

1 **CONDOMINIUM AND COMMUNITY ASSOCIATION**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: J. Stuart Adams**

6 House Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill enacts and modifies provisions relating to condominium and community
10 associations.
11

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies and enacts provisions of the Condominium Ownership Act and the
15 Community Association Act;
- 16 ▶ enacts provisions relating to the improvement, alteration, or combination of units or
17 lots;
- 18 ▶ enacts provisions relating to the responsibility for maintenance, repair, and
19 replacement of common areas and units or lots;
- 20 ▶ modifies reserve fund provisions;
- 21 ▶ enacts a provision allowing management committee members and officers to be
22 indemnified or to have their liability limited;
- 23 ▶ enacts provisions relating to an owner's request to make modifications to the
24 owner's unit or lot;
- 25 ▶ enacts provisions allowing a preexisting association to make a later-enacted
26 provision of law applicable to the association;
- 27 ▶ modifies provisions relating to the organization of an association as a nonprofit



- 28 corporation or other entity;
- 29 ▶ enacts provisions for resolving conflicting provisions of law and other applicable
- 30 documents;
- 31 ▶ modifies insurance provisions;
- 32 ▶ enacts provisions relating to the powers, meetings, and actions of a management
- 33 committee or board;
- 34 ▶ enacts provisions relating to a community association's governing documents,
- 35 including application of the rule against perpetuities and the rule against
- 36 unreasonable restraints on alienation;
- 37 ▶ enacts a provision relating to the organization of a community association;
- 38 ▶ enacts a provision relating to a lot owner's improvement or alteration to a lot;
- 39 ▶ enacts a provision relating to eminent domain of property that is part of a
- 40 community association;
- 41 ▶ enacts provisions relating to the consolidation and termination of a community
- 42 association;
- 43 ▶ repeals an obsolete provision; and
- 44 ▶ makes technical changes.

45 Money Appropriated in this Bill:

46 None

47 Other Special Clauses:

48 None

49 Utah Code Sections Affected:

50 AMENDS:

- 51 **57-8-3**, as last amended by Laws of Utah 2012, Chapter 166
- 52 **57-8-7**, as last amended by Laws of Utah 2003, Chapter 265
- 53 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369
- 54 **57-8-23**, as enacted by Laws of Utah 1963, Chapter 111
- 55 **57-8-40**, as enacted by Laws of Utah 2008, Chapter 291
- 56 **57-8-43**, as enacted by Laws of Utah 2011, Chapter 355
- 57 **57-8a-102**, as last amended by Laws of Utah 2011, Chapter 355
- 58 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369

- 59 **57-8a-212**, as enacted by Laws of Utah 2011, Chapter 355
- 60 **57-8a-220**, as enacted by Laws of Utah 2011, Chapter 355
- 61 **57-8a-402**, as enacted by Laws of Utah 2011, Chapter 355
- 62 **57-8a-403**, as enacted by Laws of Utah 2011, Chapter 355
- 63 **57-8a-404**, as enacted by Laws of Utah 2011, Chapter 355
- 64 **57-8a-405**, as last amended by Laws of Utah 2012, Chapter 369
- 65 **57-8a-406**, as enacted by Laws of Utah 2011, Chapter 355
- 66 **57-8a-407**, as enacted by Laws of Utah 2011, Chapter 355
- 67 **76-6-206**, as last amended by Laws of Utah 2010, Chapter 334

68 ENACTS:

- 69 **57-8-4.5**, Utah Code Annotated 1953
- 70 **57-8-10.3**, Utah Code Annotated 1953
- 71 **57-8-10.5**, Utah Code Annotated 1953
- 72 **57-8-40.5**, Utah Code Annotated 1953
- 73 **57-8-55**, Utah Code Annotated 1953
- 74 **57-8-56**, Utah Code Annotated 1953
- 75 **57-8-57**, Utah Code Annotated 1953
- 76 **57-8a-107**, Utah Code Annotated 1953
- 77 **57-8a-108**, Utah Code Annotated 1953
- 78 **57-8a-109**, Utah Code Annotated 1953
- 79 **57-8a-222**, Utah Code Annotated 1953
- 80 **57-8a-223**, Utah Code Annotated 1953
- 81 **57-8a-224**, Utah Code Annotated 1953
- 82 **57-8a-501**, Utah Code Annotated 1953
- 83 **57-8a-502**, Utah Code Annotated 1953
- 84 **57-8a-503**, Utah Code Annotated 1953
- 85 **57-8a-504**, Utah Code Annotated 1953
- 86 **57-8a-601**, Utah Code Annotated 1953



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

89 Section 1. Section **57-8-3** is amended to read:

90 **57-8-3. Definitions.**

91 As used in this chapter:

92 (1) "Assessment" means any charge imposed by the association, including:

93 (a) common expenses on or against a unit owner pursuant to the provisions of the
94 declaration, bylaws, or this chapter; and

95 (b) an amount that an association of unit owners assesses to a unit owner under
96 Subsection 57-8-43(9)~~(f)~~(g).

97 (2) "Association of unit owners" means all of the unit owners:

98 (a) acting as a group in accordance with the declaration and bylaws; or

99 (b) organized as a legal entity in accordance with the declaration.

100 (3) "Building" means a building, containing units, and comprising a part of the
101 property.

102 (4) "Commercial condominium project" means a condominium project that has no
103 residential units within the project.

104 ~~(4)~~ (5) "Common areas and facilities" unless otherwise provided in the declaration or
105 lawful amendments to the declaration means:

106 (a) the land included within the condominium project, whether leasehold or in fee
107 simple;

108 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
109 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

110 (c) the basements, yards, gardens, parking areas, and storage spaces;

111 (d) the premises for lodging of janitors or persons in charge of the property;

112 (e) installations of central services such as power, light, gas, hot and cold water,
113 heating, refrigeration, air conditioning, and incinerating;

114 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
115 apparatus and installations existing for common use;

116 (g) such community and commercial facilities as may be provided for in the
117 declaration; and

118 (h) all other parts of the property necessary or convenient to its existence, maintenance,
119 and safety, or normally in common use.

120 ~~(5)~~ (6) "Common expenses" means:

- 121 (a) all sums lawfully assessed against the unit owners;
- 122 (b) expenses of administration, maintenance, repair, or replacement of the common
- 123 areas and facilities;
- 124 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 125 (d) expenses declared common expenses by this chapter, or by the declaration or the
- 126 bylaws.

127 [~~(6)~~] (7) "Common profits," unless otherwise provided in the declaration or lawful
 128 amendments to the declaration, means the balance of all income, rents, profits, and revenues
 129 from the common areas and facilities remaining after the deduction of the common expenses.

130 [~~(7)~~] (8) "Condominium" means the ownership of a single unit in a multiunit project
 131 together with an undivided interest in common in the common areas and facilities of the
 132 property.

133 [~~(8)~~] (9) "Condominium plat" means a plat or plats of survey of land and units prepared
 134 in accordance with Section 57-8-13.

135 [~~(9)~~] (10) "Condominium project" means a real estate condominium project; a plan or
 136 project whereby two or more units, whether contained in existing or proposed apartments,
 137 commercial or industrial buildings or structures, or otherwise, are separately offered or
 138 proposed to be offered for sale. Condominium project also means the property when the
 139 context so requires.

140 [~~(10)~~] (11) "Condominium unit" means a unit together with the undivided interest in
 141 the common areas and facilities appertaining to that unit. Any reference in this chapter to a
 142 condominium unit includes both a physical unit together with its appurtenant undivided interest
 143 in the common areas and facilities and a time period unit together with its appurtenant
 144 undivided interest, unless the reference is specifically limited to a time period unit.

145 [~~(11)~~] (12) "Contractible condominium" means a condominium project from which one
 146 or more portions of the land within the project may be withdrawn in accordance with
 147 provisions of the declaration and of this chapter. If the withdrawal can occur only by the
 148 expiration or termination of one or more leases, then the condominium project is not a
 149 contractible condominium within the meaning of this chapter.

150 [~~(12)~~] (13) "Convertible land" means a building site which is a portion of the common
 151 areas and facilities, described by metes and bounds, within which additional units or limited

152 common areas and facilities may be created in accordance with this chapter.

153 ~~[(13)]~~ (14) "Convertible space" means a portion of the structure within the
154 condominium project, which portion may be converted into one or more units or common areas
155 and facilities, including limited common areas and facilities in accordance with this chapter.

156 ~~[(14)]~~ (15) "Declarant" means all persons who execute the declaration or on whose
157 behalf the declaration is executed. From the time of the recordation of any amendment to the
158 declaration expanding an expandable condominium, all persons who execute that amendment
159 or on whose behalf that amendment is executed shall also come within this definition. Any
160 successors of the persons referred to in this subsection who come to stand in the same relation
161 to the condominium project as their predecessors also come within this definition.

162 ~~[(15)]~~ (16) "Declaration" means the instrument by which the property is submitted to
163 the provisions of this act, as it from time to time may be lawfully amended.

164 ~~[(16)]~~ (17) "Expandable condominium" means a condominium project to which
165 additional land or an interest in it may be added in accordance with the declaration and this
166 chapter.

167 (18) "Governing documents":

168 (a) means a written instrument by which an association of unit owners may:

169 (i) exercise powers; or

170 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
171 association of unit owners; and

172 (b) includes:

173 (i) articles of incorporation;

174 (ii) bylaws;

175 (iii) a plat;

176 (iv) a declaration of covenants, conditions, and restrictions; and

177 (v) rules of the association of unit owners.

178 ~~[(17)]~~ (19) "Leasehold condominium" means a condominium project in all or any
179 portion of which each unit owner owns an estate for years in his unit, or in the land upon which
180 that unit is situated, or both, with all those leasehold interests to expire naturally at the same
181 time. A condominium project including leased land, or an interest in the land, upon which no
182 units are situated or to be situated is not a leasehold condominium within the meaning of this

183 chapter.

184 [(18)] (20) "Limited common areas and facilities" means those common areas and
185 facilities designated in the declaration as reserved for use of a certain unit or units to the
186 exclusion of the other units.

187 [(19)] (21) "Majority" or "majority of the unit owners," unless otherwise provided in
188 the declaration or lawful amendments to the declaration, means the owners of more than 50%
189 in the aggregate in interest of the undivided ownership of the common areas and facilities.

190 [(20)] (22) "Management committee" means the committee as provided in the
191 declaration charged with and having the responsibility and authority to make and to enforce all
192 of the reasonable rules covering the operation and maintenance of the property.

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

195 [(21)] (24) "Par value" means a number of dollars or points assigned to each unit by the
196 declaration. Substantially identical units shall be assigned the same par value, but units located
197 at substantially different heights above the ground, or having substantially different views, or
198 having substantially different amenities or other characteristics that might result in differences
199 in market value, may be considered substantially identical within the meaning of this
200 subsection. If par value is stated in terms of dollars, that statement may not be considered to
201 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
202 fair market transaction at a different figure may affect the par value of any unit, or any
203 undivided interest in the common areas and facilities, voting rights in the unit owners'
204 association, liability for common expenses, or right to common profits, assigned on the basis
205 thereof.

206 [(22)] (25) "Person" means an individual, corporation, partnership, association, trustee,
207 or other legal entity.

