

## **UTAH**

### **Title 57 Real Estate Chapter 8 Condominium Ownership Act**

#### **57-8-1. Short title.**

This act shall be known and may be cited as the "Condominium Ownership Act."

#### **57-8-2. Applicability of chapter.**

This act shall be applicable only to property which the sole owner or all the owners submit to the provisions of the act by duly executing and recording a declaration as provided in the act.

#### **57-8-3. Definitions.**

As used in this chapter:

- (1) "Assessment" means any charge imposed by the association, including common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter.
- (2) "Association of unit owners" means all of the unit owners:
  - (a) acting as a group in accordance with the declaration and bylaws; or
  - (b) organized as a legal entity in accordance with the declaration.
- (3) "Building" means a building, containing units, and comprising a part of the property.
- (4) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:
  - (a) the land included within the condominium project, whether leasehold or in fee simple;
  - (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;
  - (c) the basements, yards, gardens, parking areas, and storage spaces;
  - (d) the premises for lodging of janitors or persons in charge of the property;
  - (e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
  - (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
  - (g) such community and commercial facilities as may be provided for in the declaration; and
  - (h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- (5) "Common expenses" means:
  - (a) all sums lawfully assessed against the unit owners;
  - (b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;
  - (c) expenses agreed upon as common expenses by the association of unit owners; and
  - (d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.
- (6) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.
- (7) "Condominium" means the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.
- (8) "Condominium plat" means a plat or plats of survey of land and units prepared in accordance with Section **57-8-13.**
- (9) "Condominium project" means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.
- (10) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.
- (11) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with provisions of the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.
- (12) "Convertible land" means a building site which is a portion of the common areas and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in

accordance with this chapter.

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

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

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

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

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

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

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

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

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

(22) "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.

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

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

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

(26) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in Subsection 57-19-2(17).

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

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

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

**57-8-4. Status of the units.**

Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

**57-8-5. Recognized tenancy relationships.**

Any unit may be held and owned by more than one person as joint tenants, or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.

**57-8-6. Ownership and possession rights.**

Each unit owner shall be entitled to the exclusive ownership and possession of his unit. The owner of a time period condominium unit shall be entitled to the exclusive ownership and possession of the physical unit to which his time period relates and shall be entitled to the use and enjoyment of the common areas and facilities during, but only during, such annually recurring part or parts of a year as describe and define the time period unit concerned in the declaration.

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

(1) As used in this section:

(a) "emergency repairs" means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to the common areas and facilities or to another unit or units; and

(b) "reasonable notice" means written notice which is hand delivered to the unit at least 24 hours prior to the proposed entry.

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

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

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

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

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

(7) The manager or management committee shall have the right to have access to each unit:

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

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

**57-8-7.2. Scope -- Designation of certain areas.**

(1) Unless otherwise provided in the declaration, this section applies to a unit if the declaration designates a wall, floor, or ceiling as a boundary of the unit.

(2) (a) The following are part of a unit:

- (i) lath;
- (ii) furring;
- (iii) wallboard;
- (iv) plasterboard;
- (v) plaster;
- (vi) paneling;
- (vii) tiles;
- (viii) wallpaper;
- (ix) paint;
- (x) finished flooring; and
- (xi) any other material constituting part of the finished surface of a wall, floor, or ceiling.

(b) Any portion of a wall, floor, or ceiling not listed in Subsection (2)(a) is part of the common areas and facilities.

(3) If a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit:

(a) any portion of an item described in this Subsection (3) serving only that unit is part of the limited common areas and facilities; and

(b) any portion of an item described in this Subsection (3) is part of the common areas and facilities if the item serves:

- (i) more than one unit; or
- (ii) any portion of the common areas and facilities.

(4) Subject to Subsection (3), the following within the boundaries of a unit are part of the unit:

- (a) spaces;
- (b) interior partitions; and
- (c) other fixtures and improvements.

(5) The following, if designated to serve a single unit but located outside the unit's boundaries, are limited common areas and facilities allocated exclusively to a unit:

- (a) a shutter;
- (b) an awning;
- (c) a window box;
- (d) a doorstep;
- (e) a stoop;
- (f) a porch;
- (g) a balcony;
- (h) a patio;
- (i) an exterior door;
- (j) an exterior window; and
- (k) any other fixture.

**57-8-8. Compliance with covenants, bylaws and/or house rules and administrative provisions.**

Subject to reasonable compliance therewith by the manager and the management committee, each unit owner shall reasonably comply with the covenants, conditions, and restrictions as set forth in the declaration or in the deed to his unit, and with the bylaws and/or house rules and with the administrative rules and regulations drafted pursuant thereto, as either of the same may be lawfully amended from time to time, and failure to comply shall be ground for an action to recover sums due for damages or injunctive relief or both, maintainable by the manager or management committee on behalf of the unit owners, or in a proper case, by an aggrieved unit owner.

**57-8-9. Certain work prohibited.**

No unit owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other unit owners being first obtained.

**57-8-10. Contents of declaration.**

(1) Prior to the conveyance of any unit in a condominium project, a declaration shall be recorded that contains the covenants, conditions, and restrictions relating to the project that shall be enforceable equitable servitudes, where reasonable, and which shall run with the land. Unless otherwise provided, these servitudes may be enforced by any unit owner and his successors in interest.

(2) (a) For every condominium project:

(i) The declaration shall include a description of the land or interests in real property included within the project.

(ii) The declaration shall contain a description of any buildings, which states the number of storeys and basements, the number of units, the principal materials of which the building is or is to be constructed, and a description of all other significant improvements contained or to be contained in the project.

(iii) The declaration shall contain the unit number of each unit, the square footage of each unit, and any other description or information necessary to properly identify each unit.

(iv) The declaration shall describe the common areas and facilities of the project.

(v) The declaration shall describe any limited common areas and facilities and shall state to which units the use of the common areas and facilities is reserved.

(b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall constitute a limited common area and facility appertaining to that unit exclusively, whether or not the declaration makes such a provision.

(c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (2)(a) and (b).

(d) (i) The declaration shall include the percentage or fraction of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, derived and allocated in accordance with Subsection 57-8-7(2).

(ii) If any use restrictions are to apply, the declaration shall state the purposes for which the units are intended and restricted as to use.

(iii) (A) The declaration shall include the name of a person to receive service of process on behalf of the project, in the cases provided by this chapter, together with the residence or place of business of that person.

(B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall maintain a place of business within, this state.

(iv) The declaration shall describe the method by which it may be amended consistent with this chapter.

