

1 **CONDOMINIUM OWNER RENTAL AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Earl D. Tanner**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Condominium Ownership Act related to the contents
10 of a declaration.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that an association of unit owners for a condominium project that recorded
14 its initial declaration before May 12, 2009, may not prohibit or restrict a unit
15 owner's ability to rent to any greater extent than is described in the declaration that
16 was recorded at the time the unit owner purchased the unit owner's unit, unless the
17 association of unit owners obtains the unit owner's written consent; and

18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-8-10**, as last amended by Laws of Utah 2011, Chapter 355

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



28 Section 1. Section **57-8-10** is amended to read:

29 **57-8-10. Contents of declaration.**

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

35 (2) (a) For every condominium project:

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

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

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

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

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

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

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

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

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

58 (iii) (A) The declaration shall include the name of a person to receive service of

59 process on behalf of the project, in the cases provided by this chapter, together with the
60 residence or place of business of that person.

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

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

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

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

70 (e) The initial recorded declaration shall include:

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

73 (ii) the following statement: "The declarant hereby conveys and warrants pursuant to
74 U.C.A. Sections 57-1-20 and 57-8-45 to (name of trustee), with power of sale, the unit and all
75 improvements to the unit for the purpose of securing payment of assessments under the terms
76 of the declaration."

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

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

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

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

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

88 (iv) The declaration shall state the extent to which any structure erected on any
89 convertible land will be compatible with structures on other portions of the land within the

90 condominium project in terms of quality of construction, the principal materials to be used, and
91 architectural style.

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

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

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

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

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

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

105 (B) The declaration shall include a statement of any limitations on the option to
106 expand, including a statement as to whether the consent of any unit owners shall be required
107 and, a statement as to the method by which consent shall be ascertained, or a statement that
108 there are no such limitations.

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

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

115 (iv) The declaration shall state:

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

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

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

120 (v) The declaration shall include a statement as to whether portions of the additional

121 land may be added to the condominium project at different times, together with any limitations
122 fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds
123 of these lands and regulating the order in which they may be added to the condominium
124 project.

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

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

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

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

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

151 (xi) The declaration shall contain a statement that any units created on any portion of

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

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

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

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

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

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

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

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

177 (ii) The declaration shall include a statement as to whether portions of the
178 withdrawable land may be withdrawn from the condominium project at different times,
179 together with any limitations fixing the boundaries of those portions by legal descriptions
180 setting forth the metes and bounds and regulating the order in which they may be withdrawn
181 from the condominium project.

182 (iii) The declaration shall include a legal description by metes and bounds of all of the

183 land within the condominium project to which the option to contract the project does not
184 extend.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232 (B) prohibit rentals in the condominium project.

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

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

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

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

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

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

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

245 trust or other estate planning entity was created for the estate of:

246 (I) a current resident of the unit; or

247 (II) the parent, child, or sibling of the current resident of the unit;

248 (ii) a provision allowing a unit owner who has a rental in the condominium project

249 before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the

250 county recorder of the county in which the condominium project is located to continue renting

251 until:

252 (A) the unit owner occupies the unit; or

253 (B) an officer, owner, member, trustee, beneficiary, director, or person holding a

254 similar position of ownership or control of an entity or trust that holds an ownership interest in

255 the unit, occupies the unit; and

256 (iii) a requirement that the association of unit owners create, by rule or resolution,

257 procedures to:

258 (A) determine and track the number of rentals and units in the condominium project

259 subject to the provisions described in Subsections (9)(c)(i) and (ii); and

260 (B) ensure consistent administration and enforcement of the rental restrictions.

261 (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the

262 following occur:

263 (i) the conveyance, sale, or other transfer of a unit by deed;

264 (ii) the granting of a life estate in the unit; or

265 (iii) if the unit is owned by a limited liability company, corporation, partnership, or

266 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,

267 membership interests, or partnership interests in a 12-month period.

268 (e) This section does not limit or affect residency age requirements for an association

269 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42

270 U.S.C. Sec. 3607.

271 (f) A declaration or amendment to a declaration recorded prior to transfer of the first

272 unit from the initial declarant may prohibit or restrict rentals without providing for the

273 exceptions, provisions, and procedures required under Subsection (9)(c).

274 (g) This ~~[section]~~ Subsection (9) does not apply to:

275 (i) a condominium project containing a time period unit as defined in Section 57-8-3;

276 (ii) any other form of timeshare interest as defined in Section 57-19-2; or
277 (iii) a condominium project in which the initial declaration is recorded before May 12,
278 2009.

279 (h) Notwithstanding this section, an association of unit owners may, upon unanimous
280 approval by all unit owners, restrict or prohibit rentals without an exception described in
281 Subsection (9)(c).

282 (10) An association of unit owners for a condominium project that recorded its initial
283 declaration before May 12, 2009, may not prohibit or restrict a unit owner's ability to rent the
284 unit owner's unit to any greater extent than is described in the declaration that was recorded at
285 the time the unit owner purchased the unit owner's unit, unless the association of unit owners
286 obtains the unit owner's written consent.

Legislative Review Note
as of 2-14-13 1:33 PM

Office of Legislative Research and General Counsel