

SB0118S02 compared with SB0118S01

~~{deleted text}~~ shows text that was in SB0118S01 but was deleted in SB0118S02.

inserted text shows text that was not in SB0118S01 but was inserted into SB0118S02.

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~~{Senator Todd Weiler}~~Representative Carol Spackman Moss proposes the following substitute bill:

HOMEOWNER AND CONDOMINIUM ASSOCIATION ~~{BYLAWS}~~MODIFICATIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: ~~{~~Carol Spackman Moss

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the procedures, requirements, limitations, and enforcement mechanisms that apply a request to inspect or copy association records;
- ▶ addresses the requirements for an association to amend the association's governing

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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 }~~ This bill provides a coordination clause to reconcile conflicts between this bill and other legislation.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

ENACTS:

57-8a-225, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

~~{ 57-8-39, as enacted by Laws of Utah 2007, Chapter 223~~

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

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

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

~~57-8a-224, as enacted by Laws of Utah 2013, Chapter 152;~~ Utah Code Sections

Affected by Coordination Clause:

57-8-56, Utah Code Annotated 1953

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57-8a-225, Utah Code Annotated 1953

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

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

57-8-3. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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declaration; and

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

(6) "Common expenses" means:

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

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

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

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

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

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

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

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

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

(12) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or

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termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.

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

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

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

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

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

(18) "Governing documents":

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

(i) exercise powers; or

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

(b) includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association of unit owners.

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

(a) is not related to the unit owner;

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

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

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

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

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

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

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

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

(26) "Period of administrative control" means the period of control described in

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Subsection 57-8-16.5(1).

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

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

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

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

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

~~[(31)]~~ (32) "Unit" means either a separate physical part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or a time period unit, as the context may require. A convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A proposed condominium unit under an expandable condominium project, not constructed, is a unit two years after the date the recording requirements of Section 57-8-13.6 are met.

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

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

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

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

(1) As used in this section:

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

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

(ii) the appropriate amount of any reserve fund.

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

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

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

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

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

(4) A reserve fund analysis shall include:

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

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

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

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

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

(5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

(i) the requirement in Subsection (5), (6), or (7) with which the association of unit

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owners has failed to comply;

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

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

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

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

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

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

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

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

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

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

Section 3. Section 57-8-17 is ~~{amended}~~ repealed and reenacted to read:

57-8-17. ~~{Records of receipts and expenditures}~~ Records -- Availability for examination.

(1) ~~{As used in this section, "management committee" includes, during the period of administrative control }~~ (a) Subject to Subsection (1)(b), an association of unit owners shall keep and make documents available to unit owners in accordance with Sections 16-6a-1601 through 1603, 16-6a-1605, 16-6a-1606, and 16-6a-1610, regardless of whether the association of unit owners is incorporated under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(b) An association of unit owners may redact the following information from any

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document the association of unit owners produces for inspection or copying:

(i) a Social Security number;

(ii) a bank account number; and

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

(2) (a) In addition to the requirements described in Subsection ~~{57-8-16.5(1)}~~:

~~— (a) the declarant; or~~

~~— (b) the managing agent or other person selected by the declarant to exercise powers and responsibilities otherwise assigned by the declaration or this chapter}~~(1), an association of unit owners shall make documents available to unit owners in accordance with the association of unit owners' governing documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) an association of unit owners fails to make documents available to the unit owners' association, its officers, or the management committee, if the declarant has selected a managing agent or other person to exercise those powers and responsibilities:

~~—— (2) The manager or management committee shall:~~

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

~~—— (b) make those records available for examination by any unit owner at convenient hours of weekdays no later than 14 days after} owner in accordance with this section, the association of unit owners' governing documents, or as otherwise provided by law; and~~

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

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

(i) the unit owner ~~makes a written request to examine the records.~~
may request:

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

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

(C) any other relief provided by law; and

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

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

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

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

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

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

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

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

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

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

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

57-8-39. Limitation on requirements for amending governing documents --

Limitation on contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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or capital.

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

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

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

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

57-8a-102. Definitions.

As used in this chapter:

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

(i) by the association;

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

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

(b) "Assessment" includes:

(i) a common expense; and

(ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

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

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

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

(A) real property taxes;

(B) insurance premiums;

(C) maintenance costs; or

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

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

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

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

(a) owns;

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(b) maintains;

(c) repairs; or

(d) administers.

