

Senator Don L. Ipson proposes the following substitute bill:

COMMON OWNERSHIP AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Don L. Ipson

LONG TITLE

General Description:

This bill modifies provisions related to condominium and community associations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that an association rule may, for a lot that an owner leases for a short term, impose a reasonable limit on the number of individuals that may use the common areas and facilities as guests;
- ▶ provides that an association board may take binding action only at a board meeting;
- ▶ provides circumstances under which an association may place a restriction on a rental lot or rental unit; and
- ▶ provides that a matter discussed at a closed board meeting is not subject to discovery in a civil action in a state court under certain circumstances.

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 2016, Chapters 210 and 255

28 **57-8-10.1**, as last amended by Laws of Utah 2015, Chapter 22

29 **57-8-57**, as enacted by Laws of Utah 2015, Chapter 387

30 **57-8a-102**, as last amended by Laws of Utah 2015, Chapters 22, 34, 213, 325, and 387

31 **57-8a-209**, as last amended by Laws of Utah 2015, Chapters 22 and 258

32 **57-8a-218**, as last amended by Laws of Utah 2015, Chapter 22

33 **57-8a-226**, as enacted by Laws of Utah 2015, Chapter 387



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

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

37 **57-8-3. Definitions.**

38 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (18) "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 (19) "Gas corporation" means the same as that term is defined in Section 54-2-1.

115 (20) "Governing documents":

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

117 (i) exercise powers; or

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

119 association of unit owners; and

120 (b) includes:

121 (i) articles of incorporation;

122 (ii) bylaws;

123 (iii) a plat;

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

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

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

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

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

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

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

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

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

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

145 ~~[(27)]~~ (26) "~~[Meeting]~~ Management committee meeting" means a gathering of a
146 management committee, whether in person or by means of electronic communication, at which
147 the management committee can take binding action.

148 ~~[(26)]~~ (27) (a) "Means of electronic communication" means an electronic system that
149 allows individuals to communicate orally in real time.

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

151 (i) web conferencing;

152 (ii) video conferencing; and

153 (iii) telephone conferencing.

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

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

167 (30) "Period of administrative control" means the period of control described in
168 Subsection [57-8-16.5\(1\)](#).

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

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

174 (33) "Record," "recording," "recorded," and "recorder" have the meaning stated in
175 Chapter 3, Recording of Documents.

176 (34) "Rentals" or "rental unit" means:

177 (a) a unit that:

178 (i) is not owned by an entity or trust; and

179 (ii) is occupied by an individual while the unit owner is not occupying the unit as the
180 unit owner's primary residence; or

181 (b) an occupied unit owned by an entity or trust, regardless of who occupies the unit.

182 [~~(34)~~] (35) "Size" means the number of cubic feet, or the number of square feet of
183 ground or floor space, within each unit as computed by reference to the record of survey map
184 and rounded off to a whole number. Certain spaces within the units including attic, basement,
185 or garage space may be omitted from the calculation or be partially discounted by the use of a
186 ratio, if the same basis of calculation is employed for all units in the condominium project and
187 if that basis is described in the declaration.

188 [~~(35)~~] (36) "Time period unit" means an annually recurring part or parts of a year
189 specified in the declaration as a period for which a unit is separately owned and includes a
190 timeshare estate as defined in Section 57-19-2.

191 [~~(36)~~] (37) "Unconstructed unit" means a unit that:

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

194 (b) is not constructed.

195 [~~(37)~~] (38) (a) "Unit" means a separate part of the property intended for any type of
196 independent use, which is created by the recording of a declaration and a condominium plat
197 that describes the unit boundaries.

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

200 (c) "Unit" includes a convertible space, in accordance with Subsection 57-8-13.4(3).

201 [~~(38)~~] (39) "Unit number" means the number, letter, or combination of numbers and
202 letters designating the unit in the declaration and in the record of survey map.

