

Senator **Todd Weiler** proposes the following substitute bill:

**HOMEOWNER ASSOCIATION BYLAWS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Carol Spackman Moss

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ addresses the requirements for an association to amend the association's governing documents;
- ▶ prohibits certain restrictions on the time at which an association may amend the association's governing documents;
- ▶ provides that the provisions of this bill apply regardless of when the association is created; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

28 **57-8-7.5**, as last amended by Laws of Utah 2014, Chapter 189

29 **57-8-17**, as last amended by Laws of Utah 2011, Chapter 95

30 **57-8-39**, as enacted by Laws of Utah 2007, Chapter 223

31 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

32 **57-8a-217**, as enacted by Laws of Utah 2011, Chapter 355

33 **57-8a-104**, as last amended by Laws of Utah 2011, Chapter 137

34 **57-8a-224**, as enacted by Laws of Utah 2013, Chapter 152

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

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

38 **57-8-3. Definitions.**

39 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

56 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,

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

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

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

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

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

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

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

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

114 (18) "Governing documents":

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

116 (i) exercise powers; or

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

- 119 (b) includes:
- 120 (i) articles of incorporation;
- 121 (ii) bylaws;
- 122 (iii) a plat;
- 123 (iv) a declaration of covenants, conditions, and restrictions; and
- 124 (v) rules of the association of unit owners.

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

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

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

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

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

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

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

146 (25) "Par value" means a number of dollars or points assigned to each unit by the  
147 declaration. Substantially identical units shall be assigned the same par value, but units located  
148 at substantially different heights above the ground, or having substantially different views, or  
149 having substantially different amenities or other characteristics that might result in differences

150 in market value, may be considered substantially identical within the meaning of this  
151 subsection. If par value is stated in terms of dollars, that statement may not be considered to  
152 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or  
153 fair market transaction at a different figure may affect the par value of any unit, or any  
154 undivided interest in the common areas and facilities, voting rights in the unit owners'  
155 association, liability for common expenses, or right to common profits, assigned on the basis  
156 thereof.

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

159 [~~(26)~~] (27) "Person" means an individual, corporation, partnership, association, trustee,  
160 or other legal entity.

161 [~~(27)~~] (28) "Property" means the land, whether leasehold or in fee simple, the building,  
162 if any, all improvements and structures thereon, all easements, rights, and appurtenances  
163 belonging thereto, and all articles of personal property intended for use in connection  
164 therewith.

165 [~~(28)~~] (29) "Record," "recording," "recorded," and "recorder" have the meaning stated  
166 in Title 57, Chapter 3, Recording of Documents.

167 [~~(29)~~] (30) "Size" means the number of cubic feet, or the number of square feet of  
168 ground or floor space, within each unit as computed by reference to the record of survey map  
169 and rounded off to a whole number. Certain spaces within the units including attic, basement,  
170 or garage space may be omitted from the calculation or be partially discounted by the use of a  
171 ratio, if the same basis of calculation is employed for all units in the condominium project and  
172 if that basis is described in the declaration.

173 [~~(30)~~] (31) "Time period unit" means an annually recurring part or parts of a year  
174 specified in the declaration as a period for which a unit is separately owned and includes a  
175 timeshare estate as defined in Subsection 57-19-2(19).

176 [~~(31)~~] (32) "Unit" means either a separate physical part of the property intended for any  
177 type of independent use, including one or more rooms or spaces located in one or more floors  
178 or part or parts of floors in a building or a time period unit, as the context may require. A  
179 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A  
180 proposed condominium unit under an expandable condominium project, not constructed, is a

181 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

182 [~~32~~] (33) "Unit number" means the number, letter, or combination of numbers and  
183 letters designating the unit in the declaration and in the record of survey map.

184 [~~33~~] (34) "Unit owner" means the person or persons owning a unit in fee simple and  
185 an undivided interest in the fee simple estate of the common areas and facilities in the  
186 percentage specified and established in the declaration or, in the case of a leasehold  
187 condominium project, the person or persons whose leasehold interest or interests in the  
188 condominium unit extend for the entire balance of the unexpired term or terms.

189 Section 2. Section 57-8-7.5 is amended to read:

190 **57-8-7.5. Reserve analysis -- Reserve fund.**

191 (1) As used in this section:

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

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

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

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

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

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

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

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

207 (4) A reserve fund analysis shall include:

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

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

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

214 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the  
215 cost to repair, replace, or restore each component identified in the reserve analysis during the  
216 component's useful life and at the end of the component's useful life; and

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

219 (5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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



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

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

245 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

272 Section 3. Section 57-8-17 is amended to read:

273 **57-8-17. Records of receipts and expenditures -- Availability for examination.**

274 (1) As used in this section, "management committee" includes, during the period of  
275 administrative control [~~described in Subsection 57-8-16.5(1)~~]:

276 (a) the declarant; or

277 (b) the managing agent or other person selected by the declarant to exercise powers and  
278 responsibilities otherwise assigned by the declaration or this chapter to the unit owners'  
279 association, its officers, or the management committee, if the declarant has selected a managing  
280 agent or other person to exercise those powers and responsibilities.

281 (2) The manager or management committee shall:

282 (a) keep detailed, accurate records in chronological order, of the receipts and  
283 expenditures affecting the common areas and facilities, specifying and itemizing the  
284 maintenance and repair expenses of the common areas and facilities and any other expenses  
285 incurred; and

286 (b) make those records available for examination by any unit owner at convenient  
287 hours of weekdays no later than 14 days after the unit owner makes a written request to  
288 examine the records.