(v) Any further matters in connection with the property may be included in the declaration, which the person or persons executing the declaration may consider desirable consistent with this chapter.

(vi) The declaration shall contain a statement of intention that this chapter applies to the property.

(3) (a) If the condominium project contains any convertible land:

(i) The declaration shall contain a legal description by metes and bounds of each area of convertible land within the condominium project.

(ii) The declaration shall state the maximum number of units that may be created within each area of convertible land.

(iii) (A) The declaration shall state, with respect to each area of convertible land, the maximum percentage of the aggregate land and floor area of all units that may be created and the use of which will not or may not be restricted exclusively to residential purposes.

(B) The statements described in Subsection (3)(a)(iii)(A) need not be supplied if none of the units on other portions of the land within the project are restricted exclusively to residential use.

(iv) The declaration shall state the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the land within the condominium project in terms of quality of construction, the principal materials to be used, and architectural style.

(v) The declaration shall describe all other improvements that may be made on each area of convertible land within the condominium project.

(vi) The declaration shall state that any units created within each area of convertible land will be substantially identical to the units on other portions of the land within the project or it shall describe in detail what other type of units may be created.

(vii) The declaration shall describe the declarant's reserved right, if any, to create limited common areas and facilities within any convertible land in terms of the types, sizes, and maximum number of the limited common areas within each convertible land.

(b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsection (3)(a).

(4) If the condominium is an expandable condominium project:

(a) (i) (A) The declaration shall contain an explicit reservation of an option to expand the project.

(B) The declaration shall include a statement of any limitations on the option to expand, including a statement

as to whether the consent of any unit owners shall be required and, a statement as to the method by which consent shall be ascertained, or a statement that there are no such limitations.

(ii) The declaration shall include a time limit, not exceeding seven years from the date of the recording of the declaration, upon which the option to expand the condominium project shall expire, together with a statement of any circumstances which will terminate the option prior to expiration of the specified time limits.

(iii) The declaration shall contain a legal description by metes and bounds of all land that may be added to the condominium project, which is known as additional land.

(iv) The declaration shall state:

(A) if any of the additional land is added to the condominium project, whether all of it or any particular portion of it must be added;

(B) any limitations as to what portions may be added; or

(C) a statement that there are no such limitations.

(v) The declaration shall include a statement as to whether portions of the additional land may be added to the condominium project at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of these lands and regulating the order in which they may be added to the condominium project.

(vi) The declaration shall include a statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium project, or a statement that no assurances are made in that regard.

(vii) The declaration shall state the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium project and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the declaration shall also state the maximum number of units that may be created on each portion added to the condominium project. If portions of the additional land may be added to the condominium project and the boundaries of those portions are not fixed in accordance with Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per acre that may be created on any portion added to the condominium project.

(viii) With respect to the additional land and to any portion of it that may be added to the condominium project, the declaration shall state the maximum percentage of the aggregate land and floor area of all units that may be created on it, the use of which will not or may not be restricted exclusively to residential purposes. However, these statements need not be supplied if none of the units on the land originally within the project are restricted exclusively to residential use.

(ix) The declaration shall state the extent to which any structures erected on any portion of the additional land added to the condominium project will be compatible with structures on the land originally within the project in terms of quality of construction, the principal materials to be used, and architectural style. The declaration may also state that no assurances are made in those regards.

(x) The declaration shall describe all other improvements that will be made on any portion of the additional land added to the condominium project, or it shall contain a statement of any limitations as to what other improvements may be made on it. The declaration may also state that no assurances are made in that regard.

(xi) The declaration shall contain a statement that any units created on any portion of the additional land added to the condominium project will be substantially identical to the units on the land originally within the project, or a statement of any limitations as to what types of units may be created on it. The declaration may also contain a statement that no assurances are made in that regard.

(xii) The declaration shall describe the declarant's reserved right, if any, to create limited common areas and facilities within any portion of the additional land added to the condominium project, in terms of the types, sizes, and maximum number of limited common areas within each portion. The declaration may also state that no assurances are made in those regards.

(b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through (a)(xii).

(5) If the condominium project is a contractible condominium:

(a) (i) The declaration shall contain an explicit reservation of an option to contract the condominium project.

(ii) The declaration shall contain a statement of any limitations on the option to contract, including a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method by which this consent shall be ascertained. The declaration may also contain a statement that there are no such limitations.

(iii) The declaration shall state the time limit, not exceeding seven years from the recording of the declaration, upon which the option to contract the condominium project shall expire, together with a statement of any circumstances which will terminate this option prior to expiration of the specified time limit.

(b) (i) The declaration shall include a legal description by metes and bounds of all land that may be withdrawn from the condominium project, which is known as withdrawable land.

(ii) The declaration shall include a statement as to whether portions of the withdrawable land may be

withdrawn from the condominium project at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds and regulating the order in which they may be withdrawn from the condominium project.

(iii) The declaration shall include a legal description by metes and bounds of all of the land within the condominium project to which the option to contract the project does not extend.

(c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsection (5)(b).

(6) (a) If the condominium project is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium project:

(i) The declaration shall include recording information enabling the location of each lease in the official records of the county recorder.

(ii) The declaration shall include the date upon which each lease is due to expire.

(iii) The declaration shall state whether any land or improvements will be owned by the unit owners in fee simple. If there is to be fee simple ownership, the declaration shall include:

(A) a description of the land or improvements, including without limitation, a legal description by metes and bounds of the land; or

(B) a statement of any rights the unit owners have to remove these improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights.

(iv) The declaration shall include a statement of the rights the unit owners have to extend or renew any of the leases or to redeem or purchase any of the reversions, or a statement that they have no such rights.

(b) After the recording of the declaration, no lessor who executed the declaration, and no successor in interest to this lessor, has any right or power to terminate any part of the leasehold interest of any unit owner who:

(i) makes timely payment of his share of the rent to the persons designated in the declaration for the receipt of the rent; and

(ii) otherwise complies with all covenants which would entitle the lessor to terminate the lease if they were violated.

(7) (a) If the condominium project contains time period units, the declaration shall also contain the location of each condominium unit in the calendar year. This information shall be set out in a fourth column of the exhibit or schedule referred to in Subsection **57-8-7(2)**, if the exhibit or schedule accompanies the declaration.

(b) The declaration shall also put timeshare owners on notice that tax notices will be sent to the management committee, not each timeshare owner.

(c) The time period units created with respect to any given physical unit shall be such that the aggregate of the durations involved constitute a full calendar year.

