

1 **CONDOMINIUM AND COMMUNITY ASSOCIATION**

2 **AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Carol Spackman Moss**

6 Senate Sponsor: Don L. Ipson

7
8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions of the Condominium Ownership Act and the Community
11 Association Act related to organization and governing documents.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ addresses the hierarchy of the governing documents of a condominium or
15 community association;
- 16 ▶ enacts provisions related to the organization and reorganization of a community
17 association; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-8-39**, as last amended by Laws of Utah 2015, Chapter 325

26 **57-8-40**, as last amended by Laws of Utah 2013, Chapter 152

27 ENACTS:



28 **57-8a-228**, Utah Code Annotated 1953



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

31 Section 1. Section **57-8-39** is amended to read:

32 **57-8-39. Limitation on requirements for amending governing documents --**
33 **Limitation on contracts.**

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

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

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

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

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

43 (b) Subsection (1)(a) does not apply to an amendment affecting only:

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

46 (ii) unit boundaries; or

47 (iii) unit owners' voting rights.

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

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

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

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

58 (5) This section applies to an association of unit owners regardless of when the

59 association of unit owners is created.

60 Section 2. Section **57-8-40** is amended to read:

61 **57-8-40. Organization of an association of unit owners under other law --**
62 **Governing document hierarchy -- Reorganization.**

63 (1) As used in this section, "organizational documents" means the documents related to
64 the formation or operation of a nonprofit corporation or other legal entity formed by the
65 management committee or the declarant.

66 (2) If permitted, required, or acknowledged by the declaration, the management
67 committee may organize an association of unit owners as:

68 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
69 Nonprofit Corporation Act; or

70 (b) any other entity organized under other law.

71 (3) [~~Organizational~~] To the extent possible, organizational documents for a nonprofit
72 corporation or other entity formed in accordance with Subsection (2) [~~shall, to the extent~~
73 ~~possible;~~] may not conflict with the rights and obligations found in the declaration [~~and~~] or any
74 of the [~~association's~~] association of unit owners' bylaws recorded at the time of the formation of
75 a nonprofit corporation or other entity.

76 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
77 organizational documents of a nonprofit corporation or other entity formed in accordance with
78 Subsection (2) may include [~~any~~] an additional indemnification and liability limitation
79 provision for:

80 (a) [~~board members, directors, and~~] management committee members or officers; or

81 (b) similar persons in a position of control.

82 (5) In the event of a conflict between this chapter's provisions, a statute under which
83 the association of unit owners is organized, documents concerning the organization of the
84 association of unit owners as a nonprofit corporation or other entity, the plat, the declaration,
85 the bylaws, and [~~association~~] rules or policies of the association of unit owners, the following
86 order prevails:

87 (a) this chapter controls over a conflicting provision found in any of the sources listed
88 in Subsections (5)(b) through (f);

89 (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law

90 under which an entity is organized controls over a conflicting provision in any of the sources
91 listed in Subsections (5)(c) through (f);

92 (c) the plat and the declaration control equally over a conflicting provision in any of the
93 sources listed in Subsections (5)(d) through (f);

94 ~~[(c)]~~ (d) an organizational document filed in accordance with Title 16, Chapter 6a,
95 Utah Revised Nonprofit Corporation Act, or any other law under which an entity is organized,
96 controls over a conflicting provision in any of the sources listed in Subsections (5)~~[(d)]~~(e)
97 through (f);

98 ~~[(d) the declaration controls over a conflicting provision in any of the sources listed in~~
99 ~~Subsections (5)(c) or (f);]~~

100 (e) the bylaws control over a conflicting provision in ~~[association rules]~~ a source
101 described in Subsection (5)(f); and

102 (f) ~~[the association rules yield]~~ a rule or policy of the association of unit owners that is
103 adopted by the management committee yields to a conflicting provision in any of the sources
104 listed in ~~[Subsection]~~ Subsections (5)(a) through (e).

105 (6) Immediately upon the legal formation of an entity in compliance with this section,
106 the association and unit owners are subject to any right, obligation, procedure, and remedy
107 applicable to that entity.

108 (7) (a) ~~[A]~~ The management committee may modify a form "articles of incorporation"
109 or similar organizational document attached to a declaration ~~[may be modified by the~~
110 ~~management committee]~~ for filing or re-filing if the modified version is otherwise consistent
111 with this section's provisions.