208 [(23)] (26) "Property" means the land, whether leasehold or in fee simple, the building,
209 if any, all improvements and structures thereon, all easements, rights, and appurtenances
210 belonging thereto, and all articles of personal property intended for use in connection
211 therewith.

212 [(24)] (27) "Record," "recording," "recorded," and "recorder" have the meaning stated
213 in Title 57, Chapter 3, Recording of Documents.

214 ~~[(25)]~~ (28) "Size" means the number of cubic feet, or the number of square feet of
215 ground or floor space, within each unit as computed by reference to the record of survey map
216 and rounded off to a whole number. Certain spaces within the units including attic, basement,
217 or garage space may be omitted from the calculation or be partially discounted by the use of a
218 ratio, if the same basis of calculation is employed for all units in the condominium project and
219 if that basis is described in the declaration.

220 ~~[(26)]~~ (29) "Time period unit" means an annually recurring part or parts of a year
221 specified in the declaration as a period for which a unit is separately owned and includes a
222 timeshare estate as defined in Subsection 57-19-2(19).

223 ~~[(27)]~~ (30) "Unit" means either a separate physical part of the property intended for any
224 type of independent use, including one or more rooms or spaces located in one or more floors
225 or part or parts of floors in a building or a time period unit, as the context may require. A
226 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
227 proposed condominium unit under an expandable condominium project, not constructed, is a
228 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

229 ~~[(28)]~~ (31) "Unit number" means the number, letter, or combination of numbers and
230 letters designating the unit in the declaration and in the record of survey map.

231 ~~[(29)]~~ (32) "Unit owner" means the person or persons owning a unit in fee simple and
232 an undivided interest in the fee simple estate of the common areas and facilities in the
233 percentage specified and established in the declaration or, in the case of a leasehold
234 condominium project, the person or persons whose leasehold interest or interests in the
235 condominium unit extend for the entire balance of the unexpired term or terms.

236 Section 2. Section **57-8-4.5** is enacted to read:

237 **57-8-4.5. Removing or altering partition between adjoining units.**

238 (1) Subject to the declaration, a unit owner may, after acquiring an adjoining unit that
239 shares a common wall with the unit owner's unit:

240 (a) remove or alter a partition between the unit owner's unit and the acquired unit, even
241 if the partition is entirely or partly common areas and facilities; or

242 (b) create an aperture to the adjoining unit or portion of a unit.

243 (2) A unit owner may not take an action under Subsection (1) if the action would:

244 (a) impair the structural integrity or mechanical systems of the building or either unit;

245 (b) reduce the support of any portion of the common areas and facilities or another
 246 unit; or

247 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
 248 government land use ordinance, or a building code.

249 (3) The management committee may require a unit owner to submit, at the unit owner's
 250 expense, a registered professional engineer's or registered architect's opinion stating that a
 251 proposed change to the unit owner's unit will not:

252 (a) impair the structural integrity or mechanical systems of the building or either unit;

253 (b) reduce the support or integrity of common areas and facilities; or

254 (c) compromise structural components.

255 (4) The management committee may require a unit owner to pay all of the legal and
 256 other expenses of the association of unit owners related to a proposed alteration to the unit or
 257 building under this section.

258 (5) An action under Subsection (1) does not change an assessment or voting right
 259 attributable to the unit owner's unit or the acquired unit, unless the declaration provides
 260 otherwise.

261 Section 3. Section **57-8-7** is amended to read:

262 **57-8-7. Common areas and facilities.**

263 (1) As used in this section:

264 (a) "Emergency repairs" means any repairs [~~which~~] that, if not made in a timely
 265 manner, will likely result in immediate and substantial damage to the common areas and
 266 facilities or to another unit or units[~~; and~~].

267 (b) "Reasonable notice" means:

268 (i) written notice [~~which~~] that is hand delivered to the unit at least 24 hours prior to the
 269 proposed entry[~~;~~]; or

270 (ii) in the case of emergency repairs, notice that is reasonable under the circumstances.

271 (2) Each unit owner shall be entitled to an undivided interest in the common areas and
 272 facilities in the percentages or fractions expressed in the declaration. The declaration may
 273 allocate to each unit an undivided interest in the common areas and facilities proportionate to
 274 either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an
 275 equal undivided interest in the common areas and facilities, subject to the following exception:

276 each convertible space depicted on the condominium plat shall be allocated an undivided
277 interest in the common areas and facilities proportionate to the size of the space vis-a-vis the
278 aggregate size of all units so depicted, while the remaining undivided interest in the common
279 areas and facilities shall be allocated equally among the other units so depicted. The undivided
280 interest in the common areas and facilities allocated in accordance with this Subsection (2)
281 shall add up to one if stated as fractions or to 100% if stated as percentages. If an equal
282 undivided interest in the common areas and facilities is allocated to each unit, the declaration
283 may simply state that fact and need not express the fraction or percentage so allocated.
284 Otherwise, the undivided interest allocated to each unit shall be reflected by a table in the
285 declaration, or by an exhibit or schedule accompanying the declaration and recorded
286 simultaneously with it, containing columns. The first column shall identify the units, listing
287 them serially or grouping them together in the case of units to which identical undivided
288 interests are allocated. Corresponding figures in the second and third columns shall set forth
289 the respective sizes or par values of those units and the fraction or percentage of undivided
290 interest in the common areas and facilities allocated thereto.

291 (3) Except as otherwise expressly provided by this act, the undivided interest of each
292 unit owner in the common areas and facilities as expressed in the declaration shall have a
293 permanent character and shall not be altered without the consent of two-thirds of the unit
294 owners expressed in an amended declaration duly recorded. The undivided interest in the
295 common areas and facilities shall not be separated from the unit to which it appertains and shall
296 be considered to be conveyed or encumbered or released from liens with the unit even though
297 such interest is not expressly mentioned or described in the conveyance or other instrument. A
298 time period unit may not be further divided into shorter time periods by a conveyance or
299 disclaimer.

300 (4) The common areas and facilities shall remain undivided and no unit owner or any
301 other person shall bring any action for partition or division of any part thereof, unless the
302 property has been removed from the provisions of this act as provided in Sections 57-8-22 and
303 57-8-31. Any covenants to the contrary shall be null and void.

304 (5) Each unit owner may use the common areas and facilities in accordance with the
305 purpose for which they were intended without hindering or encroaching upon the lawful rights
306 of the other unit owners.

307 (6) The necessary work of maintenance, repair, and replacement of the common areas
308 and facilities and the making of any additions or improvements thereon shall be carried out
309 only as provided in this ~~[act]~~ chapter or in the declaration or bylaws.

310 (7) Except as otherwise provided in the declaration or Section 57-8-43:

311 (a) an association of unit owners is responsible for the maintenance, repair, and
312 replacement of common areas and facilities; and

313 (b) a unit owner is responsible for the maintenance, repair, and replacement of the unit
314 owner's unit.

315 ~~[(7) The]~~ (8) After reasonable notice to the occupant of the unit being entered, the
316 manager or management committee ~~[shall have the right to have]~~ may access ~~[to each]~~ a unit:

317 (a) from time to time during reasonable hours ~~[and after reasonable notice to the~~
318 ~~occupant of the unit being entered]~~, as may be necessary for the maintenance, repair, or
319 replacement of any of the common areas and facilities; or

320 (b) for making emergency repairs ~~[necessary to prevent damage to the common areas~~
321 ~~and facilities or to another unit or units, provided that a reasonable effort is made to provide~~
322 ~~notice to the occupant of the unit prior to entry].~~

323 (9) (a) An association of unit owners is liable to repair damage it causes to the common
324 areas and facilities or to a unit the association of unit owners uses to access the common areas
325 and facilities.

326 (b) An association of unit owners shall repair damage described in Subsection (9)(a)
327 within a time that is reasonable under the circumstances.

328 Section 4. Section **57-8-7.5** is amended to read:

329 **57-8-7.5. Reserve analysis -- Reserve fund.**

330 (1) As used in this section~~[-];~~

331 (a) "Reserve analysis" means an analysis to determine:

332 ~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
333 replacing, and restoring common areas and facilities that have a useful life of three years or
334 more and a remaining useful life of less than 30 years, but excluding any cost that can
335 reasonably be funded from the general budget or other funds of the association of unit owners;
336 and

337 ~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

338 (b) "Reserve fund line item" means the line item in an association of unit owners'
339 budget that identifies the amount to be placed into a reserve fund.

340 (2) Except as otherwise provided in the declaration, a management committee shall:

341 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
342 less frequently than every six years; and

343 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
344 ~~analysis to be conducted before July 1, 2012; and]~~

345 (b) review and, if necessary, update a previously conducted reserve analysis no less
346 frequently than every three years.

347 (3) The management committee may conduct a reserve analysis itself or may engage a
348 reliable person or organization, as determined by the management committee, to conduct the
349 reserve analysis.

350 (4) (a) A management committee may not use money in a reserve fund:

351 (i) for daily maintenance expenses, unless a majority of the members of the association
352 of unit owners vote to approve the use of reserve fund money for that purpose; or

353 (ii) for any purpose other than the purpose for which the reserve fund was established.

354 (b) A management committee shall maintain ~~[a]~~ reserve ~~[fund]~~ funds separate from
355 other funds of the association of unit owners.

356 (c) This Subsection (4) may not be construed to limit a management committee from
357 prudently investing money in a reserve fund, subject to any investment constraints imposed by
358 the declaration.

359 (5) An association of unit owners shall:

360 (a) annually provide unit owners a summary of the most recent reserve analysis or
361 update; and

362 (b) provide a copy of the complete reserve analysis or update to a unit owner who
363 requests a copy.

364 (6) (a) In formulating its budget each year, an association of unit owners shall include a
365 reserve fund line item in:

366 (i) an amount the management committee determines, based on the reserve analysis, to
367 be prudent; or

368 (ii) an amount required by the declaration, if the declaration requires an amount higher

369 than the amount determined under Subsection (6)(a)(i).

370 (b) Within 45 days after the date of the meeting at which the association of unit owners'
 371 budget is adopted, unit owners may disapprove a reserve fund line item:

372 (i) at a special meeting that unit owners call for that purpose; and

373 (ii) by a vote of at least 51% of the allocated voting interests in the association of unit
 374 owners.

375 (c) If unit owners disapprove a reserve fund line item under Subsection (6)(b), the last
 376 reserve fund line item that was not disapproved continues to be the budgeted amount to be
 377 placed into a reserve fund until the management committee presents another reserve fund line
 378 item that is not disapproved under Subsection (6)(b).

379 (d) An association of unit owners shall prepare and keep minutes of each special
 380 meeting of unit owners held under this Subsection (6) and indicate in the minutes any decision
 381 made relating to the funding of a reserve fund.

382 ~~[(5)]~~ (7) ~~Subsections (2)[, (3), (4), and]~~ through (6) do not apply to an association of
 383 unit owners during the period of declarant ~~[management]~~ control described in Subsection
 384 57-8-16.5(1).

385 ~~[(6) An association of unit owners shall:]~~

386 ~~[(a) annually, at the annual meeting of unit owners or at a special meeting of unit~~
 387 ~~owners:]~~

388 ~~[(i) present the reserve study; and]~~

389 ~~[(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether~~
 390 ~~to fund a reserve fund and, if so, how to fund it and in what amount; and]~~

391 ~~[(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and~~
 392 ~~indicate in the minutes any decision relating to funding a reserve fund.]~~

393 ~~[(7)]~~ (8) This section applies to each association of unit owners, regardless of when the
 394 association of unit owners was created.