(8) (a) The declaration, bylaws, and condominium plat shall be duly executed and acknowledged by all of the owners and any lessees of the land which is made subject to this chapter.

(b) As used in Subsection (8)(a), "owners and lessees" does not include, in their respective capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common areas and facilities.

(9) (a) As used in this section, "rentals" or "rental unit" means:

(i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is occupied by someone while no unit owner occupies the unit as the unit owner's primary residence; and

(ii) a unit owned by an entity or trust, regardless of who occupies the unit.

(b) (i) Subject to Subsections (9)(c), (f), and (g), an association of unit owners may:

(A) create restrictions on the number and term of rentals in a condominium project; or

(B) prohibit rentals in the condominium project.

(ii) An association of unit owners that creates a rental restriction or prohibition in accordance with Subsection (9)(b)(i) shall create the rental restriction or prohibition in a declaration or by amending the declaration.

(c) If an association of unit owners prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:

(i) a provision that requires a condominium project to exempt from the rental restrictions the following unit owner and the unit owner's unit:

(A) a unit owner in the military for the period of the unit owner's deployment;

(B) a unit occupied by a unit owner's parent, child, or sibling;

(C) a unit owner whose employer has relocated the unit owner for no less than two years; or

(D) a unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

(I) a current resident of the unit; or

- (II) the parent, child, or sibling of the current resident of the unit;
- (ii) a provision allowing a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the county recorder of the county in which the condominium project is located to continue renting until:
  - (A) the unit owner occupies the unit; or
  - (B) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; and
- (iii) a requirement that the association of unit owners create, by rule or resolution, procedures to:
  - (A) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (9)(c)(i) and (ii); and
  - (B) ensure consistent administration and enforcement of the rental restrictions.
- (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the following occur:
  - (i) the conveyance, sale, or other transfer of a unit by deed;
  - (ii) the granting of a life estate in the unit; or
  - (iii) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- (e) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.
- (f) A declaration or amendment to a declaration recorded prior to transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (9)(c).
- (g) This section does not apply to:
  - (i) a condominium project containing a time period unit as defined in Section **57-8-3**;
  - (ii) any other form of timeshare interest as defined in Section **57-19-2**; or
  - (iii) a condominium project in which the initial declaration is recorded before May 12, 2009.
- (h) Notwithstanding this section, an association of unit owners may, upon unanimous approval by all unit owners, restrict or prohibit rentals without an exception described in Subsection (9)(c).

#### **57-8-11. Contents of deeds of units.**

A deed of units may include:

- (1) a description of the land as provided in Section **57-8-10**, including the book and page or entry number and date of recording of the declaration;
- (2) the unit number of the unit and any other data necessary for its proper identification;
- (3) percentage of undivided interest appertaining to the unit in the common or community areas and facilities; and
- (4) any further particulars that the grantor and grantee consider desirable to set forth consistent with the declaration and this chapter.

#### **57-8-12. Recording.**

- (1) The declaration, any amendment, any instrument by which the provisions of this act may be waived, and every instrument affecting the property or any unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless recorded.
- (2) In addition to the records and indexes now required to be maintained by the recorder, the recorder shall maintain an index whereby the record of each condominium project contains a reference to the declaration, each conveyance of, lien against, and all other instruments referring to a unit affected by such declaration, and the record of each conveyance of, lien against, and all other instruments referring to a unit shall contain a reference to the declaration of the property of which the unit is a part.

#### **57-8-13. Condominium plat to be recorded.**

- (1) (a) Simultaneously with the recording of the declaration there shall be recorded a standard size, original linen (21" x 31") condominium plat with 6-1/4" x 1-1/2" recording information block, which map shall be made by a registered Utah land surveyor and shall set forth:
  - (i) a description of the surface of the land included within the project, including all angular and linear data along the exterior boundaries of the property;
  - (ii) the linear measurement and location, with reference to the exterior boundaries, of the building or buildings, if any, located or to be located on the property other than within the boundaries of any convertible lands;
  - (iii) diagrammatic floor plans of the building or buildings, if any, built or to be built on the property, other than within the boundaries of any convertible lands, in sufficient detail to identify each convertible space and physical unit contained within a building, including its identifying number or symbol, the official datum elevations of the

finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and the lateral extensions, of every such convertible space and unit;

(iv) a description or delineation of the boundaries of any unit or convertible space not contained or to be contained in a building or whose boundaries are not to be coextensive with walls, ceilings, or floors within a building, other than units located within the boundaries of any convertible lands, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries;

(v) a distinguishing number or other symbol for every physical unit identified on the condominium plat;

(vi) to the extent feasible, the location and dimensions of all easements appurtenant to the land included within the project;

(vii) the label "convertible space" for each such space, if any;

(viii) the location and dimensions of any convertible lands within the condominium project, with each such convertible land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;

(ix) the location and dimensions of any withdrawable lands, with each such withdrawable land labeled as such, and if there be more than one such land, with each labeled with a different letter or number;

(x) if with respect to any portion or portions, but less than all, of the land included within the project the unit owners are to own only an estate for years, the location and dimensions of any such portion, with each labeled as a leased land, and if there be more than one such land, with each labeled with a different letter or number; and

(xi) any encroachments by or on any portion of the condominium project.

(b) Each such condominium plat shall be certified as to its accuracy and compliance with the provisions of this Subsection (1) by the land surveyor who prepared or who supervised the preparation of the same and shall be executed and acknowledged as provided in Subsection **57-8-10(8)**.

(2) When converting all or any portion of any convertible land or when adding additional land to an expandable condominium, the declarant shall record a new or supplemental condominium plat which shall contain the information necessary to comply with the requirements of Subsection (1) of this section. In any case where less than all of a convertible land is being converted, the condominium plat shall show the location and dimensions of the remaining portion or portions of the land in addition to otherwise meeting such requirements.

(3) When converting all or any portion of any convertible space into one or more units or limited common areas and facilities, the declarant shall record, with regard to the structure or portion of it constituting that convertible space, a supplemental condominium plat showing the location and dimensions of the vertical and horizontal boundaries of each unit formed out of this space. The supplemental map shall be certified as to its accuracy and compliance with this Subsection (3) by the land surveyor who prepared or who supervised the preparation of it.

(4) In interpreting the condominium plat or any deed or other instrument affecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the condominium plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the condominium plat, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the condominium plat and those of the building or unit.

#### **57-8-13.2. Conversion of convertible land -- Amendment to declaration -- Limitations.**

(1) The declarant may convert all or any portion of any convertible land into one or more units or limited common areas and facilities subject to any restrictions and limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under Subsection (2) of this section and Subsection **57-8-13(2)**.