112 (b) An organizational document attached to a declaration that is filed and concerns the
113 organization of an entity may be amended in accordance with ~~[its]~~ the organizational
114 document's own terms or any applicable law, ~~[notwithstanding the fact that]~~ regardless of
115 whether the organizational document ~~[might be]~~ is recorded.

116 (c) Except for amended bylaws, an initial or amended organizational document
117 properly filed with the state does not need to be recorded.

118 (8) This section applies to the reorganization of an association of unit owners
119 previously organized if the entity's status is terminated or dissolved without the possibility of
120 reinstatement.

121 (9) (a) This section applies to [aH] a condominium [projects, whether] project
122 regardless of when the condominium project is established [before or after May 5, 2008].

123 (b) This section does not validate or invalidate the organization of an association of of
124 unit owners that occurred before May 5, 2008, regardless of whether [or not] the association of of
125 unit owners was otherwise in compliance with this section.

126 Section 3. Section **57-8a-228** is enacted to read:

127 **57-8a-228. Organization of an association -- Governing document hierarchy --**
128 **Reorganization.**

129 (1) As used in this section, "organizational documents" means the documents related to
130 the formation or operation of a nonprofit corporation or other legal entity formed by the board
131 or the declarant.

132 (2) If permitted, required, or acknowledged by the declaration, the board may organize
133 an association as:

134 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
135 Nonprofit Corporation Act; or

136 (b) any other entity organized under other law.

137 (3) To the extent possible, organizational documents for a nonprofit corporation or
138 other entity formed in accordance with Subsection (2) may not conflict with the rights and
139 obligations found in the declaration or any of the association's bylaws recorded at the time of
140 the formation of a nonprofit corporation or other entity.

141 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
142 organizational documents of a nonprofit corporation or other entity formed in accordance with
143 Subsection (2) may include an additional indemnification and liability limitation provision for:

144 (a) board members or officers; or

145 (b) similar persons in a position of control.

146 (5) In the event of a conflict between this chapter's provisions, a statute under which
147 the association is organized, documents concerning the organization of the association as a
148 nonprofit corporation or other entity, the plat, the declaration, the bylaws, and association rules
149 or policies, the following order prevails:

150 (a) this chapter controls over a conflicting provision found in any of the sources listed
151 in Subsections (5)(b) through (f);

152 (b) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or any other law
153 under which an entity is organized controls over a conflicting provision in any of the sources
154 listed in Subsections (5)(c) through (f);

155 (c) the plat and the declaration control equally over a conflicting provision in any of the
156 sources listed in Subsections (5)(d) through (f);

157 (d) an organizational document filed in accordance with Title 16, Chapter 6a, Utah
158 Revised Nonprofit Corporation Act, or any other law under which an entity is organized
159 controls over a conflicting provision in any of the sources listed in Subsections (5)(e) and (f);

160 (e) the bylaws control over a conflicting provision in a source described in Subsection
161 (5)(f); and

162 (f) an association rule or policy that is adopted by the board yields to a conflicting
163 provision in any of the sources listed in Subsections (5)(a) through (e).

164 (6) Immediately upon the legal formation of an entity in compliance with this section,
165 the association and unit owners are subject to any right, obligation, procedure, and remedy
166 applicable to that entity.

167 (7) (a) The board may modify a form "articles of incorporation" or similar
168 organizational document attached to a declaration for filing or re-filing if the modified version
169 is otherwise consistent with this section's provisions.

170 (b) An organizational document attached to a declaration that is filed and concerns the
171 organization of an entity may be amended in accordance with the organizational document's
172 own terms or any applicable law, regardless of whether the organizational document is
173 recorded.

174 (c) Except for amended bylaws, an initial or amended organizational document
175 properly filed with the state does not need to be recorded.

176 (8) This section applies to the reorganization of an association previously organized if
177 the entity's status is terminated or dissolved without the possibility of reinstatement.

178 (9) (a) This section applies regardless of when the association is created.

179 (b) This section does not validate or invalidate the organization of an association that
180 occurred before May 9, 2017, regardless of whether the association was otherwise in
181 compliance with this section.

Legislative Review Note
Office of Legislative Research and General Counsel