203 [~~(39)~~] (40) "Unit owner" means the person or persons owning a unit in fee simple and
204 an undivided interest in the fee simple estate of the common areas and facilities in the
205 percentage specified and established in the declaration or, in the case of a leasehold
206 condominium project, the person or persons whose leasehold interest or interests in the
207 condominium unit extend for the entire balance of the unexpired term or terms.

208 Section 2. Section 57-8-10.1 is amended to read:

209 **57-8-10.1. Rental restrictions.**

210 (1) (a) Subject to Subsections (1)(b), (5), and (6), an association of unit owners may:

211 (i) create restrictions on the number and term of rentals in a condominium project; or

212 (ii) prohibit rentals in the condominium project.

213 (b) An association of unit owners that creates a rental restriction or prohibition in
214 accordance with Subsection (1)(a) shall create the rental restriction or prohibition in a
215 declaration or by amending the declaration.

216 (2) If an association of unit owners prohibits or imposes restrictions on the number and
217 term of rentals, the restrictions shall include:

218 (a) a provision that requires a condominium project to exempt from the rental
219 restrictions the following unit owner and the unit owner's unit:

220 (i) a unit owner in the military for the period of the unit owner's deployment;

221 (ii) a unit occupied by a unit owner's parent, child, or sibling;

222 (iii) a unit owner whose employer has relocated the unit owner for no less than two
223 years; ~~or~~

224 (iv) a unit owned by an entity that is occupied by an individual who:

225 (A) has voting rights under the entity's organizing documents; and

226 (B) has a 25% or greater share of ownership, control, and right to profits and losses of
227 the entity; or

228 ~~(iv)~~ (v) a unit owned by a trust or other entity created for estate planning purposes if
229 the trust or other estate planning entity was created for the estate of:

230 (A) a current resident of the unit; or

231 (B) the parent, child, or sibling of the current resident of the unit;

232 (b) a provision that allows a unit owner who has a rental in the condominium project
233 before the time the rental restriction described in Subsection (1)(a) is recorded with the county
234 recorder of the county in which the condominium project is located to continue renting until:

235 (i) the unit owner occupies the unit; or

236 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a
237 similar position of ownership or control of an entity or trust that holds an ownership interest in
238 the unit, occupies the unit; and

239 (c) a requirement that the association of unit owners create, by rule or resolution,
240 procedures to:

241 (i) determine and track the number of rentals and units in the condominium project
242 subject to the provisions described in Subsections (2)(a) and (b); and

243 (ii) ensure consistent administration and enforcement of the rental restrictions.
244 (3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the
245 following occur:
246 (a) the conveyance, sale, or other transfer of a unit by deed;
247 (b) the granting of a life estate in the unit; or
248 (c) if the unit is owned by a limited liability company, corporation, partnership, or
249 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,
250 membership interests, or partnership interests in a 12-month period.
251 (4) This section does not limit or affect residency age requirements for an association
252 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42
253 U.S.C. Sec. 3607.
254 (5) A declaration or amendment to a declaration recorded before transfer of the first
255 unit from the initial declarant may prohibit or restrict rentals without providing for the
256 exceptions, provisions, and procedures required under Subsection (2)[~~(a)~~].
257 (6) (a) Subsections (1) through (5) do not apply to:
258 [~~(a)~~] (i) a condominium project that contains a time period unit as defined in Section
259 [57-8-3](#);
260 [~~(b)~~] (ii) any other form of timeshare interest as defined in Section [57-19-2](#); or
261 [~~(c)~~] (iii) subject to Subsection (6)(b), a condominium project in which the initial
262 declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association
263 of unit owners:
264 [~~(i)~~] (A) adopts a rental restriction or prohibition; or
265 [~~(ii)~~] (B) amends an existing rental restriction or prohibition.
266 (b) An association that adopts a rental restriction or amends an existing rental
267 restriction or prohibition before May 9, 2017, is not required to include the exemption
268 described in Subsection (2)(a)(iv).
269 (7) Notwithstanding this section, an association of unit owners may restrict or prohibit
270 rentals without an exception described in Subsection (2) if:
271 (a) the restriction or prohibition receives unanimous approval by all unit owners; and
272 (b) when the restriction or prohibition requires an amendment to the association of unit
273 owners' declaration, the association of unit owners fulfills all other requirements for amending

274 the declaration described in the association of unit owners' governing documents.