(2) Simultaneously with the recording of the condominium plat pursuant to Subsection **57-8-13(2)**, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible land and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection **57-8-13.10(2)**. The amendment shall describe or delineate the limited common areas and facilities formed out of the convertible land, showing or designating the unit or units to which each is assigned.

(3) All convertible lands shall be deemed part of the common areas and facilities except for such portions of them as are converted in accordance with this section. No such conversions shall occur after five years from the recordation of the declaration, or such shorter period of time as the declaration may specify, unless three-fourths of unit owners vote in favor of converting the land after the time period has expired.

#### **57-8-13.4. Conversion of convertible space -- Amendment to declaration -- Limitations.**

(1) The declarant may convert any portion of any convertible space into one or more units or common areas and facilities, including, without limitation, limited common areas and facilities, subject to any restrictions and

limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of the appropriate instruments under Subsection (2) of this section and Subsection **57-8-13(3)**.

(2) Simultaneously with the recording of the supplemental record survey map under Subsection **57-8-13(3)**, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. The amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common areas and facilities appertaining to that space. The amendment shall describe or delineate the limited common areas and facilities formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(3) Any convertible space not converted in accordance with this section, or any portion of it not so converted, shall be treated for all purposes as a single unit until and unless it is so converted; and this act shall be deemed applicable to any such space, or portion of it, as though the same were a unit.

#### **57-8-13.6. Expansion of project.**

A condominium project may be expanded under the provisions of the declaration and of this act. Any such expansion shall be deemed to have occurred at the time of the recordation of the condominium plat under Subsection **57-8-13(2)**, together with an amendment to the declaration, duly executed and acknowledged by the declarant, including, without limitation, all of the owners and lessees of the additional land added to the condominium project. The amendment shall contain a legal description by metes and bounds of the land added to the condominium project and shall reallocate undivided interests in the common areas and facilities in accordance with Subsection **57-8-13.10(2)**.

#### **57-8-13.8. Contraction of project.**

A condominium project may be contracted under the provisions of the declaration and the provisions of this chapter. Any such contraction shall be considered to have occurred at the time of the recordation of an amendment to the declaration, executed by the declarant, containing a legal description by metes and bounds of the land withdrawn from the condominium project. If portions of the withdrawable land were described pursuant to Subsection **57-8-10(5)(b)(i)**, then no described portion may be so withdrawn after the conveyance of any unit on the portion. If no withdrawable portions were described, then none of the withdrawable land may be withdrawn after the first conveyance of any unit on the portion.

#### **57-8-13.10. Condominiums containing convertible land -- Expandable condominiums -- Allocation of interests in common areas and facilities.**

(1) If a condominium project contains any convertible land or is an expandable condominium, then the declaration may not allocate undivided interests in the common areas and facilities on the basis of par value unless the declaration:

(a) prohibits the creation of any units not substantially identical to the units depicted on the condominium plat recorded pursuant to Subsection **57-8-13(1)**; or

(b) prohibits the creation of any units not described under Subsection **57-8-10(3)(a)(vii)** in the case of convertible land, Subsection **57-8-10(4)(a)(xi)** in the case of additional land, and contains from the outset a statement of the par value that shall be assigned to every unit that may be created.

(2) (a) Interests in the common areas and facilities may not be allocated to any units to be created within any convertible land or within any additional land until a condominium plat depicting the same is recorded pursuant to Subsection **57-8-13(2)**.

(b) Simultaneously with the recording of the supplemental condominium plat required under Subsection (2)(a), the declarant shall execute and record an amendment to the declaration which reallocates undivided interests in the common areas and facilities so that the units depicted on the supplemental condominium plat shall be allocated undivided interests in the common areas and facilities on the same basis as the units depicted on the condominium plat that was recorded simultaneously with the declaration pursuant to Subsection **57-8-13(1)**.

(3) If all of a convertible space is converted into common areas and facilities, including limited common areas and facilities, then the undivided interest in the common areas and facilities appertaining to the convertible space shall afterward appertain to the remaining units and shall be allocated among them in proportion to their undivided interests in the common areas and facilities. The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration, shall immediately prepare, execute, and record an amendment to the declaration reflecting the reallocation of undivided interest produced by the conversion.

(4) (a) If the expiration or termination of any lease of a leasehold condominium causes a contraction of the condominium project which reduces the number of units, or if the withdrawal of withdrawable land of a contractible condominium causes a contraction of the condominium project which reduces the number of units, the undivided interest in the common areas and facilities appertaining to any units so withdrawn shall afterward

appertain to the remaining units, being allocated among them in proportion to their undivided interests in the common areas and facilities.

(b) The principal officer of the unit owners' association or of the management committee, or any other officer specified in the declaration shall immediately prepare, execute, and record an amendment to the declaration, reflecting the reallocation of undivided interests produced by the reduction of units.

**57-8-13.12. Land to be withdrawn or added to project -- Applicability of restrictions.**

No covenants, restrictions, limitations, or other representations or commitments in the declaration concerning anything that is or is not to be done on the additional land, the withdrawable land, or any portion of either, shall be binding as to any portion of either lawfully withdrawn from the condominium project or never added to it except to the extent that the declaration so provides. In the case of any covenant, restriction, limitation, or other representation or commitment in the declaration or in any other agreement requiring the declarant to add any portion of the additional land or to withdraw any portion of the withdrawable land, or imposing any obligations concerning anything that is or is not to be done on it or concerning it, or imposing any obligations about anything that is or is not to be done on or in respect to the condominium project or any portion of it, this section shall not be construed to nullify, limit, or otherwise affect any such obligation.

**57-8-13.14. Easement rights -- Sales offices and model units -- Damage to property.**

(1) Subject to any restrictions and limitations the declaration may specify, the declarant shall have a transferable easement over and on the common areas and facilities for the purpose of making improvements on the land within the project or on any additional land under the declaration and this act, and for the purpose of doing all things reasonably necessary and proper in connection with the same.

(2) The declarant and his duly authorized agents, representatives, and employees may maintain sales offices or model units on the land within the project if the declaration provides for the same and specifies the rights of the declarant about the number, size, location, and relocation of them. Any sales office or model unit which is not designated a unit by the declaration shall become a common area and facility as soon as the declarant ceases to be a unit owner, and the declarant shall cease to have any rights concerning it unless the sales office or model unit is removed immediately from the land included within the project in accordance with a right reserved in the declaration to make this removal.

