

HOMEOWNERS ASSOCIATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Condominium Ownership Act and the Community Association Act.

Highlighted Provisions:

This bill:

- ▶ makes provisions regarding a reserve analysis and a reserve fund applicable during the period of administrative control;
- ▶ permits certain owners to disapprove a budget item during the period of administrative control, under certain conditions;
- ▶ amends provisions regarding the termination of the period of administrative control;
- ▶ amends the configuration of a board or management committee after the period of administrative control;
- ▶ prevents a declarant from prohibiting a lot owner or a unit owner from seeking election to a board or a management committee after the period of administrative control;
- ▶ requires a declarant during the period of administrative control to:
 - maintain all common areas and facilities; and
 - pay common expenses;
- ▶ makes certain provisions applicable regardless of when the association or association of unit owners was created; and



28 ▶ makes technical and conforming changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **57-8-7**, as last amended by Laws of Utah 2013, Chapters 152 and 152

36 **57-8-7.5**, as last amended by Laws of Utah 2015, Chapters 34 and 325

37 **57-8-16.5**, as last amended by Laws of Utah 2016, Chapter 210

38 **57-8a-211**, as last amended by Laws of Utah 2015, Chapter 34

39 **57-8a-215**, as enacted by Laws of Utah 2011, Chapter 355

40 **57-8a-224**, as last amended by Laws of Utah 2015, Chapters 34, 325, and 387

41 **57-8a-502**, as last amended by Laws of Utah 2016, Chapter 210

42 ENACTS:

43 **57-8-59**, Utah Code Annotated 1953



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

46 Section 1. Section **57-8-7** is amended to read:

47 **57-8-7. Common areas and facilities.**

48 (1) As used in this section:

49 (a) "Emergency repairs" means any repairs that, if not made in a timely manner, will
50 likely result in immediate and substantial damage to the common areas and facilities or to
51 another unit or units.

52 (b) "Reasonable notice" means:

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

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

56 (2) Each unit owner shall be entitled to an undivided interest in the common areas and
57 facilities in the percentages or fractions expressed in the declaration. The declaration may
58 allocate to each unit an undivided interest in the common areas and facilities proportionate to

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

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

85 (4) The common areas and facilities shall remain undivided and no unit owner or any
86 other person shall bring any action for partition or division of any part thereof, unless the
87 property has been removed from the provisions of this ~~[act]~~ chapter as provided in Sections
88 [57-8-22](#) and [57-8-31](#). Any covenants to the contrary shall be null and void.

89 (5) Each unit owner may use the common areas and facilities in accordance with the

90 purpose for which they were intended without hindering or encroaching upon the lawful rights
91 of the other unit owners.

92 (6) The necessary work of maintenance, repair, and replacement of the common areas
93 and facilities and the making of any additions or improvements thereon shall be carried out
94 only as provided:

95 (a) in this chapter; or

96 (b) except as provided in Subsection (10), in the declaration or bylaws.

97 (7) Except as otherwise provided in the declaration [~~or~~], Section 57-8-43, or

98 Subsection (10):

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

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

103 (8) After reasonable notice to the occupant of the unit being entered, the manager or
104 management committee may access a unit:

105 (a) from time to time during reasonable hours, as may be necessary for the
106 maintenance, repair, or replacement of any of the common areas and facilities; or

107 (b) for making emergency repairs.

108 (9) (a) [~~An association of unit owners is liable to repair damage it~~] The person liable to
109 repair damage an association of unit owners causes to the common areas and facilities, or to a
110 unit the association of unit owners uses to access the common areas and facilities[-], is:

111 (i) if outside the period of administrative control, the association of unit owners; or

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

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

115 (10) During the period of administrative control, the declarant shall, regardless of any
116 provision in the declaration or bylaws to the contrary:

117 (a) maintain all common areas and facilities on a regular basis; and

118 (b) pay all common expenses related to the maintenance, repair, replacement, or
119 addition of common areas and facilities.

120 (11) This section applies to each association of unit owners, regardless of when the

121 association of unit owners was created.