275 (8) Except as provided in Subsection (9), an association of unit owners may not require
276 a unit owner who owns a rental unit to:

277 (a) obtain the association of unit owners' approval of a prospective renter;

278 (b) give the association of unit owners:

279 (i) a copy of a rental application;

280 (ii) a copy of a renter's or prospective renter's credit information or credit report;

281 (iii) a copy of a renter's or prospective renter's background check; or

282 (iv) documentation to verify the renter's age; or

283 (c) pay an additional assessment, fine, or fee because the unit is a rental unit.

284 (9) (a) A unit owner who owns a rental unit shall give an association of unit owners the
285 documents described in Subsection (8)(b) if the unit owner is required to provide the
286 documents by court order or as part of discovery under the Utah Rules of Civil Procedure.

287 (b) If an association of unit owners' declaration lawfully prohibits or restricts
288 occupancy of the units by a certain class of individuals, the association of unit owners may
289 require a unit owner who owns a rental unit to give the association of unit owners the
290 information described in Subsection (8)(b), if:

291 (i) the information helps the association of unit owners determine whether the renter's
292 occupancy of the unit complies with the association of unit owners' declaration; and

293 (ii) the association of unit owners uses the information to determine whether the
294 renter's occupancy of the unit complies with the association of unit owners' declaration.

295 (10) The provisions of Subsections (8) and (9) apply to an association of unit owners
296 regardless of when the association of unit owners is created.

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

298 **57-8-57. Management committee meetings -- Open meetings.**

299 (1) Except for an action taken without a meeting in accordance with Section
300 16-6a-813, a management committee may take action only at a management committee
301 meeting.

302 [(+)] (2) (a) At least 48 hours before a management committee meeting, the association
303 of unit owners shall give written notice of the management committee meeting via email to
304 each unit owner who requests notice of a management committee meeting, unless:

305 (i) notice of the management committee meeting is included in a meeting schedule that
306 was previously provided to the unit owner; or

307 (ii) (A) the management committee meeting is to address an emergency; and

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

310 (b) A notice described in Subsection [~~(1)~~] (2)(a) shall:

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

313 (ii) state the time and date of the management committee meeting;

314 (iii) state the location of the management committee meeting; and

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

318 [~~(2)~~] (3) (a) Except as provided in Subsection [~~(2)~~] (3)(b), a management committee
319 meeting shall be open to each unit owner or the unit owner's representative if the representative
320 is designated in writing.

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

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

323 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
324 proceedings;

325 (iii) discuss a personnel matter;

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

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

331 (vi) discuss a delinquent assessment or fine.

332 [~~(3)~~] (4) (a) At each management committee meeting, the management committee shall
333 provide each unit owner a reasonable opportunity to offer comments.

334 (b) The management committee may limit the comments described in Subsection [~~(3)~~]
335 (4)(a) to one specific time period during the meeting.

336 ~~[(4)]~~ (5) A management committee member may not avoid or obstruct the requirements
337 of this section.

338 ~~[(5)]~~ (6) Nothing in this section shall affect the validity or enforceability of an action of
339 a management committee.

340 ~~[(6)]~~ (7) The provisions of this section do not apply during the period of administrative
341 control.

342 ~~[(7)]~~ (8) The provisions of this section apply regardless of when the condominium
343 project's initial declaration was recorded.