(3) To the extent that damage is inflicted on any part of the condominium project by any person or persons utilizing the easements reserved by the declaration or created by Subsections (1) and (2) of this section, the declarant, together with the person or persons causing the same, shall be jointly and severally liable for the prompt repair of the damage and for the restoration of the same to a condition compatible with the remainder of the condominium project.

**57-8-14. Legal description of units.**

(1) A deed, lease, mortgage, or other instrument may legally describe a unit by its identifying number or symbol as designated in the declaration or as shown on the condominium plat.

(2) Each description under Subsection (1) shall be considered:

(a) to be good and sufficient for all purposes; and

(b) to convey, transfer, encumber or otherwise affect the unit owner's corresponding percentage of ownership in the common or community areas and facilities even though the percentage of ownership is not expressly mentioned or described.

**57-8-15. Bylaws.**

The administration of every property shall be governed by bylaws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment and such amendment is recorded.

**57-8-16. Contents of bylaws.**

The bylaws may provide for the following:

(1) the establishment of a management committee, the number of persons constituting the committee and the method of selecting the members of the committee; the powers and duties of the management committee; and whether or not the management committee may engage the services of a manager;

(2) the method of calling meetings of the unit owners; what percentage of the unit owners shall constitute a quorum, and be authorized to transact business;

(3) the maintenance, repair, and replacement of the common areas and facilities and payment therefor;

(4) the manner of collecting from the unit owners their share of the common expenses;

(5) the designation and removal of personnel necessary for the maintenance, repair, and replacement of the common areas and facilities;

(6) the method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities;

(7) (a) restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners; and

(b) restrictions regarding the use of the units may include other prohibitions on, or allowance of, smoking tobacco products;

(8) the percentage of votes required to amend the bylaws; and

(9) other provisions as may be considered necessary for the administration of the property consistent with this act.

**57-8-16.5. Appointment and removal of committee members and association officers -- Renewal or ratification of contracts -- Failure to establish association or committee.**

(1) The declaration may authorize the declarant, or a managing agent or some other person or persons selected or to be selected by the declarant, to appoint and remove some or all of the members of the management committee or some or all of the officers of the unit owners' association, or to exercise powers and responsibilities otherwise assigned by the declaration and by this act to the unit owners' association, its officers, or the management committee. No amendment to the declaration not consented to by all unit owners shall increase the scope of this authorization, and no such authorization shall be valid after the first to occur of the following:

(a) expiration of the time limit set by the declaration, which shall not exceed six years in the case of an expandable condominium, four years in the case of a condominium project containing any convertible land, or three years in the case of any other condominium project; or

(b) after units to which three-fourths of the undivided interest in the common areas and facilities appertain have been conveyed, or after all additional land has been added to the project and all convertible land has been converted, whichever last occurs.

(2) If entered into during the period of control contemplated by Subsection (1), no management contract, lease of recreational areas or facilities, or any other contract or lease designed to benefit the declarant which was executed by or on behalf of the unit owners' association or the unit owners as a group shall be binding after such period of control unless then renewed or ratified by the consent of unit owners of units to which a majority of the votes in the unit owners' association appertains.

(3) If the unit owners' association or management committee is not in existence or does not have officers at the time of the creation of a condominium project, the declarant shall, until there is an association or management committee with these officers, have the power and responsibility to act in all instances where this act or the declaration requires action by the unit owners' association, the management committee, or any of the officers of them.

(4) This section shall be strictly construed to protect the rights of the unit owners.

**57-8-17. Records of receipts and expenditures -- Availability for examination.**

The manager or management committee shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Records and the vouchers authorizing the payments involved shall be available for examination by the unit owners at convenient hours of weekdays.

**57-8-18. Blanket mortgages and other blanket liens affecting unit at time of first conveyance.**

At the time of the first conveyance of each unit, every mortgage and other lien affecting such unit, including the percentage of undivided interest of the unit in the common areas and facilities, shall have been paid and satisfied of record, or the unit being conveyed and its percentage of undivided interest in the common areas and facilities shall have been released therefrom by partial release duly recorded. The provisions of this section shall not apply, however, to any withdrawable land in a contractible condominium.

**57-8-19. Liens against units -- Removal from lien -- Effect of part payment.**

(1) Subsequent to recording the declaration as provided in this act, and while the property remains subject to this act, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the percentage of undivided interest in the common areas and facilities appurtenant to such unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of a unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against the unit of any other unit owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any unit in

the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the unit owners, the manager or management committee in accordance with this act, the declaration or bylaws or the house rules, shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the units.

(2) In the event a lien against two or more units becomes effective, the unit owners of the separate units may remove their units and the percentage of undivided interest in the common areas and facilities appurtenant to such units from the lien by payment of the fractional or proportional amount attributable to each of the units affected. Such individual payment shall be computed by reference to the percentages appearing in the declaration. Subsequent to any payment, discharge or other satisfaction, the unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

**57-8-20. Lien for nonpayment of common expenses.**

(1) Every unit owner shall pay his proportionate share of the common expenses. Payment shall be in the amounts and at the times determined by the management committee in accordance with the terms of the declaration or the bylaws.

(2) (a) An assessment levied against each unit is a debt of the owner at the time the assessment is made and is collectible as such.

(b) The association is entitled to recover all expenses incurred by the association in collecting any unpaid assessment, including reasonable attorneys' fees, whether an action is brought against an owner under Subsection (3), or whether a suit to foreclose the lien upon the unit is instituted under Subsection (4).

(3) Suit to recover a money judgment for any unpaid assessment is maintainable without foreclosing or waiving the lien securing it. The prevailing party in the action is entitled to recover its costs of suit and reasonable attorneys' fees.

(4) (a) Subject to Subsection **57-8-37(6)**, if any unit owner fails or refuses to pay an assessment when due, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the manager or management committee it is a lien upon the unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the unit in favor of any assessing unit or special improvement district; and

(ii) encumbrances on the interest of the unit owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(b) The lien for nonpayment of an assessment may be enforced by sale or foreclosure of the unit owner's interest by the manager or management committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law.

(c) In any foreclosure or sale, the unit owner shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. If so provided in the declaration or bylaws, in the case of foreclosure, the owner shall pay a reasonable rental for the unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security.

(d) Unless otherwise provided in the declaration, the manager or management committee may bid in the unit at foreclosure or other sale and hold, lease, mortgage, or convey the unit.

(5) (a) When authorized in the declaration or bylaws, if the owner fails or refuses to pay any assessment when due, the management committee may, after giving notice and an opportunity to be heard in accordance with Subsection (5)(b):

(i) terminate an owner's right to receive utility services paid as a common expense; and

(ii) terminate an owner's right of access and use of recreational facilities.

