

COMMON AREA LAND USE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to common areas and land use.

Highlighted Provisions:

This bill:

- ▶ addresses ownership, conveyance, and modification of a parcel designated as a common area on a recorded plat;
- ▶ amends requirements for recording a certain subdivision plat; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-9a-606, as last amended by Laws of Utah 2015, Chapter 327

17-27a-604, as last amended by Laws of Utah 2015, Chapter 465

17-27a-606, as last amended by Laws of Utah 2015, Chapter 327

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

Section 1. Section **10-9a-606** is amended to read:



28 **10-9a-606. Common area parcels on a plat -- No separate ownership --**
 29 **Ownership interest equally divided among other parcels on plat and included in**
 30 **description of other parcels.**

31 (1) As used in this section:

32 (a) "Association" means the same as that term is defined in:

33 (i) regarding a common area, Section [57-8a-102](#); and

34 (ii) regarding a common area and facility, Section [57-8-3](#).

35 (b) "Common area" means the same as that term is defined in Section [57-8a-102](#).

36 (c) "Common area and facility" means the same as that term is defined in Section
 37 [57-8-3](#).

38 (d) "Declaration" means the same as that term is defined in:

39 (i) regarding a common area, Section [57-8a-102](#); and

40 (ii) regarding a common area and facility, Section [57-8-3](#).

41 ~~[(+)]~~ (2) (a) A person may not separately own or convey a parcel designated as a
 42 common [or community] area or common area and facility, on a plat recorded in compliance
 43 with this part [may not be separately owned or conveyed], independent of the other lots, units,
 44 or parcels created by the plat [unless:].

45 ~~[(i) the parcel is being acquired by a municipality for a governmental purpose; and]~~

46 ~~[(ii) the conveyance is approved by]~~

47 (b) Subsection (2)(a) does not apply if the following approve the conveyance:

48 (i) (A) for a common area that an association does not own under Subsection

49 [17-27a-604](#)(1)(d) or for a common area and facility, the owners of at least ~~[75%]~~ 67% of the
 50 lots, units, or parcels [on the plat] designated on a plat that is subject to a declaration, after the
 51 municipality gives [its] the municipality's approval[-]; or

52 (B) for a common area that an association owns under Subsection [17-27a-604](#)(1)(d),
 53 67% of the voting interests of the association;

54 (ii) if the conveyance will occur during a period of administrative control, as defined in
 55 Section [57-8-3](#) or [57-8a-102](#), the declarant, as defined in Section [57-8-3](#) or [57-8a-102](#); and

56 (iii) if the conveyance will result in a violation of an ordinance that was in effect at the
 57 time the plat was recorded and that regulated the amount of open space required for approval of
 58 the plat, regardless of whether the ordinance is currently in effect, the municipality.

59 ~~[(b) A notice of the owner approval described in Subsection (1)(a)(ii) shall be:]~~

60 (c) If a conveyance of a common area or common area and facility is approved in
61 accordance with Subsection (2)(b), the person who presents the instrument of conveyance to a
62 county recorder shall:

63 (i) ~~[attached]~~ attach a notice of the approval described in Subsection (2)(b) as an
64 exhibit to the document of conveyance; or

65 (ii) ~~[recorded]~~ record a notice of the approval described in Subsection (2)(b)
66 concurrently with the conveyance as a separate document.

67 ~~[(2) The ownership interest in a parcel described in Subsection (1) shall:]~~

68 (3) When a plat contains a common area or common area and facility:

69 (a) ~~for purposes of assessment, [be divided equally among all parcels created by the~~
70 ~~plat] each parcel that the plat creates has an equal ownership interest in the common area or~~
71 ~~common area and facility within the plat, unless the plat or an accompanying recorded~~
72 ~~document indicates a different division of interest for assessment purposes [is indicated on the~~
73 ~~plat or an accompanying recorded document]; and~~

74 (b) ~~[be considered to be included in the description of]~~ each instrument describing a
75 parcel on the plat by ~~[its]~~ the parcel's identifying plat number implicitly includes the ownership
76 interest in the common area or common area and facility, even if [the common or community
77 area] that ownership interest is not explicitly stated in the instrument.