122 Section 2. Section **57-8-7.5** is amended to read:

123 **57-8-7.5. Reserve analysis -- Reserve fund.**

124 (1) As used in this section:

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

126 (i) the need for a reserve fund to accumulate reserve funds; and

127 (ii) the appropriate amount of any reserve fund.

128 (b) "Reserve fund line item" means the line item in an association of unit owners'

129 annual budget that identifies the amount to be placed into a reserve fund.

130 (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring

131 common areas and facilities that have a useful life of three years or more and a remaining

132 useful life of less than 30 years, if the cost cannot reasonably be funded from the general

133 budget or other funds of the association of unit owners.

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

135 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

136 (b) review and, if necessary, update a previously conducted reserve analysis no less

137 frequently than every three years.

138 (3) The management committee may conduct a reserve analysis itself or may engage a

139 reliable person or organization, as determined by the management committee, to conduct the

140 reserve analysis.

141 (4) A reserve fund analysis shall include:

142 (a) a list of the components identified in the reserve analysis that will reasonably

143 require reserve funds;

144 (b) a statement of the probable remaining useful life, as of the date of the reserve

145 analysis, of each component identified in the reserve analysis;

146 (c) an estimate of the cost to repair, replace, or restore each component identified in the

147 reserve analysis;

148 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the

149 cost to repair, replace, or restore each component identified in the reserve analysis during the

150 component's useful life and at the end of the component's useful life; and

151 (e) a reserve funding plan that recommends how the association of unit owners may

152 fund the annual contribution described in Subsection (4)(d).

153 (5) An association of unit owners shall:

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

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

158 (6) In formulating [~~its~~] the association's budget each year, an association of unit owners
159 shall include a reserve fund line item in:

160 (a) an amount the management committee determines, based on the reserve analysis, to
161 be prudent; or

162 (b) an amount required by the declaration, if the declaration requires an amount higher
163 than the amount determined under Subsection (6)(a).

164 (7) (a) Within 45 days after the day on which an association of unit owners adopts [~~its~~]
165 the association's annual budget, the unit owners may veto the reserve fund line item:

166 (i) by a 51% vote of the allocated voting interests in the association of unit owners at a
167 special meeting called by the unit owners for the purpose of voting whether to veto a reserve
168 fund line item[~~;~~]; or

169 (ii) during a period of administrative control, by a 51% vote of the allocated voting
170 interests of unit owners other than the declarant at a special meeting called by the unit owners
171 other than the declarant for the purpose of voting whether to veto a reserve fund line item.

172 (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a
173 reserve fund line item exists in a previously approved annual budget of the association of unit
174 owners that was not vetoed, the association of unit owners shall fund the reserve account in
175 accordance with that prior reserve fund line item.

176 (8) (a) Subject to Subsection (8)(b), if an association of unit owners does not comply
177 with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance
178 within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:

179 (i) injunctive relief requiring the association of unit owners to comply with the
180 requirements of Subsection (5), (6), or (7);

181 (ii) \$500 or actual damages, whichever is greater;

182 (iii) any other remedy provided by law; and

183 (iv) reasonable costs and attorney fees.

184 (b) No fewer than 90 days before the day on which a unit owner files a complaint under
185 Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to
186 the association of unit owners.

187 (c) A notice under Subsection (8)(b) shall state:

188 (i) the requirement in Subsection (5), (6), or (7) with which the association of unit
189 owners has failed to comply;

190 (ii) a demand that the association of unit owners come into compliance with the
191 requirements; and

192 (iii) a date, no fewer than 90 days after the day on which the unit owner delivers the
193 notice, by which the association of unit owners shall remedy its noncompliance.

194 (d) In a case filed under Subsection (8)(a), a court may order an association of unit
195 owners to produce the summary of the reserve analysis or the complete reserve analysis on an
196 expedited basis and at the association of unit owners' expense.

197 (9) (a) A management committee may not use money in a reserve fund:

198 (i) for daily maintenance expenses, unless a majority of the members of the association
199 of unit owners other than the declarant vote to approve the use of reserve fund money for that
200 purpose; or

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

202 (b) A management committee shall maintain a reserve fund separate from other funds
203 of the association of unit owners.