(b) Before terminating utility services or right of access and use of recreational facilities under Subsection (5)(a), the manager or management committee shall give written notice to the unit owner in the manner provided in the declaration, bylaws, or association rules. The notice shall state:

(i) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(ii) the amount of the assessment due, including any interest or late payment fee; and

(iii) the right to request a hearing under Subsection (5)(c).

(c) A unit owner who is given notice under Subsection (5)(b) may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received.

(i) The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or

association rules.

(ii) If a hearing is requested, utility services or right of access and use or recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

(d) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the unit.

(e) The remedies provided in this Subsection (5) shall only apply to residential condominium units.

(6) (a) If authorized in the declaration or bylaws, the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee, upon compliance with this Subsection (6)(a), may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid.

(b) The manager or management committee must give the unit owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(i) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(ii) state the amount of the assessment due, including any interest or late payment fee;

(iii) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(iv) provide the requirements and rights described in Subsections (6)(b) through (f).

(c) If the unit owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant to Subsection (6)(d). A copy of the notice must be mailed to the unit owner. The notice provided to the tenant must state:

(i) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the management committee's intent to collect all lease payments due to the association pursuant to Subsection (6)(a);

(ii) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(iii) payment by the tenant to the association in compliance with this Subsection (6) will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

(d) All funds paid to the association pursuant to Subsection (6)(c) shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.

(e) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the unit owner.

(f) As used in this Subsection (6), "lease" or "leasing" means regular, exclusive occupancy of a unit by any person or persons, other than the unit owner, for which the unit owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

(7) (a) The manager or management committee shall, upon the written request of any unit owner and upon payment of a reasonable fee not to exceed \$10, issue a written statement indicating any unpaid assessments with respect to the unit covered by the request. This written statement of unpaid assessments is conclusive upon the remaining unit owners and upon the manager and management committee in favor of all persons who rely on the written statement in good faith.

(b) Unless the manager or management committee complies with the request for a statement of any unpaid assessments within 10 days, all unpaid assessments which became due prior to the date the request was made are subordinate to the lien held by the person requesting the statement.

(8) Any encumbrancer holding a lien on a unit may pay any unpaid assessment due with respect to the unit. Upon payment, the encumbrancer has a lien on the unit for the amounts paid.

(9) Remedies provided in this section, by law, or in equity are not considered to be mutually exclusive.

#### **57-8-21. Acquisition through tax deed or foreclosure of liens.**

In the event any person shall acquire, through foreclosure, exercise of power of sale, or other enforcement of any lien, or by tax deed, the interest of any unit owner, the interest acquired shall be subject to all the provisions of this act and to the covenants, conditions and restrictions contained in the declaration, the condominium plat, the bylaws, the house rules, or any deed affecting the interest then in force.

**57-8-22. Removal of property from statutory provisions.**

(1) All of the unit owners may remove a property from the provisions of this act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the units consent or agree by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the unit owner in the property.

(2) Upon removal of the property from the provisions of this act, the property shall be deemed to be owned in common by the unit owners. The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

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

The removal provided for in Section 57-8-22 shall not bar the subsequent resubmission of the property to the provisions of this act.

**57-8-24. Common profits, common expenses, and voting rights.**

The common profits of the property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the unit owners according to their respective percentage or fractional undivided interests in the common areas and facilities.

**57-8-25. Joint and several liability of grantor and grantee for unpaid common expenses.**

In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the manager or management committee setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

**57-8-26. Waiver of use of common areas and facilities -- Abandonment of unit.**

No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his unit.

**57-8-27. Separate taxation.**

(1) Each unit and its percentage of undivided interest in the common or community areas and facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit, local district, and special service district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.

(2) In the event any of the interests in real property made subject to this chapter by the declaration are leasehold interests, if the lease creating these interests is of record in the office of the county recorder, if the balance of the term remaining under the lease is at least 40 years at the time the leasehold interest is made subject to this chapter, if units are situated or are to be situated on or within the real property covered by the lease, and if the lease provides that the lessee shall pay all taxes and assessments imposed by governmental authority, then until 10 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be levied against the owner of the lessee's interest. If the owner of the reversion under the lease has executed the declaration and condominium plat, until 10 years prior to the date that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be separately levied against the unit owners having an interest in the lease, with each unit owner for taxation purposes being considered the owner of a parcel consisting of his undivided condominium interest in the fee of the real property affected by the lease.

(3) No forfeiture or sale of the improvements or the property as a whole for delinquent real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an individual unit if the real estate taxes or duly levied share of the assessments and charges on the individual unit are currently paid.

(4) Any exemption from taxes that may exist on real property or the ownership of the property may not be denied by virtue of the submission of the property to this chapter.

(5) Timeshare interests and timeshare estates, as defined in Subsection 57-19-2(17), may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and

rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, vacation conveniences and services, club memberships, and any other intangible rights and benefits available to a timeshare unit owner. Nothing in this section shall be construed as requiring the assessment of any real property interest associated with a timeshare interest or timeshare estate at less than its fair market value. Notice of assessment, delinquency, sale, or any other purpose required by law is considered sufficient for all purposes if the notice is given to the management committee.

**57-8-28. Exemption from rules of property.**

The rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this act, or of any declaration, bylaws or other document executed in accordance with this act.

**57-8-29. Insurance.**

(1) The manager, management committee, or association of unit owners shall obtain insurance against loss or damage by fire and other hazards for:

(a) all common areas and facilities; and

(b) all buildings that contain more than one condominium unit, including any improvement which is a permanent part of a building.

(2) Insurance coverage shall be written on the property in the name of the manager, management committee, or association of unit owners, as trustee for each of the unit owners in the percentages established in the declaration.

(3) Premiums on insurance required by this section shall be common expenses.

(4) Provision for insurance shall be without prejudice to the right of each unit owner to insure his own unit for his benefit.

**57-8-30. Application of insurance proceeds to reconstruction.**

In case of fire or any other disaster, the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. Reconstruction of the building, as used in this section and Section **57-8-31**, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

**57-8-31. Disposition of property where insurance proceeds are insufficient for reconstruction.**

Unless otherwise provided in the declaration or bylaws, if the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the manager or management committee, using proceeds of insurance, if any, on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the building is destroyed or substantially damaged and if the unit owners, by a vote of at least three-fourths of such unit owners, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the manager or management committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

(1) The property shall be deemed to be owned in common by the unit owners;

(2) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;

(3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and

(4) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

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

Unless otherwise provided in the declaration or bylaws, and notwithstanding the provisions of Sections **57-8-30** and **57-8-31**, the unit owners may, by an affirmative vote of at least three-fourths of such unit owners, at a meeting of unit owners duly called for such purpose, elect to sell or otherwise dispose of the property. Such action shall be binding upon all unit owners and it shall thereupon become the duty of every unit owner to

execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.

