

1 **CONDOMINIUM OWNERSHIP ACT AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mike Schultz**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to condominium common expenses.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms; and
- 13 ▶ provides that an unconstructed unit is allocated:
 - 14 • the unconstructed unit's share of undivided interest in common areas and
- 15 facilities; and
- 16 • voting rights.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **57-8-3**, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

24 **57-8-24**, as last amended by Laws of Utah 1975, Chapter 173

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

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



28 **57-8-3. Definitions.**

29 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (6) "Common expenses" means:

- 59 (a) all sums lawfully assessed against the unit owners;
- 60 (b) expenses of administration, maintenance, repair, or replacement of the common
61 areas and facilities;
- 62 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 63 (d) expenses declared common expenses by this chapter, or by the declaration or the
64 bylaws.
- 65 (7) "Common profits," unless otherwise provided in the declaration or lawful
66 amendments to the declaration, means the balance of all income, rents, profits, and revenues
67 from the common areas and facilities remaining after the deduction of the common expenses.
- 68 (8) "Condominium" means the ownership of a single unit in a multiunit project
69 together with an undivided interest in common in the common areas and facilities of the
70 property.
- 71 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in
72 accordance with Section [57-8-13](#).
- 73 (10) "Condominium project" means a real estate condominium project; a plan or
74 project whereby two or more units, whether contained in existing or proposed apartments,
75 commercial or industrial buildings or structures, or otherwise, are separately offered or
76 proposed to be offered for sale. Condominium project also means the property when the
77 context so requires.
- 78 (11) "Condominium unit" means a unit together with the undivided interest in the
79 common areas and facilities appertaining to that unit. Any reference in this chapter to a
80 condominium unit includes both a physical unit together with its appurtenant undivided interest
81 in the common areas and facilities and a time period unit together with its appurtenant
82 undivided interest, unless the reference is specifically limited to a time period unit.
- 83 (12) "Contractible condominium" means a condominium project from which one or
84 more portions of the land within the project may be withdrawn in accordance with provisions
85 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
86 termination of one or more leases, then the condominium project is not a contractible
87 condominium within the meaning of this chapter.
- 88 (13) "Convertible land" means a building site which is a portion of the common areas
89 and facilities, described by metes and bounds, within which additional units or limited common

90 areas and facilities may be created in accordance with this chapter.

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

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

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

102 (17) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

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

105 (19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

106 (20) "Governing documents":

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

108 (i) exercise powers; or

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

111 (b) includes:

112 (i) articles of incorporation;

113 (ii) bylaws;

114 (iii) a plat;

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

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

117 (21) "Independent third party" means a person that:

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

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

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

121 lienholder.

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

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

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

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

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

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

139 (i) web conferencing;

140 (ii) video conferencing; and

141 (iii) telephone conferencing.

142 (27) "Meeting" means a gathering of a management committee, whether in person or
143 by means of electronic communication, at which the management committee can take binding
144 action.

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

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

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

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

160 (31) "Person" means an individual, corporation, partnership, association, trustee, or
161 other legal entity.

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

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

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

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

176 (36) "Unconstructed unit" means a unit that:

177 (a) is intended, as depicted in the condominium plat, to be fully or partially contained
178 in a building; and

179 (b) is not constructed.

180 [~~(36)~~] (37) (a) "Unit" means [~~either~~] a separate [~~physical~~] part of the property intended
181 for any type of independent use, [~~including one or more rooms or spaces located in one or more~~
182 ~~floors or part or parts of floors in a building or a time period unit, as the context may require.~~

183 ~~A] which is created by the recording of a declaration and a condominium plat that describes the~~
 184 ~~unit boundaries.~~

185 (b) "Unit" includes one or more rooms or spaces located in one or more floors or a
 186 portion of a floor in a building.

187 (c) "Unit" includes a convertible space [shall be treated as a unit], in accordance with
 188 Subsection 57-8-13.4(3). ~~[A proposed condominium unit under an expandable condominium~~
 189 ~~project, not constructed, is a unit two years after the date the recording requirements of Section~~
 190 ~~57-8-13.6 are met.]~~

191 ~~[(37)]~~ (38) "Unit number" means the number, letter, or combination of numbers and
 192 letters designating the unit in the declaration and in the record of survey map.

193 ~~[(38)]~~ (39) "Unit owner" means the person or persons owning a unit in fee simple and
 194 an undivided interest in the fee simple estate of the common areas and facilities in the
 195 percentage specified and established in the declaration or, in the case of a leasehold
 196 condominium project, the person or persons whose leasehold interest or interests in the
 197 condominium unit extend for the entire balance of the unexpired term or terms.

198 Section 2. Section **57-8-24** is amended to read:

199 **57-8-24. Common profits, common expenses, and voting rights -- Unit --**
 200 **Unconstructed unit.**

201 ~~[The common profits of the property shall be distributed among, the common expenses~~
 202 ~~shall be charged to, and the voting rights shall be available to, the unit owners according to~~
 203 ~~their]~~

204 (1) A unit is created by the recording of the declaration and a condominium plat that
 205 describes the unit.

206 (2) An association of unit owners shall, according to each unit owner's respective
 207 percentage or fractional undivided interests in the common areas and facilities[-]:

208 (a) distribute the property's common profits among the unit owners;

209 (b) ~~Ë→~~ **except as otherwise provided in the declaration for unconstructed units,** ~~←Ë~~
 209a assess the unit owners the property's common expenses; and

210 (c) make voting rights available to the unit owners.

211 (3) (a) After the recording of a condominium project's declaration, an unconstructed
 212 unit is a unit for the purposes of the declaration and this chapter, including:

213 (i) allocation of undivided interests in the common areas and facilities in accordance

214 with Subsection [57-8-7\(2\)](#); and
215 (ii) voting rights in accordance with Section [57-8-24](#).
216 (b) Subsection (3)(a) applies to a condominium project regardless of when the
217 condominium project's initial declaration was recorded.

Legislative Review Note
Office of Legislative Research and General Counsel