204 (c) This Subsection (9) may not be construed to limit a management committee from
205 prudently investing money in a reserve fund, subject to any investment constraints imposed by
206 the declaration.

207 [~~(10) Subsections (2) through (9) do not apply to an association of unit owners during~~
208 ~~the period of administrative control.~~]

209 [(H)] (10) For a condominium project whose initial declaration is recorded on or after
210 May 12, 2015, during the period of administrative control, for any property that the declarant
211 sells to a third party, the declarant shall give the third party:

212 (a) a copy of the association of unit owners' governing documents; and

213 (b) a copy of the association of unit owners' most recent financial statement that

214 includes any reserve funds held by the association of unit owners or by a subsidiary of the
215 association of unit owners.

216 ~~[(12)]~~ (11) Except as otherwise provided in this section, this section applies to each
217 association of unit owners, regardless of when the association of unit owners was created.

218 Section 3. Section **57-8-16.5** is amended to read:

219 **57-8-16.5. Appointment and removal of committee members and association**
220 **officers -- Renewal or ratification of contracts -- Failure to establish association or**
221 **committee.**

222 (1) (a) The declaration may authorize the declarant, or a managing agent or some other
223 person or persons selected or to be selected by the declarant, to appoint and remove some or all
224 of the members of the management committee or some or all of the officers of the association
225 of unit owners, or to exercise powers and responsibilities otherwise assigned by the declaration
226 and by this ~~[act]~~ chapter to the association of unit owners, ~~[its]~~ the association of unit owners'
227 officers, or the management committee.

228 (b) If the declaration authorizes the declarant to appoint or remove some or all
229 members of the management committee or some or all of the officers of the association of unit
230 owners during the period of administrative control ~~[contemplated by this Subsection (1)]~~, the
231 declarant may appoint the declarant's officers, employees or agents as members of the
232 management committee or as officers of the association of unit owners.

233 (c) No amendment to the declaration not consented to by all unit owners shall increase
234 the scope of this authorization, and no such authorization shall be valid after the first to occur
235 of the following:

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

239 (ii) after units to which ~~[three-fourths]~~ 51% of the undivided interest in the common
240 areas and facilities appertain have been conveyed, or after all additional land has been added to
241 the project and all convertible land has been converted, whichever last occurs.

242 (2) If entered into during the period of administrative control ~~[contemplated by~~
243 ~~Subsection (1)]~~, no management contract, lease of recreational areas or facilities, or any other
244 contract or lease designed to benefit the declarant which was executed by or on behalf of the

245 association of unit owners or the unit owners as a group shall be binding after such period of
246 control unless then renewed or ratified by the consent of unit owners of units to which a
247 majority of the votes in the association of unit owners appertains.

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

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

254 (5) (a) Upon termination of the period of administrative control, unit owners shall elect
255 a management committee consisting of an odd number of at least three members, a majority
256 whom are unit owners other than the declarant.

257 (b) Regardless of any provision in the declaration or bylaws to the contrary, a declarant
258 may not prohibit a unit owner from seeking election under Subsection (5)(a).

259 (6) This section applies to each association of unit owners, regardless of when the
260 association of unit owners was created.

261 Section 4. Section **57-8-59** is enacted to read:

262 **57-8-59. Budget during period of administrative control.**

263 (1) At least annually during the period of administrative control, the management
264 committee shall prepare and adopt a budget for the association of unit owners.

265 (2) The management committee shall present the adopted budget to the unit owners at
266 a meeting of the unit owners.

267 (3) A budget, or line item in a budget, is disapproved if within 45 days after the day on
268 which the management committee presents the adopted budget under Subsection (2) there is a
269 vote of disapproval:

270 (a) by at least 51% of all the allocated voting interests of nondeclarant unit owners; and

271 (b) at a special meeting called by the unit owners other than the declarant for the
272 purpose of voting whether to disapprove a budget or line item.

273 (4) If a budget is disapproved under Subsection (3), the budget that the management
274 committee last adopted that was not disapproved by the nondeclarant unit owners continues as
275 the budget until the management committee presents another budget to the nondeclarant unit

276 owners that is not disapproved.

277 (5) This section applies to each association of unit owners, regardless of when the
278 association of unit owners was created.

