

Representative R. Curt Webb proposes the following substitute bill:

COMMON AREA LAND USE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: D. Gregg Buxton

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 or a common area and facility on a recorded plat;
- ▶ reduces the percentage of landowners required to approve certain conveyances;
- ▶ 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



26 57-8-32, as enacted by Laws of Utah 1963, Chapter 111



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

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

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

33 (1) As used in this section:

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

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

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

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

38 (c) "Common area and facility" means the same as that term is defined in Section
39 57-8-3.

40 (d) "Declarant" means the same as that term is defined in:

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

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

43 (e) "Declaration" means the same as that term is defined in:

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

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

46 (f) "Period of administrative control" means the same as that term is defined in:

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

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

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

53 (a) an association holds in trust the parcel designated as a common area for the owners
54 of the other lots, units, or parcels created by the plat; or

55 (b) the conveyance is a modification described in Subsection (5).

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

57 ~~[(ii) the conveyance is approved by the owners of at least 75% of the lots, units, or~~
 58 ~~parcels on the plat, after the municipality gives its approval.]~~

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

60 (3) If a modification of a common area or common area and facility is approved in
 61 accordance with Subsection (5), the person who presents the instrument of conveyance to a
 62 county recorder shall:

63 ~~[(i)]~~ (a) [attached] attach a notice of the approval described in Subsection (5) as an
 64 exhibit to the document of conveyance; or

65 ~~[(ii)]~~ (b) [recorded] record a notice of the approval described in Subsection (5)
 66 concurrently with the conveyance as a separate document.

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

68 (4) 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 ~~[(a) is approved as part of a subdivision plat amendment by the local government;]~~

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

82 (5) A person may modify the size or location of a common area or common area and
 83 facility if:

84 (a) the local government approves the modification; and

85 (b) one of the following approves the modification:

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

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

92 (iii) during the period of administrative control, the declarant.

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 without a subdivision plat amendment approval by the~~
96 ~~local government, if the modification:]~~

97 ~~[(a) is a lot line adjustment approved by at least 75% of the voting interests in a~~
98 ~~homeowners association having an interest in the common or community area, if any;]~~

99 ~~[(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if~~
100 ~~there is no homeowners association having an interest in the common or community area, if~~
101 ~~any, and]~~

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

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

104 **17-27a-604. Subdivision plat approval procedure -- Effect of not complying.**

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

107 (a) the person has complied with the requirements of Subsection [17-27a-603\(4\)\(a\)](#);

108 (b) the plat has been approved by:

109 (i) the land use authority of the:

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

111 (B) mountainous planning district in whose area the land described in the plat is

112 located; and

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

114 (c) all approvals described in Subsection (1)(b) are entered in writing on the plat by
115 designated officers~~[-];~~ and

116 (d) if the person submitting the plat intends the plat to be or if the plat is part of a
117 community association subject to Title 57, Chapter 8a, Community Association Act, the plat

118 includes language conveying to the association, as that term is defined in Section [57-8a-102](#), all

119 common areas, as that term is defined in Section 57-8a-102.

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

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

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

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

126 **17-27a-606. Common area parcels on a plat -- No separate ownership --**
127 **Ownership interest equally divided among other parcels on plat and included in**
128 **description of other parcels.**

129 (1) As used in this section:

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

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

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

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

134 (c) "Common area and facility" means the same as that term is defined in Section
135 57-8-3.

136 (d) "Declarant" 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 (e) "Declaration" means the same as that term is defined in:

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

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

142 (f) "Period of administrative control" 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 [(1)(a)] (2) 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 (a) an association holds in trust the parcel designated as a common area for the owners
152 of the other lots, units, or parcels created by the plat; or

153 (b) the conveyance is a modification described in Subsection (5).

154 ~~[(b) A notice of the approval required in Subsection (1)(a)(ii) shall be:]~~

155 (3) If a modification of a common area or common area and facility is approved in
156 accordance with Subsection (5), the person who presents the instrument of conveyance to a
157 county recorder shall:

158 ~~[(i)]~~ (a) [attached] attach a notice of the approval described in Subsection (5) as an
159 exhibit to the document of conveyance; or

160 ~~[(ii)]~~ (b) [recorded] record a notice of the approval described in Subsection (5)
161 concurrently with the conveyance as a separate document.

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

163 (4) When a plat contains a common area or common area and facility:

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

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

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

175 (5) A person may modify the size or location of a common area or common area and
176 facility if:

177 ~~[(a) is approved as part of a subdivision plat amendment by the local government;]~~

178 (a) the local government approves the modification; and

179 (b) one of the following approves the modification:

180 ~~[(b)]~~ (i) [is approved by at least 75%] 67% of the voting interests in [a homeowners] an

181 association having an interest in the common [~~or community~~] area or common area and facility,
 182 if any;

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

187 (iii) during the period of administrative control, the declarant.

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

189 ~~[(4) A parcel designated as common or community area on a plat before, on, or after~~
 190 ~~May 12, 2015, may be modified in size without a subdivision plat amendment approval by the~~
 191 ~~local government, if the modification:]~~

192 ~~[(a) is a lot line adjustment approved by at least 75% of the voting interests in a~~
 193 ~~homeowners association having an interest in the common or community area, if any;]~~

194 ~~[(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if~~
 195 ~~there is no homeowners association having an interest in the common or community area, if~~
 196 ~~any; and]~~

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

198 Section 4. Section 57-8-32 is amended to read:

199 **57-8-32. Sale of property.**

200 (1) Unless otherwise provided in the declaration or bylaws, and notwithstanding the
 201 provisions of Sections 57-8-30 and 57-8-31, the unit owners may, at a meeting of unit owners
 202 called for the purpose of voting, by an affirmative vote of at least [three-fourths of such] 67%
 203 of unit owners, [at a meeting of unit owners duly called for such purpose,] elect to sell or
 204 otherwise dispose of the property. [Such action shall be]

205 (2) An affirmative vote described in Subsection (1) is binding upon all unit owners,
 206 and [it shall thereupon become the duty of every] each unit owner [to] shall execute and deliver
 207 [such] the appropriate instruments and [to] perform all acts as [in manner and form may be]
 208 necessary to effect the sale.