344 ~~[(8)]~~ (9) (a) Subject to Subsection ~~[(8)]~~ (9)(d), if an association of unit owners fails to
345 comply with a provision of Subsections (1) through ~~[(4)]~~ (5) and fails to remedy the
346 noncompliance during the 90-day period described in Subsection ~~[(8)]~~ (9)(d), a unit owner may
347 file an action in court for:

348 (i) injunctive relief requiring the association of unit owners to comply with the
349 provisions of Subsections (1) through ~~[(4)]~~ (5);

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

351 (iii) any other relief provided by law.

352 (b) In an action described in Subsection ~~[(8)]~~ (9)(a), the court may award costs and
353 reasonable attorney fees to the prevailing party.

354 (c) Upon motion from the unit owner, notice to the association of unit owners, and a
355 hearing in which the court finds a likelihood that the association of unit owners has failed to
356 comply with a provision of Subsections (1) through ~~[(4)]~~ (5), the court may order the
357 association of unit owners to immediately comply with the provisions of Subsections (1)
358 through ~~[(4)]~~ (5).

359 (d) At least 90 days before the day on which a unit owner files an action described in
360 Subsection ~~[(8)]~~ (9)(a), the unit owner shall deliver a written notice to the association of unit
361 owners that states:

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

363 (ii) each requirement of Subsections (1) through ~~[(4)]~~ (5) with which the association of
364 unit owners has failed to comply;

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

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

370 Section 4. Section **57-8a-102** is amended to read:

371 **57-8a-102. Definitions.**

372 As used in this chapter:

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

374 (i) by the association;

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

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

377 (b) "Assessment" includes:

378 (i) a common expense; and

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

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

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

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

385 (A) real property taxes;

386 (B) insurance premiums;

387 (C) maintenance costs; or

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

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

391 ~~[(16)]~~ (3) "~~Meeting~~ Board meeting" means a gathering of a board, whether in person
392 or by means of electronic communication, at which the board can take binding action.

393 ~~[(3)]~~ (4) "Board of directors" or "board" means the entity, regardless of name, with
394 primary authority to manage the affairs of the association.

395 ~~[(4)]~~ (5) "Common areas" means property that the association:

396 (a) owns;

397 (b) maintains;

398 (c) repairs; or

399 (d) administers.

400 [~~5~~] (6) "Common expense" means costs incurred by the association to exercise any of
401 the powers provided for in the association's governing documents.

402 [~~6~~] (7) "Declarant":

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

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

407 [~~7~~] (8) "Electrical corporation" means the same as that term is defined in Section
408 54-2-1.

409 [~~8~~] (9) "Gas corporation" means the same as that term is defined in Section 54-2-1.

410 [~~9~~] (10) (a) "Governing documents" means a written instrument by which the
411 association may:

412 (i) exercise powers; or

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

415 (b) "Governing documents" includes:

416 (i) articles of incorporation;

417 (ii) bylaws;

418 (iii) a plat;

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

420 (v) rules of the association.

421 [~~10~~] (11) "Independent third party" means a person that:

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

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

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

426 [~~11~~] (12) "Judicial foreclosure" means a foreclosure of a lot:

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

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

429 property; and

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

431 ~~[(12)]~~ (13) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

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

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

435 ~~[(13)]~~ (14) "Limited common areas" means common areas described in the declaration
436 and allocated for the exclusive use of one or more lot owners.

437 ~~[(14)]~~ (15) "Lot" means:

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

439 (i) designated for separate ownership or occupancy; and

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

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

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

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

446 ~~[(15)]~~ (16) (a) "Means of electronic communication" means an electronic system that
447 allows individuals to communicate orally in real time.

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

449 (i) web conferencing;

450 (ii) video conferencing; and

451 (iii) telephone conferencing.