395 Section 5. Section **57-8-10.3** is enacted to read:

396 **57-8-10.3. Indemnification and limit of liability.**

397 Notwithstanding any conflict with the declaration or recorded bylaws, the
 398 organizational documents of an association of unit owners may indemnify and limit
 399 management committee member and officer liability to the extent permitted by the law under

400 which the association of unit owners is organized.

401 Section 6. Section **57-8-10.5** is enacted to read:

402 **57-8-10.5. Amending the declaration to make provisions of this chapter**
403 **applicable.**

404 (1) An association of unit owners may amend the declaration to make applicable to the
405 association of unit owners a provision of this chapter that is enacted after the creation of the
406 association of unit owners, by complying with:

407 (a) the amendment procedures and requirements specified in the declaration and
408 applicable provisions of this chapter; or

409 (b) the amendment procedures and requirements of this chapter, if the declaration
410 being amended does not contain amendment procedures and requirements.

411 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

412 (a) the amendment grants a right, power, or privilege permitted by that specific section;
413 and

414 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

415 Section 7. Section **57-8-23** is amended to read:

416 **57-8-23. Removal no bar to subsequent resubmission.**

417 The removal provided for in Section 57-8-22 [~~shall~~] does not bar the subsequent
418 resubmission of the property to the provisions of this [~~act~~] chapter.

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

420 **57-8-40. Organization of an association of unit owners under other law --**
421 **Reorganization.**

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

425 (2) If permitted, required, or acknowledged by the declaration, the management
426 committee may organize an association of unit owners [~~into~~] as:

427 (a) a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised
428 Nonprofit Corporation Act[;]; or [other]

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

430 (3) Organizational documents for a nonprofit corporation or other entity formed in

431 accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and
432 obligations found in the declaration and any of the association's bylaws recorded at the time of
433 the formation of a nonprofit corporation or other entity [~~under Subsection (2)~~].

434 (4) Notwithstanding any conflict with the declaration or any recorded bylaws, the
435 organizational documents of [~~an~~] a nonprofit corporation or other entity formed in accordance
436 with Subsection (2) may include any additional indemnification and liability limitation
437 provision [~~for the management committee members and officers of the association that is~~
438 ~~permitted by the chapter under which the association is organized for~~];

439 (a) for:

440 (i) board members, directors, and officers[~~;~~]; or

441 (ii) similar persons in a position of control[~~;~~]; and

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

446 [(a) ~~this chapter controls over a conflicting provision found in any of the sources listed~~
447 ~~in Subsections (5)(b) through (f);]~~

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

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

455 [(d) ~~the declaration controls over a conflicting provision in any of the sources listed in~~
456 ~~Subsections (5)(e) or (f);]~~

457 [(e) ~~the bylaws control over a conflicting provision in association rules; and]~~

458 [(f) ~~the association rules yield to a conflicting provision in any of the sources listed in~~
459 ~~Subsection (5)(a) through (e);]~~

460 (b) that is permitted by the law under which the nonprofit corporation or other entity is
461 organized.

462 ~~[(6)]~~ (5) Immediately upon the legal formation of ~~[an]~~ a nonprofit corporation or other
463 entity in compliance with this section, the association of unit owners and unit owners are
464 subject to any right, obligation, procedure, and remedy applicable to that ~~[entity]~~ nonprofit
465 corporation or other entity, subject to Section 57-8-40.5.

466 ~~[(7)]~~ (6) (a) A form ~~["]~~set of articles of incorporation["] or similar organizational
467 document ~~[attached]~~ recorded with or attached as an exhibit to a declaration or other recorded
468 governing document may be modified by the management committee for filing or ~~[re-filing]~~
469 refiling if the modified version ~~[is otherwise consistent with this section's provisions]~~ complies
470 with this section.

471 (b) An organizational document ~~[attached]~~, concerning the organization of a nonprofit
472 corporation or other entity, that is recorded with or attached as an exhibit to a declaration ~~[that~~
473 ~~is filed and concerns the organization of an entity]~~ may be amended in accordance with its own
474 terms or any applicable law, ~~[notwithstanding the fact that]~~ even though the organizational
475 document ~~[might be recorded]~~ has been recorded or attached as an exhibit to a declaration or
476 other recorded governing document.

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

479 ~~[(8)]~~ This section applies to the reorganization of an association of unit owners
480 previously organized if the entity's status is terminated or dissolved without the possibility of
481 reinstatement.]

482 (7) An association of unit owners that is terminated or dissolved without the possibility
483 of reinstatement may be reorganized by complying with the requirements of this section.

484 ~~[(9)]~~ (8) (a) This section applies to ~~[all]~~ a condominium [projects, whether established
485 before or after May 5, 2008] project, regardless of when the condominium project is
486 established.

487 (b) This section does not validate or invalidate the organization of an association of
488 unit owners that occurred before May ~~[5, 2008]~~ 14, 2013, whether or not the association of unit
489 owners was otherwise in compliance with this section.

490 Section 9. Section **57-8-40.5** is enacted to read:

491 **57-8-40.5. Resolution of conflicting governing document provisions.**

492 (1) A conflict involving the application of provisions of the governing documents shall

493 be resolved by applying those provisions in the following order of priority, unless the
494 declaration provides otherwise:
495 (a) a recorded plat;
496 (b) a recorded declaration;
497 (c) (i) the articles of incorporation, if the association of unit owners is organized as a
498 nonprofit corporation; or
499 (ii) the organizational document establishing the entity that the association of unit
500 owners is organized as, if the association of unit owners is organized as an entity other than a
501 nonprofit corporation;
502 (d) the bylaws, if applicable;
503 (e) the rules of the association of unit owners; and
504 (f) any other written instrument through which the association of unit owners exercises
505 powers or manages, maintains, or otherwise affects the real estate and personal property under
506 the association of unit owners' authority.

507 (2) This section applies to a condominium project, regardless of when the
508 condominium project is established.

509 Section 10. Section **57-8-43** is amended to read:

510 **57-8-43. Insurance.**

511 (1) As used in this section, "reasonably available" means available using typical
512 insurance carriers and markets, irrespective of the ability of the association of unit owners to
513 pay.

514 (2) (a) This section applies to an insurance policy or combination of insurance policies:

515 [~~(a)~~] (i) issued or renewed on or after July 1, 2011; and

516 [~~(b)~~] (ii) issued to or renewed by:

517 [(~~+~~)] (A) a unit owner; or

518 [(~~+~~)] (B) an association of unit owners, regardless of when the association of unit
519 owners is formed.

520 (b) Unless otherwise provided in the declaration, this section does not apply to a
521 commercial condominium project insured under a policy or combination of policies issued or
522 renewed on or after July 1, 2013.

523 (3) Beginning not later than the day on which the first unit is conveyed to a person

524 other than a declarant, an association of unit owners shall maintain, to the extent reasonably
525 available:

526 (a) subject to Subsection (9), blanket property insurance or guaranteed replacement
527 cost insurance on the physical structures in the condominium project, including common areas
528 and facilities, limited common areas and facilities, and units, insuring against all risks of direct
529 physical loss commonly insured against, including fire and extended coverage perils; and

530 (b) subject to Subsection (10), liability insurance~~[, including medical payments~~
531 ~~insurance]~~ covering all occurrences commonly insured against for death, bodily injury, and
532 property damage arising out of or in connection with the use, ownership, or maintenance of the
533 common areas and facilities.

534 (4) If an association of unit owners becomes aware that property insurance under
535 Subsection (3)(a) or liability insurance under Subsection (3)(b) is not reasonably available, the
536 association of unit owners shall, within seven calendar days after becoming aware, give all unit
537 owners notice, as provided in Section 57-8-42, that the insurance is not reasonably available.

538 (5) (a) The declaration or bylaws may require the association of unit owners to carry
539 other types of insurance in addition to those described in Subsection (3).

540 (b) In addition to any type of insurance coverage or limit of coverage provided in the
541 declaration or bylaws and subject to the requirements of this section, an association of unit
542 owners may, as the management committee considers appropriate, obtain:

543 (i) an additional type of insurance than otherwise required; or

544 (ii) a policy with greater coverage than otherwise required.

545 (6) Unless a unit owner is acting within the scope of the unit owner's authority on
546 behalf of an association of unit owners, a unit owner's act or omission may not:

547 (a) void a property insurance policy under Subsection (3)(a) or a liability insurance
548 policy under Subsection (3)(b); or

549 (b) be a condition to recovery under a policy.

550 (7) An insurer under a property insurance policy or liability insurance policy obtained
551 by an association of unit owners under this section waives the insurer's right to subrogation
552 under the policy against ~~[any unit owner or member of the unit owner's household:]~~:

553 (a) any person residing with the unit owner, if the unit owner resides in the unit; and

554 (b) the unit owner.

555 (8) (a) An insurance policy issued to an association of unit owners may not be
556 inconsistent with any provision of this section.

557 (b) A provision of a declaration, bylaw, rule, or other document governing the
558 association of unit owners that is contrary to a provision of this section has no effect.

559 (c) ~~[(A)]~~ Neither the governing documents nor a property insurance or liability insurance
560 policy issued to an association of unit owners may [not] prevent a unit owner from obtaining
561 insurance for the unit owner's own benefit.

562 (9) (a) This Subsection (9) applies to property insurance required under Subsection
563 (3)(a).

564 ~~[(b) The property covered by property insurance shall include any property that, under~~
565 ~~the declaration, is required to become common areas and facilities.]~~

566 ~~[(e)]~~ (b) The total amount of coverage provided by blanket property insurance or
567 guaranteed replacement cost insurance may not be less than 100% of the full replacement cost
568 of the insured property at the time the insurance is purchased and at each renewal date,
569 excluding:

570 (i) items normally excluded from property insurance policies[-]; and

571 (ii) unless otherwise provided in the declaration, any commercial condominium unit in
572 a mixed-use condominium project, including any fixture, improvement, or betterment in a
573 commercial condominium unit in a mixed-use condominium project.

574 ~~[(d)]~~ (c) Property insurance shall include coverage for any fixture, improvement, or
575 betterment installed [by a unit owner to a] at any time to a unit or to a limited common area
576 associated with a unit, whether installed in the original construction or in any remodel or later
577 alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or
578 plumbing fixture, paint, wall covering, window, and any other item permanently part of or
579 affixed to a unit or to a limited common element associated with a unit.

580 ~~[(e)]~~ (d) Notwithstanding anything in this section and unless otherwise provided in the
581 declaration, an association of unit owners is not required to obtain property insurance for a loss
582 to a unit that is not physically attached to:

583 (i) another unit; or

584 (ii) ~~[an above-ground]~~ a structure that is part of a common area or facility.

585 ~~[(f)]~~ (e) Each unit owner is an insured person under a property insurance policy.

