

HB0075S02 compared with HB0075S01

~~{deleted text}~~ shows text that was in HB0075S01 but was deleted in HB0075S02.

Inserted text shows text that was not in HB0075S01 but was inserted into HB0075S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative Gage Froerer}~~Senator Don L. Ipson proposes the following substitute bill:

COMMON OWNERSHIP AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

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

HB0075S02 compared with HB0075S01

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:

AMENDS:

57-8-3, as last amended by Laws of Utah 2016, Chapters 210 and 255

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

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

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

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

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

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

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" or "association" 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.

HB0075S02 compared with HB0075S01

(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 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.

HB0075S02 compared with HB0075S01

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

(18) "Expandable condominium" means a condominium project to which additional

HB0075S02 compared with HB0075S01

land or an interest in it may be added in accordance with the declaration and this chapter.

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

(20) "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.

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

(a) is not related to the unit owner;

(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.

(22) "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.

(23) "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.

(24) "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.

(25) "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

HB0075S02 compared with HB0075S01

reasonable rules covering the operation and maintenance of the property.

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

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

~~(i) web conferencing;~~

~~(ii) video conferencing; and~~

~~(iii) telephone conferencing.~~

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

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

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

~~(i) web conferencing;~~

~~(ii) video conferencing; and~~

~~(iii) telephone conferencing.~~

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

(29) "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.

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

HB0075S02 compared with HB0075S01

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

(32) "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.

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

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

(a) a unit that:

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

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

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

~~(34)~~ (35) "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.

~~(35)~~ (36) "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 Section 57-19-2.

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

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

(b) is not constructed.

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

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

HB0075S02 compared with HB0075S01

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

~~[(38)]~~ (39) "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.

~~[(39)]~~ (40) "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.

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

57-8-10.1. Rental restrictions.

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

- (i) create restrictions on the number and term of rentals in a condominium project; or
- (ii) prohibit rentals in the condominium project.

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

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

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

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

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

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

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

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

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

HB0075S02 compared with HB0075S01

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

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

(i) the unit owner occupies the unit; or

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

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

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

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a unit by deed;

(b) the granting of a life estate in the unit; or

(c) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration or amendment to a declaration recorded before transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)~~(a)~~.

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

~~(a)~~ (i) a condominium project that contains a time period unit as defined in Section 57-8-3;

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

~~(c)~~ (iii) subject to Subsection (6)(b), a condominium project in which the initial

HB0075S02 compared with HB0075S01

declaration is recorded before May 12, 2009, unless, on or after May 12, 2015, the association of unit owners:

[~~(+)~~] (A) adopts a rental restriction or prohibition; or

[~~(+)~~] (B) amends an existing rental restriction or prohibition.

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

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

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

(b) when the restriction or prohibition requires an amendment to the association of unit owners' declaration, the association of unit owners fulfills all other requirements for amending the declaration described in the association of unit owners' governing documents.

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

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

(b) give the association of unit owners:

(i) a copy of a rental application;

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

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

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

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

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

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

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

HB0075S02 compared with HB0075S01

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

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

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

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

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

~~[(1)]~~ (2) (a) At least 48 hours before a management committee meeting, the association of unit owners shall give written notice of the management committee meeting via email to each unit owner who requests notice of a management committee meeting, unless:

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

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

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

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

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

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

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

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

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

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

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

(ii) discuss ongoing or potential litigation, mediation, arbitration, or administrative

HB0075S02 compared with HB0075S01

proceedings;

(iii) discuss a personnel matter;

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

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

(vi) discuss a delinquent assessment or fine.

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

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

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

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

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

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

~~[(8)]~~ (9) (a) Subject to Subsection ~~[(8)]~~ (9)(d), if an association of unit owners fails to comply with a provision of Subsections ~~[(1)]~~ ~~[(2)]~~ through ~~[(4)]~~ (5) and fails to remedy the noncompliance during the 90-day period described in Subsection ~~[(8)]~~ (9)(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)]~~ ~~[(2)]~~ through ~~[(4)]~~ (5);

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

(iii) any other relief provided by law.

(b) In an action described in Subsection ~~[(8)]~~ (9)(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

HB0075S02 compared with HB0075S01

hearing in which the court finds a likelihood that the association of unit owners has failed to comply with a provision of Subsections ~~ff(1)-ff(2)~~ through [~~(4)~~] (5), the court may order the association of unit owners to immediately comply with the provisions of Subsections ~~ff(1)-ff(2)~~ through [~~(4)~~] (5).

(d) At least 90 days before the day on which a unit owner files an action described in Subsection [~~(8)~~] (9)(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 Subsections ~~ff(1)-ff(2)~~ through [~~(4)~~] (5) 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.

Section 4. 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;

HB0075S02 compared with HB0075S01

- (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.~~

‡ [(16)] ~~(4)~~ (3) "[~~Meeting~~] Board meeting" means a gathering of a board, whether in person or by means of electronic communication, at which the board can take binding action.

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

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

- (a) owns;
- (b) maintains;
- (c) repairs; or
- (d) administers.

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

[(6)] (7) "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)] (8) "Electrical corporation" means the same as that term is defined in Section 54-2-1.

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

[(9)] (10) (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.

HB0075S02 compared with HB0075S01

(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.

~~[(10)]~~ (11) "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.

~~[(11)]~~ (12) "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.

~~[(12)]~~ (13) "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.

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

~~[(14)]~~ (15) "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.

HB0075S02 compared with HB0075S01

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

(b) "Means of electronic communication" includes:

- (i) web conferencing;
- (ii) video conferencing; and
- (iii) telephone conferencing.

