

**UTAH COMMUNITY ASSOCIATION ACT
2011 STATUTORY CHANGES**

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57-8a-104. Limitation on requirements for amending governing documents -- Limitation on contracts.

(1) As used in this section, "period of administrative control" means the period during which the person who filed the association's governing documents or a successor in interest retains authority to:

- (a) appoint or remove members of the association's board of directors; or
- (b) exercise power or authority assigned to the association under its governing documents.

(2) (a) (i) Governing documents may not require that an amendment to the governing documents adopted after the period of administrative control be approved by more than 67% of the voting interests.

(ii) The vote required to adopt an amendment to governing documents may not be greater than 67% of the voting interests, notwithstanding a provision of the governing documents requiring a greater percentage and regardless of whether the governing documents were adopted before, on, or after May 10, 2011.

(b) Subsection (2)(a) does not apply to an amendment affecting only:

- (i) lot boundaries; or
- (ii) members' voting rights.

(3) (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 (3)(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.

(4) Voting interests under Subsections (2) and (3) are calculated in the manner required by the governing documents.

(5) Nothing in this section affects any other rights reserved by the person who filed the association's original governing documents or a successor in interest.

57-8a-105. Registration with Department of Commerce.

(1) As used in this section, "department" means the Department of Commerce created in Section **13-1-2**.

(2) (a) No later than 90 days after the recording of a declaration of covenants, conditions, and restrictions establishing an association, the association shall register with the department in the manner established by the department.

(b) An association existing under a declaration of covenants, conditions, and restrictions recorded before May 10, 2011, shall, no later than July 1, 2011, register with the department in the manner established by the department.

(3) The department shall require an association registering as required in this section to provide with each registration:

- (a) the name and address of the association;
- (b) the name, address, telephone number, and, if applicable, email address of the chair of the association board;
- (c) contact information for the manager;
- (d) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a lot owner's financing, refinancing, or sale of the owner's lot; and

(e) a registration fee not to exceed \$37.

(4) An association that has registered under Subsection (2) shall submit to the department an updated registration, in the manner established by the department, within 90 days after a change in any of the information provided under Subsection (3).

(5) During any period of noncompliance with the registration requirements of Subsection (2) or the requirement for an updated registration under Subsection (4):

(a) a lien for the nonpayment of an assessment may not arise under Section **57-8a-203** against any lot; and

(b) an association may not enforce a previous lien under Section **57-8a-203** against any lot.

57-8a-106. Fee for providing payoff information needed at closing.

(1) Unless specifically authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules, a fee for providing association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot.

(2) An association may not:

(a) require a fee described in Subsection (1) that is authorized in the declaration of covenants, conditions, and restrictions, the bylaws, or the rules to be paid before closing; or

(b) charge the fee if it exceeds \$50.

(3) (a) An association that fails to provide information described in Subsection (1) within five business days after the closing agent requests the information may not enforce a lien against that unit for money due to the association at closing.

(b) A request under Subsection (3)(a) is not effective unless the request:

(i) is conveyed in writing to the primary contact person designated under Subsection **57-8a-105**(3)(d);

(ii) contains:

(A) the name, telephone number, and address of the person making the request; and

(B) the facsimile number or email address for delivery of the payoff information; and

(iii) is accompanied by a written consent for the release of the payoff information:

(A) identifying the person requesting the information as a person to whom the payoff information may be released; and

(B) signed and dated by an owner of the lot for which the payoff information is requested.

(4) This section applies to each association, regardless of when the association is formed.

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

(1) As used in this section, "reserve analysis" means an analysis to determine:

(a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the association's general budget or from other association funds; and

(b) the appropriate amount of any reserve fund.

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

(a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every five years; and

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

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

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

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

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

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

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

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

(5) Subsections (2), (3), (4), and (6) do not apply to an association during the period of administrative control.

