediately comply with the provision.

356 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
357 the day on which the unit owner files the motion.

358 (d) At least 10 days before the day on which a unit owner files an action described in
359 Subsection (6)(a), the unit owner shall deliver a written notice to the association of unit owners
360 that states:

361 (i) the unit owner's name, address, telephone number, and email address;

362 (ii) each requirement of this section with which the association of unit owners has
363 failed to comply;

364 (iii) a demand that the association of unit owners comply with each requirement with
365 which the association of unit owners has failed to comply; and

366 (iv) a date by which the association of unit owners shall remedy the association of unit
367 owners' noncompliance that is at least 10 days after the day on which the unit owner delivers
368 the notice to the association of unit owners.

369 (7) (a) The provisions of Section 16-6a-1604 do not apply to an association of unit
370 owners.

371 (b) The provisions of this section apply regardless of any conflicting provision in Title
372 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

373 (8) A unit owner's agent may, on the unit owner's behalf, exercise or assert any right
374 that the unit owner has under this section.

375 Section 4. Section **57-8-39** is amended to read:

376 **57-8-39. Limitation on requirements for amending governing documents --**
377 **Limitation on contracts.**

378 ~~[(1) When the period of control described in Section 57-8-16.5 ends, neither the~~
379 ~~declaration nor bylaws may require that an amendment to the declaration or bylaws be~~
380 ~~approved by more than 67% of the voting interests.]~~

381 ~~[(2) Voting interests under Subsection (1) are calculated in the manner required by the~~
382 ~~declaration or bylaws.]~~

383 ~~[(3) Nothing in this section affects any other rights reserved by a declarant.]~~

384 (1) (a) (i) To amend the governing documents, the governing documents may not
385 require:

386 (A) for an amendment adopted after the period of administrative control, the vote or
387 approval of unit owners with more than 67% of the voting interests;

388 (B) the approval of any specific unit owner; or

389 (C) the vote or approval of lien holders holding more than 67% of the first position
390 security interests secured by a mortgage or trust deed in the association of unit owners.

391 (ii) Any provision in the governing documents that prohibits a vote or approval to
392 amend any part of the governing documents during a particular time period is invalid.

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

394 ~~[(a)]~~ (i) the undivided interest of each unit owner in the common areas and facilities, as
395 expressed in the declaration;

396 ~~[(b)]~~ (ii) unit boundaries; or

397 ~~[(c) members']~~ (iii) unit owners' voting rights.

398 ~~[(5)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,
399 or snow removal executed on behalf of the association of unit owners during a period of
400 administrative control is binding beyond the period of administrative control unless terminated
401 by the board of directors after the period of administrative control ends.

402 (b) Subsection ~~[(5)]~~ (2)(a) does not apply to golf course and amenity management,
403 utilities, cable services, and other similar services that require an investment of infrastructure
404 or capital.

405 (3) Voting interests under Subsection (1) are calculated in the manner required by the
406 governing documents.

407 (4) Nothing in this section affects any other rights reserved by the declarant.

408 (5) This section applies to an association of unit owners regardless of when the
409 association of unit owners is created.

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

411 **57-8a-102. Definitions.**

412 As used in this chapter:

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

414 (i) by the association;

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

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

417 (b) "Assessment" includes:

418 (i) a common expense; and

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

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

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

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

425 (A) real property taxes;

426 (B) insurance premiums;

427 (C) maintenance costs; or

428 (D) for improvement of real property not owned by the member.

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

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

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

434 (a) owns;

435 (b) maintains;

436 (c) repairs; or

437 (d) administers.

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

440 (6) "Declarant":

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

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

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

447 (i) exercise powers; or

448 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
449 association.

- 450 (b) "Governing documents" includes:
- 451 (i) articles of incorporation;
- 452 (ii) bylaws;
- 453 (iii) a plat;
- 454 (iv) a declaration of covenants, conditions, and restrictions; and
- 455 (v) rules of the association.
- 456 (8) "Independent third party" means a person that:
- 457 (a) is not related to the owner of the residential lot;
- 458 (b) shares no pecuniary interests with the owner of the residential lot; and
- 459 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 460 or future lienholder.
- 461 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 462 (a) for the nonpayment of an assessment; and
- 463 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 464 property; and
- 465 (ii) as provided in Part 3, Collection of Assessments.
- 466 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 467 (a) by a person or persons other than the owner; and
- 468 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 469 gratuity, or emolument.
- 470 (11) "Limited common areas" means common areas described in the declaration and
- 471 allocated for the exclusive use of one or more lot owners.
- 472 (12) "Lot" means:
- 473 (a) a lot, parcel, plot, or other division of land:
- 474 (i) designated for separate ownership or occupancy; and
- 475 (ii) (A) shown on a recorded subdivision plat; or
- 476 (B) the boundaries of which are described in a recorded governing document; or
- 477 (b) (i) a unit in a condominium association if the condominium association is a part of

478 a development; or

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

481 (13) "Mixed-use project" means a project under this chapter that has both residential
482 and commercial lots in the project.