586 ~~(g)~~ (f) If a loss occurs that is covered by a property insurance policy in the name of an
587 association of unit owners and another property insurance policy in the name of a unit owner:

588 (i) the association's policy provides primary insurance coverage; and

589 (ii) notwithstanding Subsection (9)~~(g)~~(f)(i); and subject to Subsection (9)(g):

590 (A) the unit owner is responsible for the deductible of the association of unit owners;

591 and

592 (B) building property coverage, often referred to as coverage A, of the unit owner's
593 policy applies to that portion of the loss attributable to the policy deductible of the association
594 of unit owners.

595 ~~(h)~~ (g) (i) As used in this Subsection (9)~~(h)~~(g) and Subsection (9)(j):

596 (A) "Covered loss" means a loss, resulting from a single event or occurrence, that is
597 covered by a property insurance policy of an association of unit owners.

598 (B) "Unit damage" means damage to a unit or to a limited common area or facility
599 ~~[applicable]~~ appurtenant to that unit, or both.

600 (C) "Unit damage percentage" means the percentage of total damage resulting in a
601 covered loss that is attributable to unit damage.

602 (ii) A unit owner who owns a unit that has suffered unit damage as part of a covered
603 loss is responsible for an amount calculated by applying the unit damage percentage for that
604 unit to the amount of the deductible under the property insurance policy of the association of
605 unit owners.

606 (iii) If a unit owner does not pay the amount required under Subsection (9)~~(h)~~(g)(ii)
607 within 30 days after substantial completion of the repairs to the unit or limited common areas
608 and facilities appurtenant to that unit, an association of unit owners may levy an assessment
609 against the unit owner for that amount.

610 ~~(i)~~ (h) An association of unit owners shall set aside an amount equal to the amount of
611 the association's property insurance policy deductible or, if the policy deductible exceeds
612 \$10,000, ~~[whichever is less]~~ an amount not less than \$10,000.

613 ~~(j)~~ (i) (i) An association of unit owners shall provide notice in accordance with
614 Section 57-8-42 to each unit owner of the unit owner's obligation under Subsection (9)~~(h)~~(g)
615 for the association's policy deductible and of any change in the amount of the deductible.

616 (ii) (A) An association of unit owners that fails to provide notice as provided in

617 Subsection (9)(~~(f)~~)(i)(i) is responsible for the [~~amount~~] portion of the deductible [~~increase~~] that
 618 the association of unit owners could have assessed to a unit owner under Subsection
 619 (9)(~~(h)~~)(g), but only to the extent that the unit owner does not have insurance coverage that
 620 would otherwise apply under this Subsection (9).

621 (B) Notwithstanding Subsection (9)(i)(ii)(A), an association of unit owners that
 622 provides notice of the association's policy deductible, as required under Subsection (9)(i)(i), but
 623 fails to provide notice of a later increase in the amount of the deductible is responsible only for
 624 the amount of the increase for which notice was not provided.

625 (iii) The failure of an association of unit owners to provide notice as provided in
 626 Subsection (9)(~~(f)~~)(i)(i) may not be construed to invalidate any other provision of this section.

627 [~~(k)~~] (j) If, in the exercise of the business judgment rule, the management committee
 628 determines that a [~~claim~~] covered loss is likely not to exceed the property insurance policy
 629 deductible of the association of unit owners and until it becomes apparent the covered loss
 630 exceeds the deductible of the property insurance of the association of unit owners and a claim
 631 is submitted to the property insurance insurer of the association of unit owners:

632 (i) [~~the~~] a unit owner's policy is considered the policy for primary coverage [to the
 633 amount of the policy deductible of the association of unit owners] for a loss occurring to the
 634 unit owner's unit or to a limited common area or facility appurtenant to the unit;

635 (ii) the association of unit owners is responsible for any covered loss to any common
 636 areas and facilities;

637 [~~(i)~~] (iii) a unit owner who does not have a policy to cover the [property insurance
 638 policy deductible of the association of unit owners is responsible for the loss to the amount of
 639 the policy deductible of the association of unit owners, as provided in Subsection (9)(h)]
 640 damage to that unit owner's unit and appurtenant limited common areas and facilities is
 641 responsible for that damage, and the association of unit owners may, as provided in Subsection
 642 (9)(g)(iii), recover any payments the association of unit owners makes to remediate that unit
 643 and appurtenant limited common areas and facilities; and

644 [~~(ii)~~] (iv) the association of unit owners need not tender the claim to the association's
 645 insurer.

646 [~~(j)~~] (k) (i) An insurer under a property insurance policy issued to an association of unit
 647 owners shall adjust with the association of unit owners a loss covered under the association's

648 policy.

649 (ii) Notwithstanding Subsection (9)~~(k)~~(i), the insurance proceeds for a loss under a
650 property insurance policy of an association of unit owners:

651 (A) are payable to an insurance trustee that the association of unit owners designates
652 or, if no trustee is designated, to the association of unit owners; and

653 (B) may not be payable to a holder of a security interest.

654 (iii) An insurance trustee or an association of unit owners shall hold any insurance
655 proceeds in trust for the association of unit owners, unit owners, and lien holders.

656 (iv) (A) ~~[Insurance]~~ If damaged property is to be repaired or restored, insurance
657 proceeds shall be disbursed first for the repair or restoration of the damaged property.

658 (B) After the disbursements described in Subsection (9)~~(k)~~(iv)(A) are made and the
659 damaged property has been completely repaired or restored or the project terminated, any
660 surplus proceeds are payable to the association of unit owners, unit owners, and lien holders, as
661 provided in the declaration.

662 ~~(l)~~ (l) An insurer that issues a property insurance policy under this section, or the
663 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

664 (i) the association of unit owners;

665 (ii) a unit owner, upon the unit owner's written request; and

666 (iii) a holder of a security interest, upon the holder's written request.

667 ~~(m)~~ (m) A cancellation or nonrenewal of a property insurance policy under this
668 section is subject to the procedures stated in Section 31A-21-303.

669 ~~(n)~~ (n) A management committee that acquires from an insurer the property insurance
670 required in this section is not liable to unit owners if the insurance proceeds are not sufficient
671 to cover 100% of the full replacement cost of the insured property at the time of the loss.

672 (o) (i) Unless required in the declaration, property insurance coverage is not required
673 for fixtures, improvements, or betterments in a commercial unit or limited common areas and
674 facilities appurtenant to a commercial unit in a mixed-use condominium project.

675 (ii) Notwithstanding any other provision of this section, an association of unit owners
676 may obtain property insurance for fixtures, improvements, or betterments in a commercial unit
677 in a mixed-use condominium project if allowed or required in the declaration.

678 (p) (i) This Subsection (9) does not prevent a person suffering a loss, as a result of

679 damage to property, from asserting a claim, either directly or through subrogation, for the loss
 680 against a person at fault for the loss.

681 (ii) Subsection (9)(p)(i) does not affect Subsection (7).

682 (10) (a) This Subsection (10) applies to a liability insurance policy required under
 683 Subsection (3)(b).

684 (b) A liability insurance policy shall be in an amount determined by the management
 685 committee but not less than an amount specified in the declaration or bylaws.

686 (c) Each unit owner is an insured person under a liability insurance policy that an
 687 association of unit owners obtains [~~that insures against~~], but only for liability arising from:

688 (i) the unit owner's ownership interest in the common areas and facilities [~~or from~~];

689 (ii) maintenance, repair, or replacement of common areas and facilities; and

690 (iii) the unit owner's membership in the association of unit owners.

691 Section 11. Section **57-8-55** is enacted to read:

692 **57-8-55. Meetings of the management committee or subcommittee.**

693 (1) As used in this section:

694 (a) "Emergency" means a set of circumstances that:

695 (i) could not have been reasonably foreseen;

696 (ii) requires immediate attention and possible management committee action; and

697 (iii) makes it impracticable to provide the notice required under this section.

698 (b) "Meeting" means a gathering of management committee or subcommittee

699 members:

700 (i) in person; or

701 (ii) by telephonic or other means, as provided in Subsection (9).

702 (c) "Subcommittee" means a committee, other than the management committee, that a
 703 governing document designates and authorizes to take action for an association of unit owners.

704 (2) Unless otherwise provided in a declaration or bylaws, Subsections (3) through (13)

705 do not apply:

706 (a) during the period of control provided for in Subsection 57-8-16.5(1); or

707 (b) to a condominium project with fewer than 11 units.

708 (3) (a) Except as provided in Subsection (3)(b), an association of unit owners shall give

709 notice of a meeting:

710 (i) to:
711 (A) each member of the management committee or subcommittee, as the case may be;
712 and
713 (B) unit owners;
714 (ii) as permitted under Section 57-8-42; and
715 (iii) at least two business days before the day of the meeting.
716 (b) Subsection (3)(a) does not apply if:
717 (i) the meeting has been included in a schedule previously given to unit owners;
718 (ii) the meeting has been called to deal with an emergency; or
719 (iii) the action is taken under Section 57-8-57.
720 (c) A notice under Subsection (3)(a) shall:
721 (i) state the time and date of the meeting; and
722 (ii) state the location of the meeting or, if there is no physical location for the meeting,
723 provide the information required under Subsection (9)(b).
724 (4) (a) Except as provided in Subsection (4)(b) and Section 57-8-57, a meeting shall be
725 open to unit owners.
726 (b) The management committee or a subcommittee may hold a closed session during a
727 meeting if the purpose of the session is to:
728 (i) consult with the association of unit owners' attorney to obtain legal advice;
729 (ii) discuss existing or potential litigation, mediation, arbitration, or administrative
730 proceeding;
731 (iii) discuss a labor or personnel matter;
732 (iv) discuss a matter relating to initial contract negotiations, including the review of a
733 bid or proposal;
734 (v) discuss a matter involving a person, if the management committee or subcommittee
735 determines that public knowledge of the matter would violate the person's privacy; or
736 (vi) discuss a delinquent assessment.
737 (5) Members of a management committee or subcommittee may not use incidental or
738 social gatherings to evade the requirement of Subsection (4)(a).
739 (6) A meeting may be called by:
740 (a) a majority of the members of a management committee or subcommittee; or

741 (b) a person designated in a governing document to call a meeting.
742 (7) Unless otherwise provided in the declaration or bylaws, the management committee
743 shall meet at least once per year.
744 (8) A physical meeting at which some or all of the management committee or
745 subcommittee members appear in person shall be:
746 (a) at the association of unit owners, if possible in a common area or facility; or
747 (b) in the county in which the condominium project is located.
748 (9) If a member of the management committee or subcommittee is permitted to
749 participate in a meeting by telephone or other means of communication by which all persons
750 participating in the meeting are able to hear each other during the meeting, the association of
751 unit owners shall provide:
752 (a) a physical location with adequate facilities to permit those entitled to attend the
753 meeting to hear the proceedings; or
754 (b) information to enable those entitled to attend to call into the meeting using a
755 telephone to access the meeting from anywhere in the contiguous United States without
756 incurring any access or long distance charge.
757 (10) At a meeting, the management committee or subcommittee, as the case may be:
758 (a) shall provide unit owners a reasonable opportunity to offer comments; and
759 (b) may limit the time for unit owners to offer comments to one specific period of time
760 during the meeting.
761 (11) A management committee or subcommittee shall, through a means permitted by
762 Section 57-8-42, send a written notice to unit owners of the action taken at a meeting.
763 (12) (a) An association of unit owners that enters a contract with a third party in
764 violation of this section is bound by the contract if the third party:
765 (i) relies on an action of the management committee; and
766 (ii) had no knowledge at the time of entering the contract that the action violates this
767 section.
768 (b) Notwithstanding noncompliance with this section, a management committee action
769 is binding and valid unless a court sets the action aside.
770 (13) For a unit owner to challenge the validity of a management committee or
771 subcommittee action based on a failure to comply with a provision of this section, the unit

772 owner shall:

773 (a) (i) within 90 days after notice of the action is sent to unit owners, give written
774 notice to the association of unit owners objecting to and identifying the noncompliant action;
775 and

776 (ii) initiate an action within 60 days after the conclusion of the 90-day period described
777 in Subsection (13)(a)(i); or

778 (b) if the association of unit owners does not provide notice to unit owners as required
779 under Subsection (11), initiate an action within 18 months after the action of the management
780 committee or subcommittee.