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

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

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

456 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
457 57-1-34; and

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

459 (19) "Period of administrative control" means the period during which the person who

460 filed the association's governing documents or the person's successor in interest retains
461 authority to:

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

465 (20) "Rentals" or "rental lot" means:

466 (a) a lot that:

- 467 (i) is not owned by an entity or trust; and
- 468 (ii) is occupied by an individual while the lot owner is not occupying the lot as the lot
469 owner's primary residence; or

470 (b) an occupied lot owned by an entity or trust, regardless of who occupies the lot.

471 [~~20~~] (21) "Residential lot" means a lot, the use of which is limited by law, covenant,
472 or otherwise to primarily residential or recreational purposes.

473 Section 5. Section **57-8a-209** is amended to read:

474 **57-8a-209. Rental restrictions.**

475 (1) (a) Subject to Subsections (1)(b), (5), and (6), an association may:

- 476 (i) create restrictions on the number and term of rentals in an association; or
- 477 (ii) prohibit rentals in the association.

478 (b) An association that creates a rental restriction or prohibition in accordance with
479 Subsection (1)(a) shall create the rental restriction or prohibition in a recorded declaration of
480 covenants, conditions, and restrictions, or by amending the recorded declaration of covenants,
481 conditions, and restrictions.

482 (2) If an association prohibits or imposes restrictions on the number and term of
483 rentals, the restrictions shall include:

484 (a) a provision that requires the association to exempt from the rental restrictions the
485 following lot owner and the lot owner's lot:

- 486 (i) a lot owner in the military for the period of the lot owner's deployment;
- 487 (ii) a lot occupied by a lot owner's parent, child, or sibling;
- 488 (iii) a lot owner whose employer has relocated the lot owner for no less than two years;

489 [~~or~~]

490 (iv) a lot owned by an entity that is occupied by an individual who:

491 (A) has voting rights under the entity's organizing documents; and
492 (B) has a 25% or greater share of ownership, control, and right to profits and losses of
493 the entity; or
494 ~~(iv)~~ (v) a lot owned by a trust or other entity created for estate planning purposes if
495 the trust or other estate planning entity was created for:
496 (A) the estate of a current resident of the lot; or
497 (B) the parent, child, or sibling of the current resident of the lot;
498 (b) a provision that allows a lot owner who has a rental in the association before the
499 time the rental restriction described in Subsection (1)(a) is recorded with the county recorder of
500 the county in which the association is located to continue renting until:
501 (i) the lot owner occupies the lot; or
502 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a
503 similar position of ownership or control of an entity or trust that holds an ownership interest in
504 the lot, occupies the lot; and
505 (c) a requirement that the association create, by rule or resolution, procedures to:
506 (i) determine and track the number of rentals and lots in the association subject to the
507 provisions described in Subsections (2)(a) and (b); and
508 (ii) ensure consistent administration and enforcement of the rental restrictions.
509 (3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the
510 following occur:
511 (a) the conveyance, sale, or other transfer of a lot by deed;
512 (b) the granting of a life estate in the lot; or
513 (c) if the lot is owned by a limited liability company, corporation, partnership, or other
514 business entity, the sale or transfer of more than 75% of the business entity's share, stock,
515 membership interests, or partnership interests in a 12-month period.
516 (4) This section does not limit or affect residency age requirements for an association
517 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.
518 3607.
519 (5) A declaration of covenants, conditions, and restrictions or amendments to the
520 declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot
521 from the initial declarant may prohibit or restrict rentals without providing for the exceptions,

522 provisions, and procedures required under Subsection (2)~~(a)~~.

523 (6) ~~(a)~~ Subsections (1) through (5) do not apply to:

524 ~~(a)~~ (i) an association that contains a time period unit as defined in Section 57-8-3;

525 ~~(b)~~ (ii) any other form of timeshare interest as defined in Section 57-19-2; or

526 ~~(c)~~ (iii) subject to Subsection (6)(b), an association [in which the initial declaration of
527 covenants, conditions, and restrictions is recorded] that is formed before May 12, 2009, unless,
528 on or after May 12, 2015, the association:

529 ~~(i)~~ (A) adopts a rental restriction or prohibition; or

530 ~~(ii)~~ (B) amends an existing rental restriction or prohibition.