(6) An association shall:

(a) annually, at the annual meeting of lot owners or at a special meeting of lot owners:

(i) present the reserve study; and

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

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

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

57-8a-213. Board action to enforce governing documents -- Parameters.

(1) (a) The board shall use its reasonable judgment to determine whether to exercise the association's powers to impose sanctions or pursue legal action for a violation of the governing documents, including:

(i) whether to compromise a claim made by or against the board or the association; and

(ii) whether to pursue a claim for an unpaid assessment.

(b) The association may not be required to take enforcement action if the board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances:

(i) the association's legal position does not justify taking any or further enforcement action;

(ii) the covenant, restriction, or rule in the governing documents is likely to be construed as inconsistent with current law;

(iii) (A) a technical violation has or may have occurred; and

(B) the violation is not material as to a reasonable person or does not justify expending the association's resources; or

(iv) it is not in the association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(2) Subject to Subsection (3), if the board decides under Subsection (1)(b) to forego enforcement, the association is not prevented from later taking enforcement action.

(3) The board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action.

(4) This section does not govern whether the association's action in enforcing a provision of the governing documents constitutes a waiver or modification of that provision.

57-8a-214. Fair and reasonable notice.

(1) Notice that an association provides by a method allowed under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, constitutes fair and reasonable notice, regardless of whether or not the association is a nonprofit corporation.

(2) Notice that an association provides by a method not referred to in Subsection (1) constitutes fair and reasonable notice if:

(a) the method is authorized in the declaration, articles, bylaws, or rules; and

(b) considering all the circumstances, the notice is fair and reasonable.

(3) (a) If provided in the declaration, articles, bylaws, or rules, an association may provide notice by electronic means, including text message, email, or the association's website.

(b) Notwithstanding Subsection (3)(a), a lot owner may, by written demand, require an association to provide notice to the lot owner by mail.

57-8a-215. Budget.

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

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

(3) A budget is disapproved if within 45 days after the date of the meeting under Subsection (2) at

which the board presents the adopted budget:

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

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

(4) If a budget is disapproved under Subsection (3), the budget that the board last adopted that was not disapproved by members continues as the budget until and unless the board presents another budget to members and that budget is not disapproved.

(5) During the period of administrative control, association members may not disapprove a budget.

57-8a-216. Association bylaws -- Recording required -- Bylaw requirements.

(1) (a) No later than the date of the first lot sale, an association shall file its bylaws for recording in the office of the recorder of each county in which any part of the real estate included within the association is located.

(b) If an association fails to file bylaws for recording within the time specified in Subsection (1)(a), the board may file the bylaws for recording as provided in Subsection (1)(a).

(2) Unless otherwise provided in the declaration, an association's bylaws shall state:

(a) the number of board members;

(b) the title of each of the association's officers;

(c) the manner and method of officer election by the board or, if the declaration requires, by the lot owners;

(d) (i) the board member's and officer's:

(A) qualifications;

(B) powers and duties; and

(C) terms of office;

(ii) the method for removing a board member or officer; and

(iii) the method for filling a board member or officer vacancy;

(e) the powers that the board or officers may delegate to other persons or to a managing agent;

(f) the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(g) a method for the board or lot owners to amend the bylaws, consistent with Section **16-6a-1010**; and

(h) subject to the provisions of the declaration and unless the declaration or this chapter requires that a provision appear in a declaration, any other matter that is necessary or appropriate for conducting the affairs of the association, including:

(i) meetings;

(ii) voting requirements; and

(iii) quorum requirements.

(3) An association shall file any amended bylaws for recording in the same manner as the association is required to file the initial bylaws for recording under Subsection (1).

57-8a-217. Association rules, including design criteria -- Requirements and limitations relating to board's action on rules and design criteria -- Vote of disapproval.

(1) (a) Subject to Subsection (1)(b), a board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the rules and design criteria of the association.