781 Section 12. Section **57-8-56** is enacted to read:

782 **57-8-56. Management committee's action without a meeting.**

783 A management committee may act without a meeting:

784 (1) by following the procedures of Section 16-6a-813; or

785 (2) to undertake ministerial actions or to implement an action that the management
786 committee previously agreed to in an open meeting.

787 Section 13. Section **57-8-57** is enacted to read:

788 **57-8-57. Consolidation of multiple associations of unit owners.**

789 (1) Two or more associations of unit owners may be consolidated into a single
790 association of unit owners as provided in Title 16, Chapter 6a, Part 11, Merger, and this
791 section.

792 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
793 consolidation between two or more associations of unit owners to consolidate into a single
794 association of unit owners is not effective unless it is approved by the unit owners of each of
795 the consolidating associations of unit owners, by the highest percentage of allocated voting
796 interests of the unit owners required by each association of unit owners to amend its respective
797 declaration, articles, or bylaws.

798 (3) A declaration of consolidation under Subsection (2) shall:

799 (a) be prepared, executed, and certified by the president of the association of each of
800 the consolidating associations of unit owners; and

801 (b) provide for the reallocation of the allocated interests in the consolidated association
802 by stating:

803 (i) the reallocations of the allocated interests in the consolidated association of unit
 804 owners or the formulas used to reallocate the allocated interests; or

805 (ii) (A) the percentage of overall allocated interests of the consolidated association of
 806 unit owners that are allocated to all of the units comprising each of the consolidating
 807 associations of unit owners; and

808 (B) that the portion of the percentages allocated to each unit formerly comprising a part
 809 of a consolidating association of unit owners is equal to the percentages of allocated interests
 810 allocated to the unit by the declaration of the consolidating association of unit owners.

811 (4) A declaration of consolidation under Subsection (2) is not effective until it is
 812 recorded in the office of each applicable county recorder.

813 (5) Unless otherwise provided in the declaration of consolidation, the consolidated
 814 association of unit owners resulting from a consolidation under this section:

815 (a) is the legal successor for all purposes of all of the consolidating associations of unit
 816 owners;

817 (b) the operations and activities of all of the consolidating associations of unit owners
 818 shall be consolidated into the consolidated association of unit owners; and

819 (c) the consolidated association of unit owners holds all powers, rights, obligations,
 820 assets, and liabilities of all consolidating associations of unit owners.

821 Section 14. Section **57-8a-102** is amended to read:

822 **57-8a-102. Definitions.**

823 As used in this chapter:

824 (1) (a) "Assessment" means a charge imposed or levied:

825 (i) by the association;

826 (ii) on or against a lot or a lot owner; and

827 (iii) pursuant to a governing document recorded with the county recorder.

828 (b) "Assessment" includes:

829 (i) a common expense; and

830 (ii) an amount assessed against a lot owner under Subsection 57-8a-405~~(8)~~(7).

831 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
 832 other legal entity, ~~each~~ any member of which:

833 (i) is an owner of a residential lot located within the jurisdiction of the association, as

834 described in the governing documents; and

835 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

836 (A) real property taxes;

837 (B) insurance premiums;

838 (C) maintenance costs; or

839 (D) for improvement of real property not owned by the member.

840 (b) "Association" or "homeowner association" does not include an association created
841 under Title 57, Chapter 8, Condominium Ownership Act.

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

844 (4) "Common areas" means property that the association:

845 (a) owns;

846 (b) maintains;

847 (c) repairs; or

848 (d) administers.

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

851 (6) "Declarant":

852 (a) means the person who executes a declaration and submits it for recording in the
853 office of the recorder of the county in which the property described in the declaration is
854 located; and

855 (b) includes the person's successor and assign.

856 (7) (a) "Governing documents" means a written instrument by which the association
857 may:

858 (i) exercise powers; or

859 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
860 association.

861 (b) "Governing documents" includes:

862 (i) articles of incorporation;

863 (ii) bylaws;

864 (iii) a plat;

- 865 (iv) a declaration of covenants, conditions, and restrictions; and
- 866 (v) rules of the association.
- 867 (8) "Judicial foreclosure" means a foreclosure of a lot:
- 868 (a) for the nonpayment of an assessment; and
- 869 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 870 property; and
- 871 (ii) as provided in Part 3, Collection of Assessments.
- 872 (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 873 (a) by a person or persons other than the owner; and
- 874 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 875 gratuity, or emolument.
- 876 (10) "Limited common areas" means common areas described in the declaration and
- 877 allocated for the exclusive use of one or more lot owners.
- 878 (11) "Lot" means:
- 879 (a) a lot, parcel, plot, or other division of land:
- 880 (i) designated for separate ownership or occupancy; and
- 881 (ii) (A) shown on a recorded subdivision plat; or
- 882 (B) the boundaries of which are described in a recorded governing document; or
- 883 (b) (i) a unit in a condominium association if the condominium association is a part of
- 884 a development; or
- 885 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 886 development.
- 887 (12) "Mixed-used project" means a project under this chapter that has both residential
- 888 and commercial lots in the project.
- 889 [~~(12)~~] (13) "Nonjudicial foreclosure" means the sale of a lot:
- 890 (a) for the nonpayment of an assessment; and
- 891 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
- 892 57-1-34; and
- 893 (ii) as provided in Part 3, Collection of Assessments.
- 894 [~~(13)~~] (14) "Residential lot" means a lot, the use of which is limited by law, covenant,
- 895 or otherwise to primarily residential or recreational purposes.

896 Section 15. Section **57-8a-107** is enacted to read:

897 **57-8a-107. Resolution of conflicting governing document provisions.**

898 (1) A conflict involving the application of provisions of the governing documents shall
899 be resolved by applying those provisions in the following order of priority, unless the
900 declaration provides otherwise:

901 (a) a recorded plat;

902 (b) a recorded declaration;

903 (c) the association's articles;

904 (d) the bylaws;

905 (e) the association rules; and

906 (f) any other written instrument through which the association exercises powers or
907 manages, maintains, or otherwise affects the real estate and personal property under the
908 association's authority.

909 (2) (a) A board may modify a form set of articles of incorporation or similar
910 organizational document attached to a recorded declaration for the purpose of filing or refileing
911 the modified articles or other organizational document if the modified articles or organizational
912 document is consistent with this section.

913 (b) Articles of incorporation or bylaws attached to a recorded declaration may be
914 amended as provided by the articles or bylaws and applicable law, even though the articles or
915 bylaws have been recorded.

916 (3) This section applies to an association regardless of when it is established.

917 Section 16. Section **57-8a-108** is enacted to read:

918 **57-8a-108. Amending the declaration to make provisions of this chapter**
919 **applicable.**

920 (1) An association may amend the declaration to make applicable to the association a
921 provision of this chapter that is enacted after the creation of the association, by complying with:

922 (a) the amendment procedures and requirements specified in the declaration and
923 applicable provisions of this chapter; or

924 (b) the amendment procedures and requirements of this chapter, if the declaration
925 being amended does not contain amendment procedures and requirements.

926 (2) If an amendment under Subsection (1) adopts a specific section of this chapter:

927 (a) the amendment grants a right, power, or privilege permitted by that specific section;
928 and

929 (b) all correlative obligations, liabilities, and restrictions in that section also apply.

930 Section 17. Section **57-8a-109** is enacted to read:

931 **57-8a-109. Rules against perpetuities and unreasonable restraints -- Insubstantial**
932 **failure to comply.**

933 (1) The rule against perpetuities and the rule against unreasonable restraints on
934 alienation of real estate may not defeat a provision of a governing document.

935 (2) (a) A declaration that fails to comply with this chapter does not render a title to a lot
936 and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

937 (b) This chapter does not affect whether a substantial failure impairs marketability.

938 Section 18. Section **57-8a-211** is amended to read:

939 **Part 2. Administrative Provisions**

940 **57-8a-211. Reserve analysis -- Reserve fund.**

941 (1) As used in this section[;]:

942 (a) "Reserve analysis" means an analysis to determine:

943 ~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
944 replacing, and restoring common areas that have a useful life of three years or more and a
945 remaining useful life of less than 30 years, but excluding any cost that can reasonably be
946 funded from the association's general budget or from other association funds; and

947 ~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

948 (b) "Reserve fund line item" means the line item in an association's budget that
949 identifies the amount to be placed into a reserve fund.

950 (2) Except as otherwise provided in the governing documents, a board shall:

951 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
952 less frequently than every six years; and

953 ~~[(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve~~
954 ~~analysis to be conducted before July 1, 2012; and]~~

955 (b) review and, if necessary, update a previously conducted reserve analysis no less
956 frequently than every three years.

957 (3) The board may conduct a reserve analysis itself or may engage a reliable person or

958 organization, as determined by the board, to conduct the reserve analysis.

959 (4) (a) A board may not use money in a reserve fund:

960 (i) for daily maintenance expenses, unless a majority of association members vote to
961 approve the use of reserve fund money for that purpose; or

962 (ii) for any purpose other than the purpose for which the reserve fund was established.

963 (b) A board shall maintain [a] reserve [~~fund~~] funds separate from other association
964 funds.

965 (c) This Subsection (4) may not be construed to limit a board from prudently investing
966 money in a reserve fund, subject to any investment constraints imposed by the governing
967 documents.

968 (5) An association shall:

969 (a) annually provide lot owners a summary of the most recent reserve analysis or
970 update; and

971 (b) provide a copy of the complete reserve analysis or update to a lot owner who
972 requests a copy.

973 (6) (a) In formulating its budget each year, an association shall include a reserve fund
974 line item in:

975 (i) an amount the board determines, based on the reserve analysis, to be prudent; or

976 (ii) an amount required by the governing documents, if the governing documents
977 require an amount higher than the amount determined under Subsection (6)(a)(i).

978 (b) Within 45 days after the date of the meeting at which the association budget is
979 adopted, lot owners may disapprove a reserve fund line item:

980 (i) at a special meeting that lot owners call for that purpose; and

981 (ii) by a vote of at least 51% of the allocated voting interests in the association.

982 (c) If lot owners disapprove a reserve fund line item under Subsection (6)(b), the last
983 reserve fund line item that was not disapproved continues to be the budgeted amount to be
984 placed into a reserve fund until the board presents another reserve fund line item that is not
985 disapproved under Subsection (6)(b).

986 (d) An association shall prepare and keep minutes of each special meeting of lot
987 owners held under this Subsection (6) and indicate in the minutes any decision made relating to
988 the funding of a reserve fund.