531 (b) An association that adopts a rental restriction or amends an existing rental
532 restriction or prohibition before May 9, 2017, is not required to include the exemption
533 described in Subsection (2)(a)(iv).

534 (7) Notwithstanding this section, an association may restrict or prohibit rentals without
535 an exception described in Subsection (2) if:

536 (a) the restriction or prohibition receives unanimous approval by all lot owners; and

537 (b) when the restriction or prohibition requires an amendment to the association's
538 recorded declaration of covenants, conditions, and restrictions, the association fulfills all other
539 requirements for amending the recorded declaration of covenants, conditions, and restrictions
540 described in the association's governing documents.

541 (8) Except as provided in Subsection (9), an association may not require a lot owner
542 who owns a rental lot to:

543 (a) obtain the association's approval of a prospective renter;

544 (b) give the association:

545 (i) a copy of a rental application;

546 (ii) a copy of a renter's or prospective renter's credit information or credit report;

547 (iii) a copy of a renter's or prospective renter's background check; or

548 (iv) documentation to verify the renter's age; or

549 (c) pay an additional assessment, fine, or fee because the lot is a rental lot.

550 (9) (a) A lot owner who owns a rental lot shall give an association the documents
551 described in Subsection (8)(b) if the lot owner is required to provide the documents by court
552 order or as part of discovery under the Utah Rules of Civil Procedure.

553 (b) If an association's declaration of covenants, conditions, and restrictions lawfully
554 prohibits or restricts occupancy of the lots by a certain class of individuals, the association may
555 require a lot owner who owns a rental lot to give the association the information described in
556 Subsection (8)(b), if:

557 (i) the information helps the association determine whether the renter's occupancy of
558 the lot complies with the association's declaration of covenants, conditions, and restrictions;
559 and

560 (ii) the association uses the information to determine whether the renter's occupancy of
561 the lot complies with the association's declaration of covenants, conditions, and restrictions.

562 (10) The provisions of Subsections (8) and (9) apply to an association regardless of
563 when the association is created.

564 Section 6. Section **57-8a-218** is amended to read:

565 **57-8a-218. Equal treatment by rules required -- Limits on association rules and**
566 **design criteria.**

567 (1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot
568 owners similarly.

569 (b) Notwithstanding Subsection (1)(a), a rule may:

570 (i) vary according to the level and type of service that the association provides to lot
571 owners; [~~and~~]

572 (ii) differ between residential and nonresidential uses[~~;~~]; and

573 (iii) for a lot that an owner leases for a term of less than 30 days, impose a reasonable
574 limit on the number of individuals who may use the common areas and facilities as guests of
575 the lot tenant or lot owner.

576 (2) (a) If a lot owner owns a rental lot and is in compliance with the association's
577 governing documents and any rule that the association adopts under Subsection (4), a rule may
578 not treat the lot owner differently because the lot owner owns a rental lot.

579 (b) Notwithstanding Subsection (2)(a), a rule may:

580 (i) limit or prohibit a rental lot owner from using the common areas for purposes other
581 than attending an association meeting or managing the rental lot;

582 (ii) if the rental lot owner retains the right to use the association's common areas, even
583 occasionally[~~;~~];