279 Section 5. Section **57-8a-211** is amended to read:

280 **57-8a-211. Reserve analysis -- Reserve fund.**

281 (1) As used in this section:

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

283 (i) the need for a reserve fund to accumulate reserve funds; and

284 (ii) the appropriate amount of any reserve fund.

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

287 (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring
288 common areas and facilities that have a useful life of three years or more and a remaining
289 useful life of less than 30 years, if the cost cannot reasonably be funded from the general
290 budget or other funds of the association.

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

292 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

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

295 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
296 organization, as determined by the board, to conduct the reserve analysis.

297 (4) A reserve fund analysis shall include:

298 (a) a list of the components identified in the reserve analysis that will reasonably
299 require reserve funds;

300 (b) a statement of the probable remaining useful life, as of the date of the reserve
301 analysis, of each component identified in the reserve analysis;

302 (c) an estimate of the cost to repair, replace, or restore each component identified in the
303 reserve analysis;

304 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
305 cost to repair, replace, or restore each component identified in the reserve analysis during the
306 component's useful life and at the end of the component's useful life; and

307 (e) a reserve funding plan that recommends how the association may fund the annual
308 contribution described in Subsection (4)(d).

309 (5) An association shall:

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

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

314 (6) In formulating [~~its~~] the association's budget each year, an association shall include a
315 reserve fund line item in:

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

317 (b) an amount required by the governing documents, if the governing documents
318 require an amount higher than the amount determined under Subsection (6)(a).

319 (7) (a) Within 45 days after the day on which an association adopts [~~its~~] the
320 association's annual budget, the lot owners may veto the reserve fund line item:

321 (i) by a 51% vote of the allocated voting interests in the association at a special
322 meeting called by the lot owners for the purpose of voting whether to veto a reserve fund line
323 item[-]; or

324 (ii) during a period of administrative control, by a 51% vote of the allocated voting
325 interests of lot owners other than the declarant at a special meeting called by the lot owners
326 other than the declarant for the purpose of voting whether to veto a reserve fund line item.

327 (b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve
328 fund line item exists in a previously approved annual budget of the association that was not
329 vetoed, the association shall fund the reserve account in accordance with that prior reserve fund
330 line item.

331 (8) (a) Subject to Subsection (8)(b), if an association does not comply with the
332 requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance
333 within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:

334 (i) injunctive relief requiring the association to comply with the requirements of
335 Subsection (5), (6), or (7);

336 (ii) \$500 or the lot owner's actual damages, whichever is greater;

337 (iii) any other remedy provided by law; and

338 (iv) reasonable costs and attorney fees.

339 (b) No fewer than 90 days before the day on which a lot owner files a complaint under
340 Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to
341 the association.

342 (c) A notice under Subsection (8)(b) shall state:

343 (i) the requirement in Subsection (5), (6), or (7) with which the association has failed to
344 comply;

345 (ii) a demand that the association come into compliance with the requirements; and

346 (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the
347 notice, by which the association shall remedy its noncompliance.

348 (d) In a case filed under Subsection (8)(a), a court may order an association to produce
349 the summary of the reserve analysis or the complete reserve analysis on an expedited basis and
350 at the association's expense.

351 (9) (a) A board may not use money in a reserve fund:

352 (i) for daily maintenance expenses, unless a majority of association members other than
353 the declarant vote to approve the use of reserve fund money for that purpose; or

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

355 (b) A board shall maintain a reserve fund separate from other association funds.

356 (c) This Subsection (9) may not be construed to limit a board from prudently investing
357 money in a reserve fund, subject to any investment constraints imposed by the governing
358 documents.

359 [~~(10) Subsections (2) through (9) do not apply to an association during the period of~~
360 ~~administrative control.~~]

361 [(11)] (10) For a project whose initial declaration of covenants, conditions, and
362 restrictions is recorded on or after May 12, 2015, during the period of administrative control,
363 for any property that the declarant sells to a third party, the declarant shall give the third party:

364 (a) a copy of the association's governing documents; and

365 (b) a copy of the association's most recent financial statement that includes any reserve
366 funds held by the association or by a subsidiary of the association.