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

290 **57-8-39. Limitation on requirements for amending governing documents --**  
291 **Limitation on contracts.**

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

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

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

298 (1) (a) (i) To amend the governing documents, the governing documents may not  
299 require:

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

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

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

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

307 [~~4~~] (b) Subsection (1)(a) does not apply to an amendment affecting only:

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

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

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

312 [~~5~~] (2) (a) A contract for services such as garbage collection, maintenance, lawn care,  
313 or snow removal executed on behalf of the association of unit owners during a period of  
314 administrative control is binding beyond the period of administrative control unless terminated  
315 by the board of directors after the period of administrative control ends.

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

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

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

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

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

325 **57-8a-102. Definitions.**

326 As used in this chapter:

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

328 (i) by the association;

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

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

331 (b) "Assessment" includes:

332 (i) a common expense; and

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

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

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

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

339 (A) real property taxes;

340 (B) insurance premiums;

341 (C) maintenance costs; or

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

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

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

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

348 (a) owns;

349 (b) maintains;

350 (c) repairs; or

351 (d) administers.

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

354 (6) "Declarant":

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

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

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

361 (i) exercise powers; or

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

364 (b) "Governing documents" includes:

365 (i) articles of incorporation;

366 (ii) bylaws;

- 367 (iii) a plat;
- 368 (iv) a declaration of covenants, conditions, and restrictions; and
- 369 (v) rules of the association.
- 370 (8) "Independent third party" means a person that:
- 371 (a) is not related to the owner of the residential lot;
- 372 (b) shares no pecuniary interests with the owner of the residential lot; and
- 373 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 374 or future lienholder.
- 375 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 376 (a) for the nonpayment of an assessment; and
- 377 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 378 property; and
- 379 (ii) as provided in Part 3, Collection of Assessments.
- 380 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 381 (a) by a person or persons other than the owner; and
- 382 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 383 gratuity, or emolument.
- 384 (11) "Limited common areas" means common areas described in the declaration and
- 385 allocated for the exclusive use of one or more lot owners.
- 386 (12) "Lot" means:
- 387 (a) a lot, parcel, plot, or other division of land:
- 388 (i) designated for separate ownership or occupancy; and
- 389 (ii) (A) shown on a recorded subdivision plat; or
- 390 (B) the boundaries of which are described in a recorded governing document; or
- 391 (b) (i) a unit in a condominium association if the condominium association is a part of
- 392 a development; or
- 393 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 394 development.
- 395 (13) "Mixed-use project" means a project under this chapter that has both residential
- 396 and commercial lots in the project.
- 397 (14) "Nonjudicial foreclosure" means the sale of a lot:

- 398 (a) for the nonpayment of an assessment; and
- 399 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
- 400 57-1-34; and
- 401 (ii) as provided in Part 3, Collection of Assessments.

402 (15) "Period of administrative control" mean the period during which the person who

403 filed the association's governing documents or the person's successor in interest retains

404 authority to:

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

408 ~~[(15)]~~ (16) "Residential lot" means a lot, the use of which is limited by law, covenant,

409 or otherwise to primarily residential or recreational purposes.

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

411 **57-8a-104. Limitation on requirements for amending governing documents --**

412 **Limitation on contracts.**

413 ~~[(1) As used in this section, "period of administrative control" means the period during~~

414 ~~which the person who filed the association's governing documents or a successor in interest~~

415 ~~retains authority to:]~~

- 416 ~~[(a) appoint or remove members of the association's board of directors; or]~~
- 417 ~~[(b) exercise power or authority assigned to the association under its governing~~
- 418 ~~documents.]~~

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

420 ~~documents adopted after the period of administrative control be approved by more than 67% of~~

421 ~~the voting interests.]~~

422 ~~[(ii) The vote required to adopt an amendment to governing documents may not be~~

423 ~~greater than 67% of the voting interests, notwithstanding a provision of the governing~~

424 ~~documents requiring a greater percentage and regardless of whether the governing documents~~

425 ~~were adopted before, on, or after May 10, 2011.]~~

426 (1) (a) (i) To amend the governing documents, the governing documents may not

427 require:

- 428 (A) for an amendment adopted after the period of administrative control, the vote or

429 approval of lot owners with more than 67% of the voting interests;

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

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

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

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

436 (i) lot boundaries; or

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

438 ~~[(3)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,  
439 or snow removal executed on behalf of the association during a period of administrative control  
440 is binding beyond the period of administrative control unless terminated by the board of  
441 directors after the period of administrative control ends.

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

445 ~~[(4)]~~ (3) Voting interests under ~~[Subsections (2) and (3)]~~ Subsection (1) are calculated  
446 in the manner required by the governing documents.

447 ~~[(5)]~~ (4) Nothing in this section affects any other rights reserved by the person who  
448 filed the association's original governing documents or a successor in interest.

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

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

451 **57-8a-217. Association rules, including design criteria -- Requirements and**  
452 **limitations relating to board's action on rules and design criteria -- Vote of disapproval.**

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

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

456 (i) this section;

457 (ii) any limitation that the declaration imposes on the authority stated in Subsection  
458 (1)(a);

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

460 (iv) the board's duty to exercise business judgment on behalf of:  
461 (A) the association; and  
462 (B) the lot owners in the association; and  
463 (v) the right of the lot owners or declarant to disapprove the action under Subsection  
464 (4).

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

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

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

473 (c) deliver a copy of the change in the rules or design criteria approved by the board to  
474 the lot owners as provided in Section 57-8a-214 within 15 days after the date of the board  
475 meeting.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

502 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**  
503 **common area and lots.**

504 (1) As used in this section:

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

507 (b) "Reasonable notice" means:

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

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

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

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

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

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

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

521 (b) for making an emergency repair.

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

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

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