989 ~~[(5)]~~ (7) Subsections (2)~~[(3), (4), and]~~ through (6) do not apply to an association
 990 during the period of administrative control.

991 ~~[(6) An association shall:]~~

992 ~~[(a) annually, at the annual meeting of lot owners or at a special meeting of lot
 993 owners:]~~

994 ~~[(i) present the reserve study; and]~~

995 ~~[(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to
 996 fund a reserve fund and, if so, how to fund it and in what amount; and]~~

997 ~~[(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and
 998 indicate in the minutes any decision relating to funding a reserve fund.]~~

999 ~~[(7)]~~ (8) This section applies to each association, regardless of when the association
 1000 was created.

1001 Section 19. Section **57-8a-212** is amended to read:

1002 **57-8a-212. Content of a declaration.**

1003 (1) An initial declaration recorded on or after May 10, 2011 shall contain:

1004 (a) the name of the project;

1005 (b) the name of the association;

1006 (c) a statement that the project is not a cooperative;

1007 (d) a statement indicating any portions of the project that contain condominiums
 1008 governed by Chapter 8, Condominium Ownership Act;

1009 (e) if the declarant desires to reserve the option to expand the project, a statement
 1010 reserving the option to expand the project;

1011 (f) the name of each county in which any part of the project is located;

1012 (g) a legally sufficient description of the real estate included in the project;

1013 (h) a description of any limited common areas and any real estate that is or is required
 1014 to become common areas;

1015 (i) any restriction on the alienation of a lot, including a restriction on leasing; and

1016 (j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or
 1017 (iv); and

1018 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
 1019 U.C.A. Sections 57-1-20 and ~~[57-8a-402]~~ 57-8a-302 to (name of trustee), with power of sale,

1020 the lot and all improvements to the lot for the purpose of securing payment of assessments
1021 under the terms of the declaration."

1022 (2) A declaration may contain any other information the declarant considers
1023 appropriate, including any restriction on the use of a lot, the number of persons who may
1024 occupy a lot, or other qualifications of a person who may occupy a lot.

1025 (3) The location of a limited common area or real estate described in Subsection (1)(g)
1026 may be shown on a subdivision plat.

1027 Section 20. Section **57-8a-220** is amended to read:

1028 **57-8a-220. Creditor approval may be required for lot owner or association action**
1029 **under declaration -- Creditor approval presumed in certain circumstances -- Notice to**
1030 **creditor or creditor's successor.**

1031 (1) (a) Subject to Subsection (1)(b), a declaration may:

1032 (i) condition the effectiveness of lot owners' actions specified in the declaration on the
1033 approval of a specified number or percentage of lenders holding a security interest in the lots;
1034 or

1035 (ii) condition the effectiveness of association actions specified in the declaration on the
1036 approval of a specified number or percentage of lenders that have extended credit to the
1037 association.

1038 (b) A condition under Subsection (1)(a) may not:

1039 (i) deny or delegate the lot owners' or board's control over the association's general
1040 administrative affairs;

1041 (ii) prevent the association or board from commencing, intervening in, or settling any
1042 litigation or proceeding; or

1043 (iii) prevent an insurance trustee or the association from receiving or distributing
1044 insurance proceeds under Subsection 57-8a-405[~~(12)~~](11).

1045 (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection
1046 (1)(b) by:

1047 (i) requiring the association to deposit the association's assessments before default with
1048 the lender assigned the income; or

1049 (ii) requiring the association to increase an assessment at the lender's direction by an
1050 amount reasonably necessary to pay the loan in accordance with the loan terms.

1051 (d) This Subsection (1) applies to:
1052 (i) an association formed before, on, or after May 10, 2011; and
1053 (ii) documents created and recorded before, on, or after May 10, 2011.
1054 (2) Subject to this chapter and applicable law, a lender who has extended credit to an
1055 association secured by an assignment of income or an encumbrance of the common areas may
1056 enforce the lender's security agreement as provided in the agreement.
1057 (3) (a) Subject to Subsection (4), a security holder's consent that is required under
1058 Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:
1059 (i) the association sends written notice of the proposed amendment or action by
1060 certified or registered mail to the security holder's address stated in a recorded document
1061 evidencing the security interest; and
1062 (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security
1063 holder's response does not receive a response within 60 days after the association sends notice
1064 under Subsection (3)(a)(i).
1065 (b) If a security holder's address for receiving notice is not stated in a recorded
1066 document evidencing the security interest, an association:
1067 (i) shall use reasonable efforts to find a mailing address for the security holder; and
1068 (ii) may send the notice to any address obtained under Subsection (3)(b)(i).
1069 (4) If a security holder responds in writing within 60 days after the association sends
1070 notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to
1071 another person, the association:
1072 (a) shall:
1073 (i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the
1074 security interest at the address provided by the security holder in the security holder's response;
1075 or
1076 (ii) if no address is provided:
1077 (A) use reasonable efforts to find a mailing address for the person assigned or
1078 conveyed the security interest; and
1079 (B) send notice by certified or registered mail to the person at the address that the
1080 association finds under Subsection (4)(a)(ii)(A); and
1081 (b) may not presume the security holder's consent under Subsection (3)(a) unless the

1082 person designated in a notice under Subsection (4)(a) to receive the response from the person
1083 assigned or conveyed the security interest does not receive a response within 60 days after the
1084 association sends the notice.

1085 Section 21. Section **57-8a-222** is enacted to read:

1086 **57-8a-222. Removing or altering partition between dwelling units on adjoining**
1087 **lots.**

1088 (1) Subject to the declaration, a lot owner may, after acquiring an adjoining lot with a
1089 dwelling unit that shares a common wall with a dwelling unit on the lot owner's lot:

1090 (a) remove or alter a partition between the lot owner's lot and the acquired lot, even if
1091 the partition is entirely or partly common areas; or

1092 (b) create an aperture to the adjoining lot or portion.

1093 (2) A lot owner may not take an action under Subsection (1) if the action would:

1094 (a) impair the structural integrity or mechanical systems of the building or either lot;

1095 (b) reduce the support of any portion of the common areas or another lot; or

1096 (c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local
1097 government land use ordinance, or a building code.

1098 (3) The board may require a lot owner to submit, at the lot owner's expense, a
1099 registered professional engineer's or registered architect's opinion stating that a proposed
1100 change to the lot owner's lot will not:

1101 (a) impair the structural integrity or mechanical systems of the building or either lot;

1102 (b) reduce the support or integrity of common areas; or

1103 (c) compromise structural components.

1104 (4) The board may require a lot owner to pay all of the association's legal and other
1105 expenses related to a proposed alteration to the lot or building under this section.

1106 (5) An action under Subsection (1) does not change an assessment or voting right
1107 attributable to the lot owner's lot or the acquired lot, unless the declaration provides otherwise.

1108 Section 22. Section **57-8a-223** is enacted to read:

1109 **57-8a-223. Eminent domain -- Common area.**

1110 Unless the declaration provides otherwise:

1111 (1) if part of the common area is taken by eminent domain:

1112 (a) the entity taking part of the common area shall pay to the association the portion of

1113 the compensation awarded for the taking that is attributable to the common area; and
1114 (b) the association shall equally divide any portion of the award attributable to the
1115 taking of a limited common area among the owners of the lots to which the limited common
1116 area was allocated at the time of the taking; and
1117 (2) an association shall submit for recording to each applicable county recorder the
1118 court judgment or order in an eminent domain action that results in the taking of some or all of
1119 the common area.

1120 Section 23. Section **57-8a-224** is enacted to read:

1121 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
1122 **common area and lots.**

1123 (1) As used in this section:

1124 (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely
1125 result in immediate and substantial damage to a common area or to another lot.

1126 (b) "Reasonable notice" means:

1127 (i) written notice that is hand delivered to the lot at least 24 hours before the proposed
1128 entry; or

1129 (ii) in the case of an emergency repair, notice that is reasonable under the
1130 circumstances.

1131 (2) Except as otherwise provided in the declaration or Part 4, Insurance:

1132 (a) an association is responsible for the maintenance, repair, and replacement of
1133 common areas; and

1134 (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot
1135 owner's lot.

1136 (3) After reasonable notice to the occupant of the lot being entered, the board may
1137 access a lot:

1138 (a) from time to time during reasonable hours, as necessary for the maintenance, repair,
1139 or replacement of any of the common areas; or

1140 (b) for making an emergency repair.

1141 (4) (a) An association is liable to repair damage it causes to the common areas or to a
1142 lot the association uses to access the common areas.

1143 (b) An association shall repair damage described in Subsection (4)(a) within a time that

1144 is reasonable under the circumstances.

1145 (5) Subsections (2), (3), and (4) do not apply during the period of administrative
1146 control as defined in Section 57-8a-104.

1147 Section 24. Section **57-8a-402** is amended to read:

1148 **57-8a-402. Applicability of part.**

1149 (1) This part applies to an insurance policy or combination of insurance policies:

1150 (a) issued or renewed on or after July 1, 2011; and

1151 (b) issued to or renewed by:

1152 (i) a lot owner; or

1153 (ii) an association, regardless of when the association is formed.

1154 (2) ~~[This]~~ Unless otherwise provided in the declaration, this part does not apply to a
1155 project if all of the project's lots are restricted to entirely nonresidential use.

1156 (3) Subject to Subsection (4), this part does not apply to a project if:

1157 (a) the initial declaration for the project is recorded before January 1, 2012;

1158 (b) the project includes attached dwellings; and

1159 (c) the declaration requires each lot owner to insure the lot owner's dwelling.

1160 (4) (a) An association ~~[that is subject to a declaration recorded before January 1, 2012]~~
1161 to which this part does not apply under Subsection (3) may amend the declaration, as provided
1162 in the declaration and applicable law, to subject the association to this part.

1163 (b) During the period of administrative control, an amendment under Subsection (4)(a)
1164 requires the consent of the declarant.

1165 Section 25. Section **57-8a-403** is amended to read:

1166 **57-8a-403. Property and liability insurance required -- Notice if insurance not**
1167 **reasonably available.**

1168 (1) Beginning not later than the day on which the first lot is conveyed to a person other
1169 than a declarant, an association shall maintain, to the extent reasonably available:

1170 (a) subject to Section 57-8a-405, blanket property insurance or guaranteed replacement
1171 cost insurance on the physical structure of all attached dwellings, limited common areas
1172 appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks
1173 of direct physical loss commonly insured against, including fire and extended coverage perils;
1174 and

1175 (b) subject to Section 57-8a-406, liability insurance~~[-including medical payments~~
 1176 ~~insurance]~~ covering all occurrences commonly insured against for death, bodily injury, and
 1177 property damage arising out of or in connection with the use, ownership, or maintenance of the
 1178 common areas.

1179 (2) If an association becomes aware that property insurance under Subsection (1)(a) or
 1180 liability insurance under Subsection (1)(b) is not reasonably available, the association shall,
 1181 within seven calendar days after becoming aware, give all lot owners notice, as provided in
 1182 Section ~~[57-8a-215]~~ 57-8a-214, that the insurance is not reasonably available.