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

(6) "Declarant":

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

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

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

(i) exercise powers; or

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

(b) "Governing documents" includes:

(i) articles of incorporation;

(ii) bylaws;

(iii) a plat;

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

(v) rules of the association.

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

(a) is not related to the owner of the residential lot;

(b) shares no pecuniary interests with the owner of the residential lot; and

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

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

(a) for the nonpayment of an assessment; and

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

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

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

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

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

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

(12) "Lot" means:

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

(i) designated for separate ownership or occupancy; and

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

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

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

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

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

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

(a) for the nonpayment of an assessment; and

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

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

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

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

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

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

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

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

Limitation on contracts.

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

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

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

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

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

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

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

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

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

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

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

(i) lot boundaries; or

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

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

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

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

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

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

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

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

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

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

(i) this section;

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

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

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

(A) the association; and

(B) the lot owners in the association; and

(v) the right of the lot owners or declarant to disapprove the action under Subsection (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) subject to the outcome of the meeting.

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

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

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

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(1) As used in this section:

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

(b) "Reasonable notice" means:

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

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

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

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

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

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

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

(b) for making an emergency repair.

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

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

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

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

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

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

(b) An association may redact the following information from any document the

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association produces for inspection or copying:

- (i) a Social Security number;
- (ii) a bank account number; and
- (iii) any communication subject to attorney-client privilege.

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

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

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

- (a) elect whether to inspect or copy the documents;
- (b) if the lot owner elects to copy the documents, request hard copies or electronic scans of the documents; or

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

- (i) the association make the copies or electronic scans of the requested documents;
- (ii) a recognized third party duplicating service make the copies or electronic scans of the requested documents; or

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

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

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

- (i) the copies or electronic scans shall be legible and accurate; and
- (ii) the lot owner shall pay the association the reasonable cost of the copies or

electronic scans, which may not exceed:

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

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

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

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- (i) the association shall arrange for the delivery and pick up of the original documents;
and
- (ii) the lot owner shall pay the duplicating service directly.
- (d) If a lot owner requests to bring imaging equipment to the inspection, the association shall provide the necessary space, light, and power for the imaging equipment.
- (5) If, in response to a lot owner's request to inspect or copy documents, an association fails to comply with a provision of this section, the association shall pay:
- (a) the reasonable costs of inspecting and copying the requested documents; and
- (b) reasonable attorney fees and costs incurred by the lot owner in obtaining the inspection and copies of the requested documents.
- (6) (a) In addition to any remedy in the association's governing documents or otherwise provided by law, a lot owner may file an action in court under this section if:
- (i) an association fails to make documents available to the lot owner in accordance with this section, the association's governing documents, or as otherwise provided by law; and
- (ii) the association fails to timely comply with a notice described in Subsection (6)(d).
- (b) In an action described in Subsection (6)(a):
- (i) the lot owner may request:
- (A) injunctive relief requiring the association to comply with the provisions of this section;
- (B) \$500 or actual damage, whichever is greater; or
- (C) any other relief provided by law; and
- (ii) the court shall award costs and reasonable attorney fees to the prevailing party, including any reasonable attorney fees incurred before the action was filed that relate to the request that is the subject of the action.
- (c) (i) In an action described in Subsection (6)(a), upon motion by the lot owner, notice to the association, and a hearing in which the court finds a likelihood that the association failed to comply with a provision of this section, the court shall order the association to immediately comply with the provision.
- (ii) The court shall hold a hearing described in Subsection (6)(c)(i) within 30 days after the day on which the lot owner files the motion.
- (d) At least 10 days before the day on which a lot owner files an action described in

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Subsection (6)(a), the lot owner shall deliver a written notice to the association that states:

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

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

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

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

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

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

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

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

(1) enact a new Subsection 57-8-56(8) to read:

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

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

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

(iii) any other relief provided by law.

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

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

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

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

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

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

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

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

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

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

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

(iii) any other relief provided by law.

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

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

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

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

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

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

(iv) a date by which the association shall remedy the association's noncompliance that is at least 90 days after the day on which the lot owner delivers the notice to the association."

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