**57-8-32.5. Property taken by eminent domain -- Allocation of award -- Reallocation of interests.**

(1) If any portion of the common areas and facilities is taken by eminent domain, the award for it shall be allocated to the unit owners in proportion to their respective undivided interests in the common areas and facilities.

(2) If any units are taken by eminent domain, the undivided interest in the common areas and facilities appertaining to these units shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interests in the common areas and facilities. The court shall enter a decree reflecting the reallocation of undivided interests so produced, and the award shall include, without limitation, just compensation to the unit owner of any unit taken for his undivided interest in the common areas and facilities as well as for his unit.

(3) If portions of any unit are taken by eminent domain, the court shall determine the fair market value of the portions of the unit not taken, and the undivided interest in the common areas and facilities appertaining to any such units shall be reduced, in the case of each unit, in proportion to the diminution in the fair market value of the unit resulting from the taking. The portions of undivided interest in the common areas and facilities thus divested from the unit owners of these units shall be reallocated among these units and the other units in the condominium project in proportion to their respective undivided interests in the common areas and facilities, with any units partially taken participating in the reallocation on the basis of their undivided interests as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common areas and facilities divested from him by operation of the first sentence of this Subsection (3), and not revested in him by operation of the following sentence, as well as for that portion of his unit taken by eminent domain.

(4) The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of any unit partially taken for that portion of his undivided interest in the common areas and facilities divested from him and also not revested in him under this Subsection (4), as well as for that portion of his unit taken by eminent domain.

(5) If, however, the taking of a portion of any unit makes it impractical to use the remaining portion of that unit for any lawful purpose permitted by the declaration, then the entire undivided interest in the common areas and facilities appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their respective undivided interest in the common areas and facilities, and the remaining portion of that unit shall thenceforth be a common area and facility. The court shall enter a decree reflecting the reallocation of undivided interests produced by this, and the award shall include, without limitation, just compensation to the unit owner of the unit for his entire undivided interest in the common areas and facilities and for his entire unit.

**57-8-33. Actions.**

Without limiting the rights of any unit owner, actions may be brought by the manager or management committee, in either case in the discretion of the management committee, on behalf of two or more of the unit owners, as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one unit. Service of process on two or more unit owners in any action relating to the common areas and facilities or more than one unit may be made on the person designated in the declaration to receive service of process.

**57-8-34. Persons subject to provisions and agreements.**

(1) All unit owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use the property or any part thereof submitted to the provisions of this act shall be subject to this act and to the declaration and bylaws adopted pursuant to the provisions of this act.

(2) All agreements, decisions and determinations lawfully made by the manager, management committee or by the association of unit owners in accordance with this act, the declaration or bylaws, shall be deemed to be binding on all unit owners.

**57-8-35. Effect of other laws -- Compliance with ordinances and codes -- Approval of projects by municipality or county.**

(1) The provisions of this chapter shall be in addition and supplemental to all other provisions of law, statutory or judicially declared, provided that wherever the application of the provisions of this chapter conflict with the application of such other provisions, this chapter shall prevail: provided further, for purposes of Sections **10-9a-604**, **10-9a-611**, and **17-27a-603** and provisions of similar import and any law or ordinance adopted pursuant thereto, a condominium project shall be considered to be a subdivision, and a condominium plat or

supplement thereto prepared pursuant to this chapter shall be considered to be a subdivision map or plat, only with respect to:

(a) such real property or improvements, if any, as are intended to be dedicated to the use of the public in connection with the creation of the condominium project or portion thereof concerned; and

(b) those units, if any, included in the condominium project or portion thereof concerned which are not contained in existing or proposed buildings.

(2) Nothing in this chapter shall be interpreted to state or imply that a condominium project, unit, association or unit owners, or management committee is exempt by this chapter from compliance with the zoning ordinance, building and sanitary codes, and similar development regulations which have been adopted by a municipality or county. No condominium project or any use within said project or any unit or parcel or parcel of land indicated as a separate unit or any structure within said project shall be permitted which is not in compliance with said ordinances and codes.

(3) From and after the time a municipality or county shall have established a planning commission, no condominium project or any condominium plat, declaration, or other material as required for recordation under this chapter shall be recorded in the office of the county recorder unless and until the following mentioned attributes of said condominium project shall have been approved by the municipality or county in which it is located. In order to more fully avail itself of this power, the legislative body of a municipality or county may provide by ordinance for the approval of condominium projects proposed within its limits. This ordinance may include and shall be limited to a procedure for approval of condominium projects, the standards and the criteria for the geographical layout of a condominium project, facilities for utility lines and roads which shall be constructed, the percentage of the project which must be devoted to common or recreational use, and the content of the declaration with respect to the standards which must be adhered to concerning maintenance, upkeep, and operation of any roads, utility facilities, recreational areas, and open spaces included in the project.

(4) Any ordinance adopted by the legislative body of a municipality or county which outlines the procedures for approval of a condominium project shall provide for:

(a) a preliminary approval, which, among other things, will then authorize the developer of the condominium project to proceed with the project; and

(b) a final approval which will certify that all of the requirements set forth in the preliminary approval either have been accomplished or have been assured of accomplishment by bond or other appropriate means. No declaration or condominium plat shall be recorded in the office of the county recorder until a final approval has been granted.

#### **57-8-36. Existing projects -- Effect of statutory amendments.**

Any condominium project established by instruments filed for record prior to the effective date of the foregoing amendments to the Condominium Ownership Act (hereinafter referred to as an "existing project") and the rights and obligations of all parties interested in any such existing project shall, to the extent that the declaration, bylaws, and condominium plat concerning the existing project are inconsistent with the provisions of these amendments, be governed and controlled by the provisions of the Condominium Ownership Act as they existed prior to these amendments and by the terms of the existing project's declaration, bylaws, and condominium plat to the extent that these terms are consistent with applicable law other than these amendments. Any existing project containing or purporting to contain time period units, convertible land, or convertible space, any existing project which is or purports to be a contractible, expandable, or leasehold condominium, the validity of any such project, and the validity and enforceability of any provisions concerning time period units, convertible land, convertible space, withdrawable land, additional land, or leased land which are set forth in an existing project's declaration, bylaws, or condominium plat, shall be governed by applicable law in effect prior to these amendments, including principles relating to reasonableness, certainty, and constructive and actual notice, shall not necessarily be ineffective or defeated in whole or in part because the project or provision in question does not comply or substantially comply with those requirements of the foregoing amendments which would have been applicable had the instruments creating the project been recorded after the effective date of these amendments, but shall, in any event, be valid, effective, and enforceable if the project or provision in question either substantially complies with those requirements of the foregoing amendments which relate to the subject at issue or employs an arrangement which substantially achieves the same policy as underlies those requirements of the foregoing amendments which relate to the subject at issue.