(b) A board's action under Subsection (1)(a) is subject to:

(i) this section;

(ii) any limitation that the declaration imposes on the authority stated in Subsection (1)(a);

(iii) the limitation on rules in Sections **57-8a-218** and **57-8a-219**;

(iv) the board's duty to exercise business judgment on behalf of:

(A) the association; and

(B) the lot owners in the association; and

(v) the right of the lot owners or declarant to disapprove the action under Subsection (4).

(2) Except as provided in Subsection (3), before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the association, the board shall:

(a) at least 15 days before the board will meet to consider a change to a rule or design criterion, deliver notice to lot owners, as provided in Section **57-8a-214**, that the board is considering a change to a rule or design criterion;

(b) provide an open forum at the board meeting giving lot owners an opportunity to be heard at the board meeting before the board takes action under Subsection (1)(a); and

(c) deliver a copy of the change in the rules or design criteria approved by the board to the lot owners as provided in Section **57-8a-214** within 15 days after the date of the board meeting.

(3) (a) Subject to Subsection (3)(b), a board may adopt a rule without first giving notice to the lot owners under Subsection (2) if there is an imminent risk of harm to a common area, a limited common area, a lot owner, an occupant of a lot, a lot, or a dwelling.

(b) The board shall provide notice under Subsection (2) to the lot owners of a rule adopted under Subsection (3)(a).

(4) A board action in accordance with Subsections (1), (2), and (3) is disapproved if within 60 days after the date of the board meeting where the action was taken:

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

(ii) the vote is taken at a special meeting called for that purpose by the lot owners under the declaration, articles, or bylaws; or

(b) (i) the declarant delivers to the board a writing of disapproval; and

(ii) (A) the declarant is within the period of declarant control; or

(B) for an expandable project, the declarant has the right to add real estate to the project.

(5) (a) The board has no obligation to call a meeting of the lot owners to consider disapproval, unless lot owners submit a petition, in the same manner as the declaration, articles, or bylaws provide for a special meeting, for the meeting to be held.

(b) Upon the board receiving a petition under Subsection (5)(a), the effect of the board's action is:

(i) stayed until after the meeting is held; and

(ii) subject to the outcome of the meeting.

(6) During the period of administrative control, a declarant may exempt the declarant from association rules and the rulemaking procedure under this section if the declaration reserves to the declarant the right to exempt the declarant.

57-8a-218. Equal treatment by rules required -- Limits on association rules and design criteria.

(1) (a) Except as provided in Subsection (1)(b), a rule shall treat similarly situated lot owners similarly.

(b) Notwithstanding Subsection (1)(a), a rule may:

(i) vary according to the level and type of service that the association provides to lot owners; and

(ii) differ between residential and nonresidential uses.

(2) (a) A rule criterion may not abridge the rights of a lot owner to display religious and holiday signs, symbols, and decorations inside a dwelling on a lot.

(b) Notwithstanding Subsection (2)(a), the association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling or lot.

(3) (a) A rule may not regulate the content of political signs.

(b) Notwithstanding Subsection (3)(a):

(i) a rule may regulate the time, place, and manner of posting a political sign; and

(ii) an association design provision may establish design criteria for political signs.

(4) (a) A rule may not interfere with the freedom of a lot owner to determine the composition of the lot owner's household.

(b) Notwithstanding Subsection (4)(a), an association may:

(i) require that all occupants of a dwelling be members of a single housekeeping unit; and

(ii) limit the total number of occupants permitted in each residential dwelling on the basis of the residential dwelling's:

- (A) size and facilities; and
- (B) fair use of the common areas.

(5) (a) A rule may not interfere with an activity of a lot owner within the confines of a dwelling or lot, to the extent that the activity is in compliance with local laws and ordinances.