483 (14) "Nonjudicial foreclosure" means the sale of a lot:

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

485 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
486 57-1-34; and

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

488 (15) "Period of administrative control" mean the period during which the person who
489 filed the association's governing documents or the person's successor in interest retains
490 authority to:

491 (a) appoint or remove members of the association's board of directors; or

492 (b) exercise power or authority assigned to the association under the association's
493 governing documents.

494 [(15)] (16) "Residential lot" means a lot, the use of which is limited by law, covenant,
495 or otherwise to primarily residential or recreational purposes.

496 Section 6. Section 57-8a-104 is amended to read:

497 **57-8a-104. Limitation on requirements for amending governing documents --**
498 **Limitation on contracts.**

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

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

503 [(b) exercise power or authority assigned to the association under its governing
504 documents.]

505 [(2) (a) (i) Governing documents may not require that an amendment to the governing

506 documents adopted after the period of administrative control be approved by more than 67% of
507 the voting interests.]

508 ~~[(ii) The vote required to adopt an amendment to governing documents may not be~~
509 ~~greater than 67% of the voting interests, notwithstanding a provision of the governing~~
510 ~~documents requiring a greater percentage and regardless of whether the governing documents~~
511 ~~were adopted before, on, or after May 10, 2011.]~~

512 (1) (a) (i) To amend the governing documents, the governing documents may not
513 require:

514 (A) for an amendment adopted after the period of administrative control, the vote or
515 approval of lot owners with more than 67% of the voting interests;

516 (B) the approval of any specific lot owner; or

517 (C) the vote or approval of lien holders holding more than 67% of the first position
518 security interests secured by a mortgage or trust deed in the association.

519 (ii) Any provision in the governing documents that prohibits a vote or approval to
520 amend any part of the governing documents during a particular time period is invalid.

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

522 (i) lot boundaries; or

523 (ii) ~~[members']~~ lot owner's voting rights.

524 ~~[(3)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,
525 or snow removal executed on behalf of the association during a period of administrative control
526 is binding beyond the period of administrative control unless terminated by the board of
527 directors after the period of administrative control ends.

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

531 ~~[(4)]~~ (3) Voting interests under ~~[Subsections (2) and (3)]~~ Subsection (1) are calculated
532 in the manner required by the governing documents.

533 ~~[(5)]~~ (4) Nothing in this section affects any other rights reserved by the person who

534 filed the association's original governing documents or a successor in interest.

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

536 Section 7. Section **57-8a-217** is amended to read:

537 **57-8a-217. Association rules, including design criteria -- Requirements and**
538 **limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

539 (1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit,
540 create exceptions to, expand, or enforce the rules and design criteria of the association.

541 (b) A board's action under Subsection (1)(a) is subject to:

542 (i) this section;

543 (ii) any limitation that the declaration imposes on the authority stated in Subsection

544 (1)(a);

545 (iii) the limitation on rules in Sections [57-8a-218](#) and [57-8a-219](#);

546 (iv) the board's duty to exercise business judgment on behalf of:

547 (A) the association; and

548 (B) the lot owners in the association; and

549 (v) the right of the lot owners or declarant to disapprove the action under Subsection

550 (4).

551 (2) Except as provided in Subsection (3), before adopting, amending, modifying,
552 canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the
553 association, the board shall:

554 (a) at least 15 days before the board will meet to consider a change to a rule or design
555 criterion, deliver notice to lot owners, as provided in Section [57-8a-214](#), that the board is
556 considering a change to a rule or design criterion;

557 (b) provide an open forum at the board meeting giving lot owners an opportunity to be
558 heard at the board meeting before the board takes action under Subsection (1)(a); and

559 (c) deliver a copy of the change in the rules or design criteria approved by the board to
560 the lot owners as provided in Section [57-8a-214](#) within 15 days after the date of the board
561 meeting.

562 (3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving
563 notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common
564 area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

565 (b) The board shall provide notice under Subsection (2) to the lot owners of a rule
566 adopted under Subsection (3)(a).