#### **57-8-37. Fines.**

(1) (a) If authorized in the declaration, bylaws, or association rules, the management committee of a residential condominium project may assess a fine against a unit owner after the requirements of Subsection (2) have been met for a violation of the rules and regulations of the association of unit owners which have been promulgated in accordance with this chapter and the declaration and bylaws.

(b) The management committee of a nonresidential condominium project may not assess a fine against a unit owner.

(2) Before assessing a fine under Subsection (1), the management committee shall give notice to the unit owner of the violation and inform the owner that a fine will be imposed if the violation is not cured within the time provided in the declaration, bylaws, or association rules, which shall be at least 48 hours.

(3) (a) A fine assessed under Subsection (1) shall:

(i) be made only for a violation of a rule or regulation which is specifically listed in the declaration, bylaws, or association rules as an offense which is subject to a fine;

(ii) be in the amount specifically provided for in the declaration, bylaws, or association rules for that specific type of violation, not to exceed \$500; and

(iii) accrue interest and late fees as provided in the declaration, bylaws, or association rules.

(b) Cumulative fines for a continuing violation may not exceed \$500 per month.

(4) A unit owner who is assessed a fine under Subsection (1) may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

(5) A unit owner may appeal a fine issued under Subsection (1) by initiating a civil action within 180 days after:

(a) a hearing has been held and a final decision has been rendered by the management committee under Subsection (4); or

(b) the time to request an informal hearing under Subsection (4) has expired without the unit owner making such a request.

(6) A fine assessed under Subsection (1) which remains unpaid after the time for appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section **57-8-20**.

#### **57-8-38. Arbitration.**

The declaration, bylaws, or association rules may provide that disputes between the parties shall be submitted to arbitration pursuant to Title 78B, Chapter 11, Utah Uniform Arbitration Act.

#### **57-8-39. Limitation on requirements for amending declaration or bylaws.**

(1) When the period of control described in Section **57-8-16.5** ends, neither the declaration nor bylaws may require that an amendment to the declaration or bylaws be approved by more than 67% of the voting interests.

(2) Voting interests under Subsection (1) are calculated in the manner required by the declaration or bylaws.

(3) Nothing in this section affects any other rights reserved by a declarant.

(4) Subsection (1) does not apply to an amendment affecting only:

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

(b) unit boundaries; or

(c) members' voting rights.

(5) (a) A contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the association during a period of administrative control is binding beyond the period of administrative control unless terminated by the board of directors after the period of administrative control ends.

(b) Subsection (5)(a) does not apply to golf course and amenity management, utilities, cable services, and other similar services that require an investment of infrastructure or capital.

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

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

(2) If permitted, required, or acknowledged by the declaration, the management committee may organize an association of unit owners into a nonprofit corporation in accordance with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or other entity organized under other law.

(3) Organizational documents for a nonprofit corporation or other entity formed in accordance with Subsection (2) shall, to the extent possible, not conflict with the rights and obligations found in the declaration and any of the association's bylaws recorded at the time of the formation of a nonprofit corporation or other entity under Subsection (2).

(4) Notwithstanding any conflict with the declaration or any recorded bylaws, the organizational documents of an entity formed in accordance with Subsection (2) may include any additional indemnification and liability limitation provision for the management committee members and officers of the association that is permitted by the chapter under which the association is organized for board members, directors, and officers, or similar persons in a position of control.

(5) In the event of a conflict between this chapter's provisions, a statute under which the association of unit owners is organized, documents concerning the organization of the association of unit owners as a nonprofit

corporation or other entity, the declaration, the bylaws, and association rules, the following order prevails:

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

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

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

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

(e) the bylaws control over a conflicting provision in association rules; and

(f) the association rules yield to a conflicting provision in any of the sources listed in Subsection (5)(a) through (e).

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

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

(b) An organizational document attached to a declaration that is filed and concerns the organization of an entity may be amended in accordance with its own terms or any applicable law, notwithstanding the fact that the organizational document might be recorded.

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

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

(9) (a) This section applies to all condominium projects, whether established before or after May 5, 2008.

(b) This section does not validate or invalidate the organization of an association that occurred before May 5, 2008, whether or not the association was otherwise in compliance with this section.

#### **57-8-41. Lender approval -- Declaration amendments and association action.**

(1) If a security holder's consent is a condition for amending a declaration or bylaw, or for an action of the association of unit owners or management committee, then, subject to Subsection (4), the security holder's consent is presumed if:

(a) written notice of the proposed amendment or action is sent by certified or registered mail to the security holder's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest;

(b) 60 days have passed after the day on which notice was mailed; and

(c) the person designated for receipt of the response in the notice has not received a written response from the security holder either consenting to or refusing to accept the amendment or action.

(2) The provisions of Subsection (1) shall apply to:

(a) an association of unit owners formed before and after May 12, 2009; and

(b) documents created and recorded before and after May 12, 2009.

(3) If, under Subsection (1), a security holder's address for receiving notice is not provided in the recorded documents evidencing the security interest, the association of unit owners:

(a) shall use reasonable efforts to find a mailing address for the security holder; and

(b) may send the notice to any address obtained under Subsection (3)(a).

(4) If a security holder responds in writing within 60 days after the day on which the notice is mailed under Subsection (1), indicating that the security interest has been assigned or conveyed to another person, without any recorded document evidencing such a conveyance, the association of unit owners:

(a) may not presume the security holder's consent under Subsection (1); and

(b) shall send a notice in accordance with Subsection (1) to the person assigned or conveyed the security interest.

(5) The association of unit owners shall:

(a) send a notice as described in Subsection (4)(b) to the person assigned or conveyed the interest at an address provided by the security holder under Subsection (4); or

(b) if no address is provided, shall use reasonable efforts to find a mailing address for, and send notice to, the person assigned or conveyed the interest.