(b) Notwithstanding Subsection (5)(a), a rule may prohibit an activity within a dwelling on an owner's lot if the activity:

- (i) is not normally associated with a project restricted to residential use; or
- (ii) (A) creates monetary costs for the association or other lot owners;
- (B) creates a danger to the health or safety of occupants of other lots;
- (C) generates excessive noise or traffic;
- (D) creates unsightly conditions visible from outside the dwelling;
- (E) creates an unreasonable source of annoyance to persons outside the lot; or
- (F) if there are attached dwellings, creates the potential for smoke to enter another lot owner's

dwelling, the common areas, or limited common areas.

(c) If permitted by law, an association may adopt rules described in Subsection (5)(b) that affect the use of or behavior inside the dwelling.

(6) (a) A rule may not, to the detriment of a lot owner and over the lot owner's written objection to the board, alter the allocation of financial burdens among the various lots.

(b) Notwithstanding Subsection (6)(a), an association may:

- (i) change the common areas available to a lot owner;
- (ii) adopt generally applicable rules for the use of common areas; or
- (iii) deny use privileges to a lot owner who:
 - (A) is delinquent in paying assessments;
 - (B) abuses the common areas; or
 - (C) violates the governing documents.

(c) This Subsection (6) does not permit a rule that:

- (i) alters the method of levying assessments; or
- (ii) increases the amount of assessments as provided in the declaration.

(7) (a) Subject to Subsection (7)(b), a rule may not:

- (i) prohibit the transfer of a lot; or
 - (ii) require the consent of the association or board to transfer a lot.
- (b) Unless contrary to a declaration, a rule may require a minimum lease term.

(8) (a) A rule may not require a lot owner to dispose of personal property that was in or on a lot before the adoption of the rule or design criteria if the personal property was in compliance with all rules and other governing documents previously in force.

(b) The exemption in Subsection (8)(a):

- (i) applies during the period of the lot owner's ownership of the lot; and
- (ii) does not apply to a subsequent lot owner who takes title to the lot after adoption of the rule

described in Subsection (8)(a).

(9) A rule or action by the association or action by the board may not unreasonably impede a declarant's ability to satisfy existing development financing for community improvements and right to develop:

- (a) the project; or
- (b) other properties in the vicinity of the project.

(10) A rule or association or board action may not interfere with:

- (a) the use or operation of an amenity that the association does not own or control; or
- (b) the exercise of a right associated with an easement.

(11) A rule may not divest a lot owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the governing documents in existence at the time the completed application was submitted by the owner for review.

(12) Unless otherwise provided in the declaration, an association may by rule:

- (a) regulate the use, maintenance, repair, replacement, and modification of common areas;
 - (b) impose and receive any payment, fee, or charge for:
 - (i) the use, rental, or operation of the common areas, except limited common areas; and
 - (ii) a service provided to a lot owner;
 - (c) impose a charge for a late payment of an assessment; or
 - (d) provide for the indemnification of its officers and board consistent with Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act.
- (13) A rule shall be reasonable.
- (14) A declaration, or an amendment to a declaration, may vary any of the requirements of Subsections (1) through (12), except Subsection (1)(b)(ii).
- (15) A rule may not be inconsistent with a provision of a declaration.

57-8a-219. Display of the flag.

(1) An association may not prohibit a lot owner from displaying a United States flag inside a dwelling or limited common area or on a lot, if the display complies with United States Code, Title 4, Chapter 1, The Flag.

(2) An association may restrict the display of a flag on the common areas.