584 (A) charge a rental lot owner a fee to use the common areas; or
585 (B) for a lot that an owner leases for a term of less than 30 days, impose a reasonable
586 limit on the number of individuals who may use the common areas and facilities as guests of
587 the lot tenant or lot owner; or
588 (iii) include a provision in the association's governing documents that:
589 (A) requires each tenant of a rental lot to abide by the terms of the governing
590 documents; and
591 (B) holds the tenant and the rental lot owner jointly and severally liable for a violation
592 of a provision of the governing documents.
593 (3) (a) A rule criterion may not abridge the rights of a lot owner to display religious
594 and holiday signs, symbols, and decorations inside a dwelling on a lot.
595 (b) Notwithstanding Subsection (3)(a), the association may adopt time, place, and
596 manner restrictions with respect to displays visible from outside the dwelling or lot.
597 (4) (a) A rule may not regulate the content of political signs.
598 (b) Notwithstanding Subsection (4)(a):
599 (i) a rule may regulate the time, place, and manner of posting a political sign; and
600 (ii) an association design provision may establish design criteria for political signs.
601 (5) (a) A rule may not interfere with the freedom of a lot owner to determine the
602 composition of the lot owner's household.
603 (b) Notwithstanding Subsection (5)(a), an association may:
604 (i) require that all occupants of a dwelling be members of a single housekeeping unit;
605 or
606 (ii) limit the total number of occupants permitted in each residential dwelling on the
607 basis of the residential dwelling's:
608 (A) size and facilities; and
609 (B) fair use of the common areas.
610 (6) (a) A rule may not interfere with an activity of a lot owner within the confines of a
611 dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.
612 (b) Notwithstanding Subsection (6)(a), a rule may prohibit an activity within a dwelling
613 on an owner's lot if the activity:
614 (i) is not normally associated with a project restricted to residential use; or

- 615 (ii) (A) creates monetary costs for the association or other lot owners;
- 616 (B) creates a danger to the health or safety of occupants of other lots;
- 617 (C) generates excessive noise or traffic;
- 618 (D) creates unsightly conditions visible from outside the dwelling;
- 619 (E) creates an unreasonable source of annoyance to persons outside the lot; or
- 620 (F) if there are attached dwellings, creates the potential for smoke to enter another lot
- 621 owner's dwelling, the common areas, or limited common areas.

622 (c) If permitted by law, an association may adopt rules described in Subsection (6)(b)

623 that affect the use of or behavior inside the dwelling.

624 (7) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written

625 objection to the board, alter the allocation of financial burdens among the various lots.

626 (b) Notwithstanding Subsection (7)(a), an association may:

- 627 (i) change the common areas available to a lot owner;
- 628 (ii) adopt generally applicable rules for the use of common areas; or
- 629 (iii) deny use privileges to a lot owner who:

630 (A) is delinquent in paying assessments;

631 (B) abuses the common areas; or

632 (C) violates the governing documents.

633 (c) This Subsection (7) does not permit a rule that:

634 (i) alters the method of levying assessments; or

635 (ii) increases the amount of assessments as provided in the declaration.

636 (8) (a) Subject to Subsection (8)(b), a rule may not:

637 (i) prohibit the transfer of a lot; or

638 (ii) require the consent of the association or board to transfer a lot.

639 (b) Unless contrary to a declaration, a rule may require a minimum lease term.

640 (9) (a) A rule may not require a lot owner to dispose of personal property that was in or

641 on a lot before the adoption of the rule or design criteria if the personal property was in

642 compliance with all rules and other governing documents previously in force.

643 (b) The exemption in Subsection (9)(a):

644 (i) applies during the period of the lot owner's ownership of the lot; and

645 (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of

646 the rule described in Subsection (9)(a).

647 (10) A rule or action by the association or action by the board may not unreasonably
648 impede a declarant's ability to satisfy existing development financing for community
649 improvements and right to develop:

650 (a) the project; or

651 (b) other properties in the vicinity of the project.

652 (11) A rule or association or board action may not interfere with:

653 (a) the use or operation of an amenity that the association does not own or control; or

654 (b) the exercise of a right associated with an easement.

655 (12) A rule may not divest a lot owner of the right to proceed in accordance with a
656 completed application for design review, or to proceed in accordance with another approval
657 process, under the terms of the governing documents in existence at the time the completed
658 application was submitted by the owner for review.