567 (4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if
568 within 60 days after the date of the board meeting where the action was taken:

569 (a) (i) there is a vote of disapproval by at least 51% of all the allocated voting interests
570 of the lot owners in the association; and

571 (ii) the vote is taken at a special meeting called for that purpose by the lot owners
572 under the declaration, articles, or bylaws; or

573 (b) (i) the declarant delivers to the board a writing of disapproval; and

574 (ii) (A) the declarant is within the period of [~~declarant~~] administrative control; or

575 (B) for an expandable project, the declarant has the right to add real estate to the
576 project.

577 (5) (a) The board has no obligation to call a meeting of the lot owners to consider
578 disapproval, unless lot owners submit a petition, in the same manner as the declaration,
579 articles, or bylaws provide for a special meeting, for the meeting to be held.

580 (b) Upon the board receiving a petition under Subsection (5)(a), the effect of the
581 board's action is:

582 (i) stayed until after the meeting is held; and

583 (ii) subject to the outcome of the meeting.

584 (6) During the period of administrative control, a declarant may exempt the declarant
585 from association rules and the rulemaking procedure under this section if the declaration
586 reserves to the declarant the right to exempt the declarant.

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

588 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
589 **common area and lots.**

590 (1) As used in this section:

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

593 (b) "Reasonable notice" means:

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

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

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

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

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

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

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

607 (b) for making an emergency repair.

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

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

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

614 Section 9. Section **57-8a-225** is enacted to read:

615 **57-8a-225. Records -- Availability for examination.**

616 (1) (a) Subject to Subsection (1)(b), an association shall keep and make documents
617 available to lot owners in accordance with Sections 16-6a-1601 through 1603, 16-6a-1605,

618 16-6a-1606, and 16-6a-1610, regardless of whether the association is incorporated under Title
619 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

620 (b) An association may redact the following information from any document the
621 association produces for inspection or copying:

622 (i) a Social Security number;

623 (ii) a bank account number; or

624 (iii) any communication subject to attorney-client privilege.

625 (2) (a) In addition to the requirements described in Subsection (1), an association shall
626 make documents available to lot owners in accordance with the association's governing
627 documents.

628 (b) If a provision of an association's governing documents conflicts with a provision of
629 this section, the provision of this section governs.

630 (3) In a request to inspect or copy documents, a lot owner may:

631 (a) elect whether to inspect or copy the documents;

632 (b) if the lot owner elects to copy the documents, request hard copies or electronic
633 scans of the documents; or

634 (c) subject to Subsection (4), request that:

635 (i) the association make the copies or electronic scans of the requested documents;

636 (ii) a recognized third party duplicating service make the copies or electronic scans of
637 the requested documents; or

638 (iii) the lot owner be allowed to bring any necessary imaging equipment to the place of
639 inspection and make copies or electronic scans of the documents while inspecting the
640 documents.

641 (4) (a) An association shall comply with a request described in Subsection (3).

642 (b) If an association produces the copies or electronic scans:

643 (i) the copies or electronic scans shall be legible and accurate; and

644 (ii) the lot owner shall pay the association the reasonable cost of the copies or
645 electronic scans, which may not exceed:

646 (A) the actual cost that the association paid to a recognized third party duplicating
647 service to make the copies or electronic scans; or

648 (B) if an employee, manager, or other agent of the association makes the copies or
649 electronic scans, 10 cents per page and \$15 per hour for the employee's, manager's, or other
650 agent's time making the copies or electronic scans.

651 (c) If a lot owner requests a recognized third party duplicating service make the copies
652 or electronic scans:

653 (i) the association shall arrange for the delivery and pick up of the original documents;
654 and

655 (ii) the lot owner shall pay the duplicating service directly.

656 (d) If a lot owner requests to bring imaging equipment to the inspection, the association
657 shall provide the necessary space, light, and power for the imaging equipment.

658 (5) If, in response to a lot owner's request to inspect or copy documents, an association
659 fails to comply with a provision of this section, the association shall pay:

660 (a) the reasonable costs of inspecting and copying the requested documents; and

661 (b) reasonable attorney fees and costs incurred by the lot owner in obtaining the
662 inspection and copies of the requested documents.

663 (6) (a) In addition to any remedy in the association's governing documents or otherwise
664 provided by law, a lot owner may file an action in court under this section if:

665 (i) an association fails to make documents available to the lot owner in accordance
666 with this section, the association's governing documents, or as otherwise provided by law; and

667 (ii) the association fails to timely comply with a notice described in Subsection (6)(d).

668 (b) In an action described in Subsection (6)(a):

669 (i) the lot owner may request:

670 (A) injunctive relief requiring the association to comply with the provisions of this
671 section;

672 (B) \$500 or actual damage, whichever is greater; or

673 (C) any other relief provided by law; and

674 (ii) the court shall award costs and reasonable attorney fees to the prevailing party,
675 including any reasonable attorney fees incurred before the action was filed that relate to the
676 request that is the subject of the action.