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

(18) "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.

(19) "Period of administrative control" means 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.

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

(a) a lot that:

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

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

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

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

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

57-8a-209. Rental restrictions.

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

(i) create restrictions on the number and term of rentals in an association; or

HB0075S02 compared with HB0075S01

(ii) prohibit rentals in the association.

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

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

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

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

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

(iii) a lot owner whose employer has relocated the lot owner for no less than two years;

[~~or~~]

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

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

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

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

(A) the estate of a current resident of the lot; or

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

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

(i) the lot owner occupies the lot; or

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

(c) a requirement that the association create, by rule or resolution, procedures to:

(i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (2)(a) and (b); and

HB0075S02 compared with HB0075S01

(ii) ensure consistent administration and enforcement of the rental restrictions.

(3) For purposes of Subsection (2)(b), a transfer occurs when one or more of the following occur:

(a) the conveyance, sale, or other transfer of a lot by deed;

(b) the granting of a life estate in the lot; or

(c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(4) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.

(5) A declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (2)~~(a)~~.

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

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

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

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

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

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

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

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

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

(b) when the restriction or prohibition requires an amendment to the association's recorded declaration of covenants, conditions, and restrictions, the association fulfills all other

HB0075S02 compared with HB0075S01

requirements for amending the recorded declaration of covenants, conditions, and restrictions described in the association's governing documents.

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

- (a) obtain the association's approval of a prospective renter;
- (b) give the association:
 - (i) a copy of a rental application;
 - (ii) a copy of a renter's or prospective renter's credit information or credit report;
 - (iii) a copy of a renter's or prospective renter's background check; or
 - (iv) documentation to verify the renter's age; or
- (c) pay an additional assessment, fine, or fee because the lot is a rental lot.

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

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

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

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

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

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

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

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

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

HB0075S02 compared with HB0075S01

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

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

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

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

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

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

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

(A) charge a rental lot owner a fee to use the common areas; or

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

(iii) include a provision in the association's governing documents that:

(A) requires each tenant of a rental lot to abide by the terms of the governing documents; and

(B) holds the tenant and the rental lot owner jointly and severally liable for a violation of a provision of the governing documents.

(3) (a) A rule criterion may not abridge the rights of a lot owner to display religious and holiday signs, symbols, and decorations inside a dwelling on a lot.

(b) Notwithstanding Subsection (3)(a), the association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling or lot.

(4) (a) A rule may not regulate the content of political signs.

(b) Notwithstanding Subsection (4)(a):

(i) a rule may regulate the time, place, and manner of posting a political sign; and

(ii) an association design provision may establish design criteria for political signs.

HB0075S02 compared with HB0075S01

(5) (a) A rule may not interfere with the freedom of a lot owner to determine the composition of the lot owner's household.

(b) Notwithstanding Subsection (5)(a), an association may:

(i) require that all occupants of a dwelling be members of a single housekeeping unit;

or

(ii) limit the total number of occupants permitted in each residential dwelling on the basis of the residential dwelling's:

(A) size and facilities; and

(B) fair use of the common areas.

(6) (a) A rule may not interfere with an activity of a lot owner within the confines of a dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.

(b) Notwithstanding Subsection (6)(a), a rule may prohibit an activity within a dwelling on an owner's lot if the activity:

(i) is not normally associated with a project restricted to residential use; or

(ii) (A) creates monetary costs for the association or other lot owners;

(B) creates a danger to the health or safety of occupants of other lots;

(C) generates excessive noise or traffic;

(D) creates unsightly conditions visible from outside the dwelling;

(E) creates an unreasonable source of annoyance to persons outside the lot; or

(F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's dwelling, the common areas, or limited common areas.

(c) If permitted by law, an association may adopt rules described in Subsection (6)(b) that affect the use of or behavior inside the dwelling.

(7) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.

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

(i) change the common areas available to a lot owner;

(ii) adopt generally applicable rules for the use of common areas; or

(iii) deny use privileges to a lot owner who:

(A) is delinquent in paying assessments;

(B) abuses the common areas; or

HB0075S02 compared with HB0075S01

(C) violates the governing documents.

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

(i) alters the method of levying assessments; or

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

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

(i) prohibit the transfer of a lot; or

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

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

(9) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

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

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

(ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule described in Subsection (9)(a).

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

(a) the project; or

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

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

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

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

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

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

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

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

HB0075S02 compared with HB0075S01

(i) the use, rental, or operation of the common areas, except limited common areas; and
(ii) a service provided to a lot owner;
(c) impose a charge for a late payment of an assessment; or
(d) provide for the indemnification of the association's officers and board consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.

(14) A rule shall be reasonable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0075S02 compared with HB0075S01

electronic communication.

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

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

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

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

(iii) discuss a personnel matter;

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

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

(vi) discuss a delinquent assessment or fine.

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

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

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

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

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

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

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

~~[(8)]~~ (9) (a) Subject to Subsection ~~[(8)]~~ (9)(d), if an association fails to comply with a provision of Subsections (1) through ~~[(4)]~~ (5) and fails to remedy the noncompliance during the

HB0075S02 compared with HB0075S01

90-day period described in Subsection [~~(8)~~] (9)(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)~~] (5);

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

(iii) any other relief provided by law.

(b) In an action described in Subsection [~~(8)~~] (9)(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)~~] (5), the court may order the association to immediately comply with the provisions of Subsections (1) through [~~(4)~~] (5).

(d) At least 90 days before the day on which a lot owner files an action described in Subsection [~~(8)~~] (9)(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)~~] (5) 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.