

HB0243S01 compared with HB0243

~~deleted text~~ shows text that was in HB0243 but was deleted in HB0243S01.

Inserted text shows text that was not in HB0243 but was inserted into HB0243S01.

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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: _____

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:

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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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(1)~~(a)] (~~2~~)~~(a)~~ A person may not separately own or convey a parcel designated as a
common [~~or community~~] area or common area and facility, on a plat recorded in compliance

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with this part [~~may not be separately owned or conveyed~~], independent of the other lots, units, or parcels created by the plat ~~{unless:}~~

{unless:

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

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

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

~~[(ii) the conveyance is approved by {}]~~

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

~~———— (i) (A) for a common area that an association does not own under Subsection 17-27a-604(1)(d) or for a common area and facility,} the owners of at least ~~{}~~ 75% ~~{}~~ 67% of the lots, units, or parcels ~~{}~~ on the plat ~~{}~~ designated on a plat that is subject to a declaration}; after the municipality gives ~~{}~~ its ~~{}~~ the municipality's approval[-]; or~~

~~———— (B) for a common area that an association owns under Subsection 17-27a-604(1)(d), 67% of the voting interests of the association;~~

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

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

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

~~(~~{c}~~3) If a ~~{conveyance}~~ modification of a common area or common area and facility is approved in accordance with Subsection (~~{2}~~~~(b)~~5), the person who presents the instrument of conveyance to a county recorder shall:~~

~~[(~~{t}~~)] (a) [attached] attach a notice of the approval described in Subsection (~~{2}~~~~(b)~~5) as an exhibit to the document of conveyance; or~~

~~[(~~{t}~~)] (b) [recorded] record a notice of the approval described in Subsection (~~{2}~~~~(b)~~5) concurrently with the conveyance as a separate document.~~

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

~~(~~{3}~~4) When a plat contains a common area or common area and facility:~~

~~(a) for purposes of assessment, [~~be divided equally among all parcels created by the~~~~

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~~plat] each parcel that the plat creates has an equal ownership interest in the common area or common area and facility within the plat, unless the plat or an accompanying recorded document indicates a different division of interest for assessment purposes [is indicated on the plat or an accompanying recorded document]; and~~

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

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

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

~~— (a) { } is approved { } the local government approves the modification as part of a subdivision plat amendment { } by the local government; { } and { }~~

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

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

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

~~(b) ~~either~~ one of the following approves the modification:~~

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

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

~~; or~~

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

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

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

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

~~(a) (i);~~ if the modification:

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

~~[(b) (ii) {} area, if any;]~~

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

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

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

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

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

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

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

(b) the plat has been approved by:

(i) the land use authority of the:

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

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

located; and

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(d) "~~{Declaration}~~ Declarant" means the same as that term is defined in:

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

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

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

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

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

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

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

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

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

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

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

~~{b} Subsection (2)(a) does not apply if the following approve the conveyance:~~

~~—— (i) (A) for a common area that ~~a~~ an association ~~does not own under Subsection 17-27a-604(1)(d) or for a common area and facility, the owners of at least [75%] 67% of the~~ holds in trust the parcel designated as a common area for the owners of the other lots, units, or parcels ~~{[on the plat] designated on a plat that is subject to a declaration, after the county gives [its] the county's approval[-]; or~~~~

~~—— (B) for a common area that an association owns under Subsection 17-27a-604(1)(d), 67% of the voting interests of the association;~~

~~—— (ii) if created by the plat; or~~

~~(b) the conveyance ~~{will occur during a period of administrative control, as defined in Section 57-8-3 or 57-8a-102, the declarant, as defined in Section 57-8-3 or 57-8a-102; and~~~~

~~—— (iii) if the conveyance will result in a violation of an ordinance that was in effect at the time the plat was recorded and that regulated the amount of open space required for approval of the plat, regardless of whether the ordinance is currently in effect, the county is a modification described in Subsection (5).~~

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

~~{c}3) If a ~~{conveyance}~~ modification of a common area or common area and facility is approved in accordance with Subsection ~~{2}{b}5~~, the person who presents the instrument of conveyance to a county recorder shall:~~

~~{i} a ~~[attached]~~ attach a notice of the approval described in Subsection ~~{2}{b}5~~ as an exhibit to the document of conveyance; or~~

~~{ii} b ~~[recorded]~~ record a notice of the approval described in Subsection ~~{2}{b}5~~ concurrently with the conveyance as a separate document.~~

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

~~{3}4) When a plat contains a common area or common area and facility:~~

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

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

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

~~{4}5~~ A person may modify the size or location of a common area or common area and facility if:

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

(a) the local government approves the modification ~~{ as part of a subdivision plat amendment [by the local government]}~~; and

~~(b) {either}~~ one of the following approves the modification:

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

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

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

~~{(d) does not create a new buildable lot.}~~

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

~~— (5) A person may,}~~ without a subdivision plat amendment approval by the local government, ~~{}~~ if the modification ~~{}~~ modify the size of a common area or common area and facility if:

~~— (a) (i) the modification;}~~

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

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

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

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

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

Legislative Review Note

Office of Legislative Research and General Counsel;]

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

57-8-32. Sale of property.

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

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