1183 Section 26. Section **57-8a-404** is amended to read:

1184 **57-8a-404. Other and additional insurance -- Limit on effect of lot owner act or**
 1185 **omission -- Insurer's subrogation waiver -- Inconsistent provisions.**

1186 (1) (a) The declaration or bylaws may require the association to carry other types of
 1187 insurance in addition to those described in Section 57-8a-403.

1188 (b) In addition to any type of insurance coverage or limit of coverage provided in the
 1189 declaration or bylaws and subject to the requirements of this part, an association may, as the
 1190 board considers appropriate, obtain:

- 1191 (i) an additional type of insurance than otherwise required; or
- 1192 (ii) a policy with greater coverage than otherwise required.

1193 (2) Unless a lot owner is acting within the scope of the lot owner's authority on behalf
 1194 of an association, a lot owner's act or omission may not:

1195 (a) void a property insurance policy under Subsection 57-8a-403(1)(a) or a liability
 1196 insurance policy under Subsection 57-8a-403(1)(b); or

1197 (b) be a condition to recovery under a policy.

1198 (3) An insurer under a property insurance policy or liability insurance policy obtained
 1199 by an association under this part waives its right to subrogation under the policy against [~~any~~
 1200 ~~lot owner or member of the lot owner's household.];~~

1201 (a) any person residing with a lot owner, if the lot owner resides on the lot; and

1202 (b) the lot owner.

1203 (4) (a) An insurance policy issued to an association may not be inconsistent with any
 1204 provision of this part.

1205 (b) A provision of a governing document that is contrary to a provision of this part has

1206 no effect.

1207 (c) ~~[A]~~ Neither the governing documents nor a property insurance or liability insurance
1208 policy issued to an association may ~~[not]~~ prevent a lot owner from obtaining insurance for the
1209 lot owner's own benefit.

1210 Section 27. Section **57-8a-405** is amended to read:

1211 **57-8a-405. Property insurance.**

1212 (1) This section applies to property insurance required under Subsection
1213 57-8a-403(1)(a).

1214 ~~[(2) The property covered by property insurance shall include any property that, under~~
1215 ~~the declaration, is required to become common areas.]~~

1216 ~~[(3)]~~ (2) The total amount of coverage provided by blanket property insurance or
1217 guaranteed replacement cost insurance may not be less than 100% of the full replacement cost
1218 of the insured property at the time the insurance is purchased and at each renewal date,
1219 excluding:

1220 (a) items normally excluded from property insurance policies[-]; and

1221 (b) unless otherwise provided in the declaration, any commercial lot in a mixed-use
1222 project, including any fixture, improvement, or betterment in a commercial lot in a mixed-use
1223 project.

1224 ~~[(4)]~~ (3) Property insurance shall include coverage for any fixture, improvement, or
1225 betterment installed ~~[by a lot owner]~~ at any time to an attached dwelling or to a limited
1226 common area appurtenant to a dwelling on a lot, whether installed in the original construction
1227 or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical
1228 fixture, heating or plumbing fixture, paint, wall covering, window, and any other item
1229 permanently part of or affixed to an attached dwelling or to a limited common area.

1230 ~~[(5)]~~ (4) Notwithstanding anything in this part and unless otherwise provided in the
1231 declaration, an association is not required to obtain property insurance for a loss to a dwelling
1232 that is not physically attached to another dwelling or to a common area structure.

1233 ~~[(6)]~~ (5) Each lot owner is an insured person under a property insurance policy.

1234 ~~[(7)]~~ (6) If a loss occurs that is covered by a property insurance policy in the name of
1235 an association and another property insurance policy in the name of a lot owner:

1236 (a) the association's policy provides primary insurance coverage; and

- 1237 (b) notwithstanding Subsection ~~[(7)]~~ (6)(a) and subject to Subsection ~~[(8)]~~ (7):
- 1238 (i) ~~[a]~~ the lot owner is responsible for the association's policy deductible; and
- 1239 (ii) building property coverage, often referred to as coverage A, of the lot owner's
- 1240 policy applies to that portion of the loss attributable to the association's policy deductible.
- 1241 ~~[(8)]~~ (7) (a) As used in this Subsection ~~[(8)]~~ (7) and Subsection (10):
- 1242 (i) "Covered loss" means a loss, resulting from a single event or occurrence, that is
- 1243 covered by an association's property insurance policy.
- 1244 (ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a
- 1245 limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.
- 1246 (iii) "Lot damage percentage" means the percentage of total damage resulting in a
- 1247 covered loss that is attributable to lot damage.
- 1248 (b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is
- 1249 responsible for an amount calculated by applying the lot damage percentage for that lot to the
- 1250 amount of the deductible under the association's property insurance policy.
- 1251 (c) If a lot owner does not pay the amount required under Subsection ~~[(8)]~~ (7)(b) within
- 1252 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the
- 1253 lot, or the limited common area appurtenant to the lot, an association may levy an assessment
- 1254 against a lot owner for that amount.
- 1255 ~~[(9)]~~ (8) An association shall set aside an amount equal to the amount of the
- 1256 association's property insurance policy deductible or, if the policy deductible exceeds \$10,000,
- 1257 [~~whichever is less~~] an amount not less than \$10,000.
- 1258 ~~[(10)]~~ (9) (a) An association shall provide notice in accordance with Section 57-8a-214
- 1259 to each lot owner of the lot owner's obligation under Subsection ~~[(8)]~~ (7) for the association's
- 1260 policy deductible and of any change in the amount of the deductible.
- 1261 (b) (i) An association that fails to provide notice as provided in Subsection ~~[(10)]~~ (9)(a)
- 1262 is responsible for the ~~[amount]~~ portion of the deductible ~~[increase]~~ that the association could
- 1263 have assessed to a lot owner under Subsection ~~[(8)]~~ (7), but only to the extent that the lot owner
- 1264 does not have insurance coverage that would otherwise apply under this section.
- 1265 (ii) Notwithstanding Subsection (9)(b)(i), an association that provides notice of the
- 1266 association's policy deductible, as required under Subsection (9)(a), but fails to provide notice
- 1267 of a later increase in the amount of the deductible is responsible only for the amount of the

1268 increase for which notice was not provided.

1269 (c) An association's failure to provide notice as provided in Subsection [~~(10)~~] (9)(a)
1270 may not be construed to invalidate any other provision of this part.

1271 [~~(11)~~] (10) If, in the exercise of the business judgment rule, the board determines that a
1272 [claim] covered loss is likely not to exceed the association's property insurance policy
1273 deductible, and until it becomes apparent the covered loss exceeds the association's property
1274 insurance deductible and a claim is submitted to the association's property insurance insurer:

1275 (a) for a lot to which a loss occurs, the lot owner's policy is considered the policy for
1276 primary coverage [~~to the amount of the association's policy deductible~~] for the damage to that
1277 lot;

1278 (b) the association is responsible for any covered loss to any common area;

1279 [~~(b)~~] (c) a lot owner who does not have a policy to cover the [~~association's property~~
1280 ~~insurance policy deductible~~] damage to that lot owner's lot is responsible for [~~the loss to the~~
1281 ~~amount of the association's policy deductible, as provided in Subsection (8)] that lot damage,
1282 and the association may, as provided in Subsection (7)(c), recover any payments the association
1283 makes to remediate that lot; and~~

1284 [~~(c)~~] (d) the association need not tender the claim to the association's insurer.

1285 [~~(12)~~] (11) (a) An insurer under a property insurance policy issued to an association
1286 shall adjust with the association a loss covered under the association's policy.

1287 (b) Notwithstanding Subsection [~~(12)~~] (11)(a), the insurance proceeds for a loss under
1288 an association's property insurance policy:

1289 (i) are payable to an insurance trustee that the association designates or, if no trustee is
1290 designated, to the association; and

1291 (ii) may not be payable to a holder of a security interest.

1292 (c) An insurance trustee or an association shall hold any insurance proceeds in trust for
1293 the association, lot owners, and lien holders.

1294 (d) (i) [~~Insurance~~] If damaged property is to be repaired or restored, insurance proceeds
1295 shall be disbursed first for the repair or restoration of the damaged property.

1296 (ii) After the disbursements described in Subsection [~~(12)~~] (11)(d)(i) are made and the
1297 damaged property has been completely repaired or restored or the project terminated, any
1298 surplus proceeds are payable to the association, lot owners, and lien holders, as provided in the

1299 declaration.

1300 [~~(13)~~] (12) An insurer that issues a property insurance policy under this part, or the
1301 insurer's authorized agent, shall issue a certificate or memorandum of insurance to:

1302 (a) the association;

1303 (b) a lot owner, upon the lot owner's written request; and

1304 (c) a holder of a security interest, upon the holder's written request.

1305 [~~(14)~~] (13) A cancellation or nonrenewal of a property insurance policy under this
1306 section is subject to the procedures stated in Section 31A-21-303.

1307 [~~(15)~~] (14) A board that acquires from an insurer the property insurance required in this
1308 section is not liable to lot owners if the insurance proceeds are not sufficient to cover 100% of
1309 the full replacement cost of the insured property at the time of the loss.

1310 (15) (a) Unless required in the declaration, property insurance coverage is not required
1311 for fixtures, improvements, or betterments in a commercial lot or limited common areas
1312 appurtenant to a commercial lot in a mixed-use project.

1313 (b) Notwithstanding any other provision of this part, an association may obtain
1314 property insurance for fixtures, improvements, and betterments in a commercial lot in a
1315 mixed-use project if allowed or required in the declaration.

1316 (16) (a) This section does not prevent a person suffering a loss, as a result of damage to
1317 property, from asserting a claim, either directly or through subrogation, for the loss against a
1318 person at fault for the loss.

1319 (b) Subsection (16)(a) does not affect Subsection 57-8a-404(3).

1320 Section 28. Section **57-8a-406** is amended to read:

1321 **57-8a-406. Liability insurance.**

1322 (1) This section applies to a liability insurance policy required under Subsection
1323 57-8a-403(1)(b).

1324 (2) A liability insurance policy shall be in an amount determined by the board but not
1325 less than an amount specified in the declaration or bylaws.

1326 (3) Each lot owner is an insured person under a liability insurance policy that an
1327 association obtains [~~that insures against~~], but only for liability arising from:

1328 (a) the lot owner's ownership interest in the common areas [or from];

1329 (b) maintenance, repair, or replacement of common areas; and

1330 (c) the lot owner's membership in the association.

1331 Section 29. Section **57-8a-407** is amended to read:

1332 **57-8a-407. Damage to a portion of project -- Insurance proceeds.**

1333 (1) (a) If a portion of the project for which insurance is required under this part is
1334 damaged or destroyed, the association shall repair or replace the portion within a reasonable
1335 amount of time unless:

1336 (i) the project is terminated;

1337 (ii) repair or replacement would be illegal under a state statute or local ordinance
1338 governing health or safety; or

1339 (iii) (A) at least 75% of the allocated voting interests of the lot owners in the
1340 association vote not to rebuild; and

1341 (B) each owner of a dwelling on a lot and the limited common area appurtenant to that
1342 lot that will not be rebuilt votes not to rebuild.

1343 (b) If a portion of a project is not repaired or replaced because the project is terminated,
1344 the termination provisions of applicable law and the governing documents apply.

1345 (2) (a) The cost of repair or replacement of any lot in excess of insurance proceeds and
1346 reserves is a common expense[-] to the extent the association is required under this chapter to
1347 provide insurance coverage for the lot.