78 ~~[(3) A parcel designated as common or community area on a plat before, on, or after~~
79 ~~May 12, 2015, may be modified in size and location if the modification:]~~

80 (4) A person may modify the size or location of a common area or common area and
81 facility if:

82 (a) ~~[is approved]~~ the local government approves the modification as part of a
83 subdivision plat amendment~~[by the local government]; and~~

84 ~~[(b) is approved by at least 75%]~~

85 (b) either:

86 (i) 67% of the voting interests in a homeowners association having an interest in the
87 common ~~[or community area, if any]~~ area or common area and facility approve the
88 modification; or

89 ~~[(c) (ii) [is approved by at least 75% of the owners of lots, units, or parcels on the plat]~~

90 if there is no homeowners association having an interest in the common [~~or community area, if~~
 91 ~~any; and~~] area or common area and facility, 67% of the owners of lots, units, or parcels
 92 designated on a plat that is subject to a declaration approve the modification.

93 [~~(d) does not create a new buildable lot.~~]

94 [~~(4) A parcel designated as common or community area on a plat before, on, or after~~
 95 ~~May 12, 2015, may be modified in size]~~

96 (5) A person may, without a subdivision plat amendment approval by the local
 97 government, modify the size of a common area or common area and facility if [the
 98 modification]:

99 (a) (i) the modification is a lot line adjustment [approved by] that at least [75%] 67%
 100 of the voting interests in a homeowners association having an interest in the common [or
 101 community] area or common area and facility, if any, approve; or

102 [~~(b) (ii) [is approved by at least 75% of the owners of lots, units, or parcels on the~~
 103 ~~plat] if there is no homeowners association having an interest in the common [or community~~
 104 ~~area, if any] area or common area and facility, 67% of the owners of lots, units, or parcels on a~~
 105 ~~plat that is subject to a declaration approve the modification; and~~

106 [~~(c) (b) does not create a new buildable lot.~~]

107 (6) This section applies regardless of when the parcel is designated as a common area
 108 or common area and facility.

109 Section 2. Section **17-27a-604** is amended to read:

110 **17-27a-604. Subdivision plat approval procedure -- Effect of not complying.**

111 (1) A person may not submit a subdivision plat to the county recorder's office for
 112 recording unless:

113 (a) the person has complied with the requirements of Subsection **17-27a-603(4)(a)**;

114 (b) the plat has been approved by:

115 (i) the land use authority of the:

116 (A) county in whose unincorporated area the land described in the plat is located; or

117 (B) mountainous planning district in whose area the land described in the plat is
 118 located; and

119 (ii) other officers that the county designates in its ordinance; [~~and~~]

120 (c) all approvals described in Subsection (1)(b) are entered in writing on the plat by

121 designated officers[-]; and

122 (d) if the person submitting the plat intends the plat to be or if the plat is part of a
123 community association subject to Title 57, Chapter 8a, Community Association Act, the plat
124 includes language conveying to the association, as that term is defined in Section 57-8a-102, all
125 common areas, as that term is defined in Section 57-8a-102.

126 (2) An owner of a platted lot is the owner of record sufficient to re-subdivide the lot if
127 the owner's platted lot is not part of a community association subject to Title 57, Chapter 8a,
128 Community Association Act.

129 (3) A plat recorded without the signatures required under this section is void.

130 (4) A transfer of land pursuant to a void plat is voidable.

131 Section 3. Section 17-27a-606 is amended to read:

132 **17-27a-606. Common area parcels on a plat -- No separate ownership --**
133 **Ownership interest equally divided among other parcels on plat and included in**
134 **description of other parcels.**

135 (1) As used in this section:

136 (a) "Association" means the same as that term is defined in:

137 (i) regarding a common area, Section 57-8a-102; and

138 (ii) regarding a common area and facility, Section 57-8-3.

139 (b) "Common area" means the same as that term is defined in Section 57-8a-102.

140 (c) "Common area and facility" means the same as that term is defined in Section
141 57-8-3.

142 (d) "Declaration" means the same as that term is defined in:

143 (i) regarding a common area, Section 57-8a-102; and

144 (ii) regarding a common area and facility, Section 57-8-3.

145 [(+)] (2) (a) A person may not separately own or convey a parcel designated as a
146 common [or community] area or common area and facility on a plat recorded in compliance
147 with this part [may not be separately owned or conveyed], independent of the other lots, units,
148 or parcels created by the plat [unless:].