367 [(12)] (11) Except as otherwise provided in this section, this section applies to each
368 association, regardless of when the association was created.

369 Section 6. Section **57-8a-215** is amended to read:

370 **57-8a-215. Budget.**

371 (1) At least annually the board shall prepare and adopt a budget for the association.

372 (2) The board shall present the adopted budget to association members at a meeting of
373 the members.

374 (3) A budget is disapproved if within 45 days after the date of the meeting under
375 Subsection (2) at which the board presents the adopted budget:

376 (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of
377 the lot owners in the association; and

378 (b) the vote is taken at a special meeting called for that purpose by lot owners under the
379 declaration, articles, or bylaws.

380 (4) During a period of administrative control, a budget, or a line item in a budget, is
381 disapproved if within 45 days after the day on which the board presents the adopted budget
382 under Subsection (2) there is a vote of disapproval:

383 (a) by at least 51% of all the allocated voting interests of nondeclarant lot owners; and

384 (b) at a special meeting called by the lot owners other than the declarant for the
385 purpose of voting whether to disapprove a budget or line item.

386 [~~(4)~~] (5) If a budget is disapproved under Subsection (3) or (4), the budget that the
387 board last adopted that was not disapproved by members continues as the budget until and
388 unless the board presents another budget to members and that budget is not disapproved.

389 [~~(5) During the period of administrative control, association members may not~~
390 ~~disapprove a budget.]~~

391 (6) This section applies to each association, regardless of when the association was
392 created.

393 Section 7. Section **57-8a-224** is amended to read:

394 **57-8a-224. Responsibility for the maintenance, repair, and replacement of**
395 **common areas and lots.**

396 (1) As used in this section:

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

399 (b) "Reasonable notice" means:

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

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

404 (2) Except as otherwise provided in the declaration ~~[or]~~, Part 4, Insurance, or
405 Subsection (5):

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

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

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

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

414 (b) for making an emergency repair.

415 (4) (a) ~~[An association is liable to repair damage it]~~ The person liable to repair damage
416 an association causes to the common areas, or to a lot the association uses to access the
417 common areas~~[-]~~, is:

418 (i) if outside the period of administrative control, the association; or

419 (ii) if during the period of administrative control, the declarant.

420 (b) An association or a declarant shall repair damage described in Subsection (4)(a)
421 within a time that is reasonable under the circumstances.

422 ~~[(5) Subsections (2), (3), and (4) do not apply during the period of administrative~~
423 ~~control.]~~

424 (5) During the period of administrative control, the declarant shall, regardless of any
425 provision in the declaration or bylaws to the contrary:

426 (a) maintain all common areas on a regular basis; and

427 (b) pay all common expenses related to the maintenance, repair, replacement, or
428 addition of common areas.

429 (6) This section applies to each association, regardless of when the association was
430 created.

431 Section 8. Section **57-8a-502** is amended to read:

432 **57-8a-502. Period of administrative control.**

433 (1) [~~Unless otherwise provided for~~] Regardless of any provision in a declaration to the
434 contrary, a period of administrative control terminates on the first to occur of the following:

435 (a) 60 days after [~~75%~~] the day on which 51% of the lots that may be created are
436 conveyed to lot owners other than a declarant;

437 [~~(b) seven years after all declarants have ceased to offer lots for sale in the ordinary~~
438 ~~course of business; or~~]

439 (b) three years after the day on which the first lot is conveyed to a lot owner other than
440 the declarant; or

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

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

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

449 (c) During a period of administrative control, except as provided in Subsection (2)(a), a
450 declarant may appoint the declarant's officers, employees, or agents as members of the board.

451 (3) (a) (i) Upon termination of the period of administrative control, the lot owners shall
452 elect a board consisting of an odd number of at least three members, a majority of whom [~~shall~~
453 ~~be~~] are lot owners other than the declarant.

454 (ii) Regardless of any provision in the declaration or bylaws to the contrary, a declarant
455 may not prohibit a lot owner from seeking election under Subsection (3)(a)(i).

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

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

459 (4) This section applies to each association, regardless of when the association was
460 created.

Legislative Review Note
Office of Legislative Research and General Counsel