659 (13) Unless otherwise provided in the declaration, an association may by rule:

660 (a) regulate the use, maintenance, repair, replacement, and modification of common
661 areas;

662 (b) impose and receive any payment, fee, or charge for:

663 (i) the use, rental, or operation of the common areas, except limited common areas; and

664 (ii) a service provided to a lot owner;

665 (c) impose a charge for a late payment of an assessment; or

666 (d) provide for the indemnification of the association's officers and board consistent
667 with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

668 (14) A rule shall be reasonable.

669 (15) A declaration, or an amendment to a declaration, may vary any of the
670 requirements of Subsections (1) through (13), except Subsection (1)(b)(ii).

671 (16) A rule may not be inconsistent with a provision of the association's declaration,
672 bylaws, or articles of incorporation.

673 (17) This section applies to an association regardless of when the association is
674 created.

675 Section 7. Section **57-8a-226** is amended to read:

676 **57-8a-226. Board meetings -- Open board meetings.**

677 (1) Except for an action taken without a meeting in accordance with Section
678 16-6a-813, a board may take action only at a board meeting.

679 ~~[(1)]~~ (2) (a) At least 48 hours before a board meeting, the association shall give written
680 notice of the board meeting via email to each lot owner who requests notice of a board
681 meeting, unless:

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

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

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

687 (b) A notice described in Subsection ~~[(1)]~~ (2)(a) shall:

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

690 (ii) state the time and date of the board meeting;

691 (iii) state the location of the board meeting; and

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

695 ~~[(2)]~~ (3) (a) Except as provided in Subsection ~~[(2)]~~ (3)(b), a board meeting shall be
696 open to each lot owner or the lot owner's representative if the representative is designated in
697 writing.

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

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

700 (ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative
701 proceedings;

702 (iii) discuss a personnel matter;

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

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

708 (vi) discuss a delinquent assessment or fine.

709 (c) Any matter discussed at a board meeting closed pursuant to Subsection (3)(b)(ii) is
710 not subject to discovery in a civil action in a state court under the Utah Rules of Civil
711 Procedure.

712 [~~3~~] (4) (a) At each board meeting, the board shall provide each lot owner a reasonable
713 opportunity to offer comments.

714 (b) The board may limit the comments described in Subsection [~~3~~] (4)(a) to one
715 specific time period during the board meeting.

716 [~~4~~] (5) A board member may not avoid or obstruct the requirements of this section.

717 [~~5~~] (6) Nothing in this section shall affect the validity or enforceability of an action of
718 a board.

719 [~~6~~] (7) The provisions of this section do not apply during the period of administrative
720 control.

721 [~~7~~] (8) The provisions of this section apply regardless of when the association's first
722 governing document was recorded.

723 [~~8~~] (9) (a) Subject to Subsection [~~8~~] (9)(d), if an association fails to comply with a
724 provision of Subsections (1) through [~~4~~] (5) and fails to remedy the noncompliance during the
725 90-day period described in Subsection [~~8~~] (9)(d), a lot owner may file an action in court for:

726 (i) injunctive relief requiring the association to comply with the provisions of
727 Subsections (1) through [~~4~~] (5);

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

729 (iii) any other relief provided by law.

730 (b) In an action described in Subsection [~~8~~] (9)(a), the court may award costs and
731 reasonable attorney fees to the prevailing party.

732 (c) Upon motion from the lot owner, notice to the association, and a hearing in which
733 the court finds a likelihood that the association has failed to comply with a provision of
734 Subsections (1) through [~~4~~] (5), the court may order the association to immediately comply
735 with the provisions of Subsections (1) through [~~4~~] (5).

736 (d) At least 90 days before the day on which a lot owner files an action described in
737 Subsection [~~8~~] (9)(a), the lot owner shall deliver a written notice to the association that states:

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

739 (ii) each requirement of Subsections (1) through [~~(4)~~] (5) with which the association
740 has failed to comply;

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

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