149 [(i) the parcel is being acquired by a county for a governmental purpose; and]

150 [(ii) the conveyance is approved by]

151 (b) Subsection (2)(a) does not apply if the following approve the conveyance:

152 (i) (A) for a common area that an association does not own under Subsection
 153 17-27a-604(1)(d) or for a common area and facility, the owners of at least [75%] 67% of the
 154 lots, units, or parcels [on the plat] designated on a plat that is subject to a declaration, after the
 155 county gives [its] the county's approval[-]; or
 156 (B) for a common area that an association owns under Subsection 17-27a-604(1)(d),
 157 67% of the voting interests of the association;
 158 (ii) if the conveyance will occur during a period of administrative control, as defined in
 159 Section 57-8-3 or 57-8a-102, the declarant, as defined in Section 57-8-3 or 57-8a-102; and
 160 (iii) if the conveyance will result in a violation of an ordinance that was in effect at the
 161 time the plat was recorded and that regulated the amount of open space required for approval of
 162 the plat, regardless of whether the ordinance is currently in effect, the county.
 163 ~~[(b) A notice of the approval required in Subsection (1)(a)(ii) shall be:]~~
 164 (c) If a conveyance of a common area or common area and facility is approved in
 165 accordance with Subsection (2)(b), the person who presents the instrument of conveyance to a
 166 county recorder shall:
 167 (i) [attached] attach a notice of the approval described in Subsection (2)(b) as an
 168 exhibit to the document of conveyance; or
 169 (ii) [recorded] record a notice of the approval described in Subsection (2)(b)
 170 concurrently with the conveyance as a separate document.
 171 ~~[(2) The ownership interest in a parcel described in Subsection (1) shall:]~~
 172 (3) When a plat contains a common area or common area and facility:
 173 (a) [for purposes of assessment, be divided equally among all parcels created by the
 174 plat, unless] each parcel that the plat creates has an equal ownership interest in the common
 175 area or common area and facility within the plat, unless the plat or an accompanying recorded
 176 document indicates a different division of interest for assessment purposes [is indicated on the
 177 plat or an accompanying recorded document]; and
 178 (b) [be considered to be included in the description of] each instrument describing a
 179 parcel on the plat by [its] the parcel's identifying plat number implicitly includes the ownership
 180 interest in the common area or common area and facility within the plat, even if [the common
 181 or community area] that ownership interest is not explicitly stated in the instrument.
 182 ~~[(3) A parcel designated as common or community area on a plat before, on, or after~~

183 ~~May 12, 2015, may be modified in size and location if the modification:]~~

184 (4) A person may modify the size or location of a common area or common area and
 185 facility if:

186 (a) ~~[is approved]~~ the local government approves the modification as part of a
 187 subdivision plat amendment ~~[by the local government];~~ and

188 (b) either:

189 ~~[(b)]~~ (i) [is approved by at least 75%] 67% of the voting interests in a homeowners
 190 association having an interest in the common ~~[or community]~~ area or common area and facility,
 191 if any, approve the modification; or

192 ~~[(c)]~~ (ii) [is approved by at least 75% of the owners of lots, units, or parcels on the plat]
 193 if there is no homeowners association having an interest in the common [or community area, if
 194 any; and] area or common area and facility, 67% of the owners of lots, units, or parcels
 195 designated on a plat that is subject to a declaration approve the modification.

196 ~~[(d) does not create a new buildable lot.]~~

197 ~~[(4) A parcel designated as common or community area on a plat before, on, or after~~
 198 ~~May 12, 2015, may be modified in size]~~

199 (5) A person may, without a subdivision plat amendment approval by the local
 200 government, [if the modification] modify the size of a common area or common area and
 201 facility if:

202 (a) (i) the modification is a lot line adjustment ~~[approved by]~~ that at least ~~[75%]~~ 67%
 203 of the voting interests in a homeowners association having an interest in the common ~~[or~~
 204 ~~community]~~ area or common area and facility, if any[;], approve; or

205 ~~[(b) is approved by at least 75%]~~

206 (ii) [of the owners of lots, units, or parcels on the plat] if there is no homeowners
 207 association having an interest in the common ~~[or community area, if any]~~ area or common area
 208 and facility, 67% of the owners of lots, units, or parcels on a plat that is subject to a declaration
 209 approve the modification; and

210 ~~[(c)]~~ (b) does not create a new buildable lot.

211 (6) This section applies regardless of when the parcel is designated as a common area
 212 or common area and facility.

**Legislative Review Note
Office of Legislative Research and General Counsel**