1348 (b) The cost of repair or replacement of any common area in excess of insurance
1349 proceeds and reserves is a common expense.

1350 (3) If the entire project is damaged or destroyed and not repaired or replaced:

1351 (a) the association shall use the insurance proceeds attributable to the damaged
1352 common areas to restore the damaged area to a condition compatible with the remainder of the
1353 project;

1354 (b) the association shall distribute the insurance proceeds attributable to lots and
1355 common areas that are not rebuilt to:

1356 (i) the lot owners of the lots that are not rebuilt;

1357 (ii) the lot owners of the lots to which those common areas that are not rebuilt were
1358 allocated; or

1359 (iii) lien holders; and

1360 (c) the association shall distribute the remainder of the proceeds to all the lot owners or

1361 lien holders in proportion to the common expense liabilities of all the lots.

1362 (4) If the lot owners vote not to rebuild a lot:

1363 (a) the lot's allocated interests are automatically reallocated upon the lot owner's vote
1364 as if the lot had been condemned; and

1365 (b) the association shall prepare, execute, and submit for recording an amendment to
1366 the declaration reflecting the reallocations described in Subsection (4)(a).

1367 Section 30. Section **57-8a-501** is enacted to read:

1368 **Part 5. Association Board**

1369 **57-8a-501. Board acts for association.**

1370 Except as limited in a declaration, the association bylaws, or other provisions of this
1371 chapter, a board acts in all instances on behalf of the association.

1372 Section 31. Section **57-8a-502** is enacted to read:

1373 **57-8a-502. Meetings of the board or subcommittee.**

1374 (1) As used in this section:

1375 (a) "Emergency" means a set of circumstances that:

1376 (i) could not have been reasonably foreseen;

1377 (ii) requires immediate attention and possible board action; and

1378 (iii) makes it impracticable to provide the notice required under this section.

1379 (b) "Meeting" means a gathering of board or subcommittee members:

1380 (i) in person; or

1381 (ii) by telephonic or other means, as provided in Subsection (9).

1382 (c) "Subcommittee" means a committee, other than the board, that a governing
1383 document designates and authorizes to take action for an association.

1384 (2) Unless otherwise provided in a declaration or bylaws, Subsections (3) through (13)
1385 do not apply:

1386 (a) during the period of administrative control defined in Section 57-8a-104; or

1387 (b) to an association that includes fewer than 11 lots.

1388 (3) (a) Except as provided in Subsection (3)(b), an association shall give notice of a
1389 meeting:

1390 (i) to:

1391 (A) each member of the board or subcommittee, as the case may be; and

1392 (B) lot owners;
1393 (ii) as permitted under Section 57-8a-214; and
1394 (iii) at least two business days before the day of the meeting.
1395 (b) Subsection (3)(a) does not apply if:
1396 (i) the meeting has been included in a schedule previously given to lot owners;
1397 (ii) the meeting has been called to deal with an emergency; or
1398 (iii) the action is taken under Section 57-8a-503.
1399 (c) A notice under Subsection (3)(a) shall:
1400 (i) state the time and date of the meeting; and
1401 (ii) state the location of the meeting or, if there is no physical location for the meeting,
1402 provide the information required under Subsection (9)(b).
1403 (4) (a) Except as provided in Subsection (4)(b) and Section 57-8a-503, a meeting shall
1404 be open to lot owners.
1405 (b) The board or a subcommittee may hold a closed session during a meeting if the
1406 purpose of the session is to:
1407 (i) consult with the association's attorney to obtain legal advice;
1408 (ii) discuss existing or potential litigation, mediation, arbitration, or administrative
1409 proceeding;
1410 (iii) discuss a labor or personnel matter;
1411 (iv) discuss a matter relating to initial contract negotiations, including the review of a
1412 bid or proposal;
1413 (v) discuss a matter involving a person, if the board or subcommittee determines that
1414 public knowledge of the matter would violate the person's privacy; or
1415 (vi) discuss a delinquent assessment.
1416 (5) Members of a board or subcommittee may not use incidental or social gatherings to
1417 evade the requirement of Subsection (4)(a).
1418 (6) A meeting may be called by:
1419 (a) a majority of the members of a board or subcommittee; or
1420 (b) a person designated in a governing document to call a meeting.
1421 (7) Unless otherwise provided in the declaration or bylaws, the board shall meet at
1422 least once per year.

1423 (8) A physical meeting at which some or all of the board or subcommittee members
1424 appear in person shall be:

1425 (a) at the association, if possible in a common area; or

1426 (b) in a location convenient to the association.

1427 (9) If a member of the board or subcommittee is permitted to participate in a meeting
1428 by telephone or other means of communication by which all persons participating in the
1429 meeting are able to hear each other during the meeting, the association shall provide:

1430 (a) a physical location with adequate facilities to permit those entitled to attend the
1431 meeting to hear the proceedings; or

1432 (b) information to enable those entitled to attend to call into the meeting using a
1433 telephone to access the meeting from anywhere in the contiguous United States without
1434 incurring any access or long distance charge.

1435 (10) At a meeting, the board or subcommittee, as the case may be:

1436 (a) shall provide lot owners a reasonable opportunity to offer comments; and

1437 (b) may limit the time for lot owners to offer comments to one specific period of time
1438 during the meeting.

1439 (11) A board or subcommittee shall, through a means permitted by Section 57-8a-214,
1440 send a written notice to lot owners of the action taken at a meeting.

1441 (12) (a) An association that enters a contract with a third party in violation of this
1442 section is bound by the contract if the third party:

1443 (i) relies on an action of the board; and

1444 (ii) had no knowledge at the time of entering the contract that the action violates this
1445 section.

1446 (b) Notwithstanding noncompliance with this section, a board action is binding and
1447 valid unless a court sets the action aside.

1448 (13) For a lot owner to challenge the validity of a board or subcommittee action based
1449 on a failure to comply with a provision of this section, the lot owner shall:

1450 (a) (i) within 90 days after notice of the action is sent to lot owners, give written notice
1451 to the association objecting to and identifying the noncompliant action; and

1452 (ii) initiate an action within 60 days after the conclusion of the 90-day period described
1453 in Subsection (13)(a)(i); or

1454 (b) if the association does not provide notice to lot owners as required under
1455 Subsection (11), initiate an action within 18 months after the action of the board or
1456 subcommittee.

1457 Section 32. Section **57-8a-503** is enacted to read:

1458 **57-8a-503. Board action without a meeting.**

1459 A board may act without a meeting:

1460 (1) by following the procedures of Section 16-6a-813; or

1461 (2) to undertake ministerial actions or to implement an action that the board previously
1462 agreed to in an open meeting.

1463 Section 33. Section **57-8a-504** is enacted to read:

1464 **57-8a-504. Period of administrative control.**

1465 (1) Unless otherwise provided for in a declaration, a period of administrative control
1466 terminates on the first to occur of the following:

1467 (a) 60 days after 75% of the lots that may be created are conveyed to lot owners other
1468 than a declarant;

1469 (b) seven years after all declarants have ceased to offer lots for sale in the ordinary
1470 course of business; or

1471 (c) the day the declarant, after giving written notice to the lot owners, records an
1472 instrument voluntarily surrendering all rights to control activities of the association.

1473 (2) (a) A declarant may voluntarily surrender the right to appoint and remove a member
1474 of the board before the period of administrative control terminates under Subsection (1).

1475 (b) Subject to Subsection (2)(a), the declarant may require, for the duration of the
1476 period of administrative control, that actions of the association or board, as specified in a
1477 recorded instrument executed by the declarant, be approved by the declarant before they
1478 become effective.

1479 (3) (a) Upon termination of the period of administrative control, the lot owners shall
1480 elect a board consisting of an odd number of at least three members, a majority of whom shall
1481 be lot owners.

1482 (b) Unless the declaration provides for the election of officers by the lot owners, the
1483 board shall elect officers of the association.

1484 (c) The board members and officers shall take office upon election or appointment.

1485 Section 34. Section **57-8a-601** is enacted to read:

1486 **Part 6. Consolidation of Associations**

1487 **57-8a-601. Consolidation of multiple associations.**

1488 (1) Two or more associations may be consolidated into a single association as provided
1489 in Title 16, Chapter 6a, Part 11, Merger, and this section.

1490 (2) Unless the declaration, articles, or bylaws otherwise provide, a declaration of
1491 consolidation between two or more associations to consolidate into a single association is not
1492 effective unless it is approved by the lot owners of each of the consolidating associations by the
1493 highest percentage of allocated voting interests of the lot owners required by each association
1494 to amend its respective declaration, articles, or bylaws.

1495 (3) A declaration of consolidation under Subsection (2) shall:

1496 (a) be prepared, executed, and certified by the president of each of the consolidating
1497 associations; and

1498 (b) provide for the reallocation of the allocated interests in the consolidated association
1499 by stating:

1500 (i) the reallocations of the allocated interests in the consolidated association or the
1501 formulas used to reallocate the allocated interests; or

1502 (ii) (A) the percentage of overall allocated interests of the consolidated association that
1503 are allocated to all of the lots comprising each of the consolidating associations; and

1504 (B) that the portion of the percentages allocated to each lot formerly comprising a part
1505 of a consolidating association is equal to the percentages of allocated interests allocated to the
1506 lot by the declaration of the consolidating association.

1507 (4) A declaration of consolidation under Subsection (2) is not effective until it is
1508 recorded in the office of each applicable county recorder.

1509 (5) Unless otherwise provided in the declaration of consolidation:

1510 (a) the consolidated association resulting from a consolidation under this section is the
1511 legal successor for all purposes of all of the consolidating associations;

1512 (b) the operations and activities of all of the consolidating associations shall be
1513 consolidated into the consolidated association; and

1514 (c) the consolidated association holds all powers, rights, obligations, assets, and
1515 liabilities of all consolidating associations.

1516 Section 35. Section **76-6-206** is amended to read:
1517 **76-6-206. Criminal trespass.**
1518 (1) As used in this section, "enter" means intrusion of the entire body.
1519 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
1520 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section
1521 76-10-2402 regarding commercial obstruction:
1522 (a) the person enters or remains unlawfully on property and:
1523 (i) intends to cause annoyance or injury to any person or damage to any property,
1524 including the use of graffiti as defined in Section 76-6-107;
1525 (ii) intends to commit any crime, other than theft or a felony; or
1526 (iii) is reckless as to whether his presence will cause fear for the safety of another;
1527 (b) knowing the person's entry or presence is unlawful, the person enters or remains on
1528 property as to which notice against entering is given by:
1529 (i) personal communication to the actor by the owner or someone with apparent
1530 authority to act for the owner;
1531 (ii) fencing or other enclosure obviously designed to exclude intruders; or
1532 (iii) posting of signs reasonably likely to come to the attention of intruders; or
1533 (c) the person enters a condominium unit in violation of Subsection 57-8-7~~(7)~~(8).
1534 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was
1535 committed in a dwelling, in which event it is a class A misdemeanor.
1536 (b) A violation of Subsection (2)(c) is an infraction.
1537 (4) It is a defense to prosecution under this section that:
1538 (a) the property was open to the public when the actor entered or remained; and
1539 (b) the actor's conduct did not substantially interfere with the owner's use of the
1540 property.

Legislative Review Note
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