

1 **COMMON AREA LAND USE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: R. Curt Webb**

5 Senate Sponsor: D. Gregg Buxton

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses ownership, conveyance, and modification of a parcel designated as a
- 13 common area or a common area and facility on a recorded plat;
- 14 ▶ reduces the percentage of landowners required to approve certain conveyances;
- 15 ▶ amends requirements for recording a certain subdivision plat; and
- 16 ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **10-9a-604**, as last amended by Laws of Utah 2010, Chapter 381

24 **10-9a-606**, as last amended by Laws of Utah 2015, Chapter 327

25 **17-27a-604**, as last amended by Laws of Utah 2015, Chapter 465

26 **17-27a-606**, as last amended by Laws of Utah 2015, Chapter 327

27 **57-8-32**, as enacted by Laws of Utah 1963, Chapter 111

28

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

30 Section 1. Section **10-9a-604** is amended to read:

31 **10-9a-604. Subdivision plat approval procedure -- Effect of not complying.**

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

34 (a) the person has complied with the requirements of Subsection [10-9a-603\(4\)\(a\)](#);

35 (b) the plat has been approved by:

36 (i) the land use authority of the municipality in which the land described in the plat is
37 located; and

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

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

41 (d) if the person submitting the plat intends the plat to be or if the plat is part of a
42 community association subject to Title 57, Chapter 8a, Community Association Act, the plat
43 includes language conveying to the association, as that term is defined in Section [57-8a-102](#), all
44 common areas, as that term is defined in Section [57-8a-102](#).

45 (2) A subdivision plat recorded without the signatures required under this section is
46 void.

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

48 Section 2. Section **10-9a-606** is amended to read:

49 **10-9a-606. Common area parcels on a plat -- No separate ownership --**
50 **Ownership interest equally divided among other parcels on plat and included in**
51 **description of other parcels.**

52 (1) As used in this section:

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

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

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

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

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

58 57-8-3.

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

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

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

62 (e) "Declaration," regarding a common area and facility, means the same as that term is
63 defined in Section 57-8-3.

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

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

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

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

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

73 (b) the conveyance or modification is approved under Subsection (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (5) Notwithstanding Subsection (2), a person may modify the size or location of or
101 separately convey a common area or common area and facility if the following approve the
102 conveyance or modification:

103 (a) the local government;

104 (b) (i) for a common area that an association owns, 67% of the voting interests in [a
105 homeowners] the association [having an interest in the common or community area, if any]; or

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

109 (ii) for a common area that an association does not own, or for a common area and
110 facility, 67% of the owners of lots, units, and parcels designated on a plat that is subject to a
111 declaration and on which the common area or common area and facility is included; and

112 (c) during the period of administrative control, the declarant.

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

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

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

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

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

123 Section 3. Section **17-27a-604** is amended to read:

124 **17-27a-604. Subdivision plat approval procedure -- Effect of not complying.**

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

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

128 (b) the plat has been approved by:

129 (i) the land use authority of the:

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

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

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

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

136 (d) if the person submitting the plat intends the plat to be or if the plat is part of a
137 community association subject to Title 57, Chapter 8a, Community Association Act, the plat
138 includes language conveying to the association, as that term is defined in Section [57-8a-102](#), all
139 common areas, as that term is defined in Section [57-8a-102](#).

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

142 Community Association Act.

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

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

145 Section 4. Section 17-27a-606 is amended to read:

146 **17-27a-606. Common area parcels on a plat -- No separate ownership --**

147 **Ownership interest equally divided among other parcels on plat and included in**

148 **description of other parcels.**

149 (1) As used in this section:

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

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

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

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

154 (c) "Common area and facility" means the same as that term is defined in Section

155 57-8-3.

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

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

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

159 (e) "Declaration," regarding a common area and facility, means the same as that term is

160 defined in Section 57-8-3.

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

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

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

164 ~~[(1)(a)]~~ (2) A person may not separately own, convey, or modify a parcel designated as

165 a common ~~[or community]~~ area or common area and facility on a plat recorded in compliance

166 with this part ~~[may not be separately owned or conveyed]~~, independent of the other lots, units,

167 or parcels created by the plat unless:

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

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

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

172 (b) the conveyance or modification is approved under Subsection (5).

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

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

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

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

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

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

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

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

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

194 (5) Notwithstanding Subsection (2), a person may modify the size or location of or
195 separately convey a common area or common area and facility if the following approve the
196 conveyance or modification:

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

198 (a) the local government;
199 ~~[(b) is approved by at least 75%]~~
200 (b) (i) for a common area that an association owns, 67% of the voting interests in [a
201 homeowners] the association [having an interest in the common or community area, if any]; or
202 ~~[(c) is approved by at least 75% of the owners of lots, units, or parcels on the plat if~~
203 ~~there is no homeowners association having an interest in the common or community area, if~~
204 ~~any; and]~~
205 (ii) for a common area that an association does not own, or for a common area and
206 facility, 67% of the owners of lots, units, and parcels designated on a plat that is subject to a
207 declaration and on which the common area or common area and facility is included; and
208 (c) during the period of administrative control, the declarant.
209 ~~[(d) does not create a new buildable lot.]~~
210 ~~[(4) A parcel designated as common or community area on a plat before, on, or after~~
211 ~~May 12, 2015, may be modified in size without a subdivision plat amendment approval by the~~
212 ~~local government, if the modification:]~~
213 ~~[(a) is a lot line adjustment approved by at least 75% of the voting interests in a~~
214 ~~homeowners association having an interest in the common or community area, if any;]~~
215 ~~[(b) is approved by at least 75% of the owners of lots, units, or parcels on the plat if~~
216 ~~there is no homeowners association having an interest in the common or community area, if~~
217 ~~any; and]~~
218 ~~[(c) does not create a new buildable lot.]~~
219 Section 5. Section **57-8-32** is amended to read:
220 **57-8-32. Sale of property.**
221 (1) Unless otherwise provided in the declaration or bylaws, and notwithstanding the
222 provisions of Sections 57-8-30 and 57-8-31, the unit owners may, at a meeting of unit owners
223 called for the purpose of voting, by an affirmative vote of at least [three-fourths of such] 67%
224 of unit owners, [at a meeting of unit owners duly called for such purpose,] elect to sell or
225 otherwise dispose of the property. [Such action shall be]

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