677 (c) (i) In an action described in Subsection (6)(a), upon motion by the lot owner, notice
678 to the association, and a hearing in which the court finds a likelihood that the association failed
679 to comply with a provision of this section, the court shall order the association to immediately
680 comply with the provision.

681 (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after
682 the day on which the lot owner files the motion.

683 (d) At least 10 days before the day on which a lot owner files an action described in
684 Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

685 (i) the lot owner's name, address, telephone number, and email address;

686 (ii) each requirement of this section with which the association has failed to comply;

687 (iii) a demand that the association comply with each requirement with which the
688 association has failed to comply; and

689 (iv) a date by which the association shall remedy the association's noncompliance that
690 is at least 10 days after the day on which the lot owner delivers the notice to the association.

691 (7) (a) The provisions of Section [16-6a-1604](#) do not apply to an association.

692 (b) The provisions of this section apply regardless of any conflicting provision in Title
693 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

694 (8) A lot owner's agent may, on the lot owner's behalf, exercise or assert any right that
695 the lot owner has under this section.

696 Section 10. **Coordinating S.B. 118 with H.B. 99 -- Substantive amendment.**

697 If this S.B. 118 and H.B. 99, Association Open Meeting Amendments, both pass and
698 become law, the Legislature intends that the Office of Legislative Research and General
699 Counsel, in preparing the Utah Code database for publication, on July 1, 2015:

700 (1) enact a new Subsection [57-8-56\(8\)](#) to read:

701 "(8) (a) Subject to Subsection (8)(d), if an association of unit owners fails to comply

702 with a provision of Subsections (1) through (4) and fails to remedy the noncompliance during
703 the 90-day period described in Subsection (8)(d), a unit owner may file an action in court for:

704 (i) injunctive relief requiring the association of unit owners to comply with the
705 provisions of Subsections (1) through (4);

706 (ii) \$500 or actual damages, whichever is greater; or

707 (iii) any other relief provided by law.

708 (b) In an action described in Subsection (8)(a), the court may award costs and
709 reasonable attorney fees to the prevailing party.

710 (c) Upon motion from the unit owner, notice to the association of unit owners, and a
711 hearing in which the court finds a likelihood that the association of unit owners has failed to
712 comply with a provision of Subsections (1) through (4), the court may order the association of
713 unit owners to immediately comply with the provisions of Subsections (1) through (4).

714 (d) At least 90 days before the day on which a unit owner files an action described in
715 Subsection (8)(a), the unit owner shall deliver a written notice to the association of unit owners
716 that states:

717 (i) the unit owner's name, address, telephone number, and email address;

718 (ii) each requirement of Subsections (1) through (4) with which the association of unit
719 owners has failed to comply;

720 (iii) a demand that the association of unit owners comply with each requirement with
721 which the association of unit owners has failed to comply; and

722 (iv) a date by which the association of unit owners shall remedy the association of unit
723 owners' noncompliance that is at least 90 days after the day on which the unit owner delivers
724 the notice to the association of unit owners."; and

725 (2) enact a new Subsection 57-8a-225(8) in H.B. 99 to read:

726 "(8) (a) Subject to Subsection (8)(d), if an association fails to comply with a provision
727 of Subsections (1) through (4) and fails to remedy the noncompliance during the 90-day period
728 described in Subsection (8)(d), a lot owner may file an action in court for:

729 (i) injunctive relief requiring the association to comply with the provisions of

730 Subsections (1) through (4);

731 (ii) \$500 or actual damages, whichever is greater; or

732 (iii) any other relief provided by law.

733 (b) In an action described in Subsection (8)(a), the court may award costs and

734 reasonable attorney fees to the prevailing party.

735 (c) Upon motion from the lot owner, notice to the association, and a hearing in which

736 the court finds a likelihood that the association has failed to comply with a provision of

737 Subsections (1) through (4), the court may order the association to immediately comply with

738 the provisions of Subsections (1) through (4).

739 (d) At least 90 days before the day on which a lot owner files an action described in

740 Subsection (8)(a), the lot owner shall deliver a written notice to the association that states:

741 (i) the lot owner's name, address, telephone number, and email address;

742 (ii) each requirement of Subsections (1) through (4) with which the association has

743 failed to comply;

744 (iii) a demand that the association comply with each requirement with which the

745 association has failed to comply; and

746 (iv) a date by which the association shall remedy the association's noncompliance that

747 is at least 90 days after the day on which the lot owner delivers the notice to the association."