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

- (1) (a) Subject to Subsection (1)(b), a declaration may:
- (i) condition the effectiveness of lot owners' actions specified in the declaration on the approval of a specified number or percentage of lenders holding a security interest in the lots; or
 - (ii) condition the effectiveness of association actions specified in the declaration on the approval of a specified number or percentage of lenders that have extended credit to the association.
- (b) A condition under Subsection (1)(a) may not:
- (i) deny or delegate the lot owners' or board's control over the association's general administrative affairs;
 - (ii) prevent the association or board from commencing, intervening in, or settling any litigation or proceeding; or
 - (iii) prevent an insurance trustee or the association from receiving or distributing insurance proceeds under Subsection **57-8a-405**(12).
- (c) A condition under Subsection (1)(a) does not violate a prohibition under Subsection (1)(b) by:
- (i) requiring the association to deposit the association's assessments before default with the lender assigned the income; or
 - (ii) requiring the association to increase an assessment at the lender's direction by an amount reasonably necessary to pay the loan in accordance with the loan terms.
- (d) This Subsection (1) applies to:
- (i) an association formed before, on, or after May 10, 2011; and
 - (ii) documents created and recorded before, on, or after May 10, 2011.
- (2) Subject to this chapter and applicable law, a lender who has extended credit to an association secured by an assignment of income or an encumbrance of the common areas may enforce the lender's security agreement as provided in the agreement.
- (3) (a) Subject to Subsection (4), a security holder's consent that is required under Subsection (1) to amend a declaration or bylaw or for another association action is presumed if:
- (i) the association sends written notice of the proposed amendment or action by certified or registered mail to the security holder's address stated in a recorded document evidencing the security interest; and
 - (ii) the person designated in a notice under Subsection (3)(a)(i) to receive the security holder's response does not receive a response within 60 days after the association sends notice under Subsection (3)(a)(i).
- (b) If a security holder's address for receiving notice is not stated in a recorded document evidencing

the security interest, an association:

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

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

(4) If a security holder responds in writing within 60 days after the association sends notice under Subsection (3)(a)(i) that the security interest has been assigned or conveyed to another person, the association:

(a) shall:

(i) send a notice under Subsection (3)(a)(i) to the person assigned or conveyed the security interest at the address provided by the security holder in the security holder's response; or

(ii) if no address is provided:

(A) use reasonable efforts to find a mailing address for the person assigned or conveyed the security interest; and

(B) send notice by certified or registered mail to the person at the address that the association finds under Subsection (4)(a)(ii)(A); and

(b) may not presume the security holder's consent under Subsection (3)(a) unless the person designated in a notice under Subsection (4)(a) to receive the response from the person assigned or conveyed the security interest does not receive a response within 60 days after the association sends the notice.

57-8a-221. Reincorporation of terminated or dissolved association.

(1) An association that is terminated or dissolved without possibility of reinstatement under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, may be reincorporated by the acting directors of the association refiling articles of incorporation that are substantially similar to the articles of incorporation, as amended, in existence at the time of termination or dissolution.

(2) Upon the association's reincorporation under Subsection (1):

(a) the board of directors shall readopt bylaws for the association that are the same as the bylaws that were in existence at the time of termination or dissolution; and

(b) all lot owners within the project are members of the reincorporated association.

57-8a-301. Lien in favor of association for assessments and costs of collection.

(1) (a) An association has a lien on a lot for:

(i) an assessment;

(ii) except as provided in the declaration, fees, charges, and costs associated with collecting an unpaid assessment, including:

(A) court costs and reasonable attorney fees;

(B) late charges;

(C) interest; and

(D) any other amount that the association is entitled to recover under the declaration, this chapter, or an administrative or judicial decision; and

(iii) a fine that the association imposes against the owner of the lot.

(b) The recording of a declaration constitutes record notice and perfection of a lien described in Subsection (1)(a).

(2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i) is for the full amount of the assessment from the time the first installment is due, unless the association otherwise provides in a notice of assessment.

(3) An unpaid assessment or fine accrues interest at the rate provided:

(a) in Subsection **15-1-1**(2); or

(b) in the declaration, if the declaration provides for a different interest rate.

(4) A lien under this section has priority over each other lien and encumbrance on a lot except:

(a) a lien or encumbrance recorded before the declaration is recorded;

(b) a first or second security interest on the lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the association; or

(c) a lien for real estate taxes or other governmental assessments or charges against the lot.

(5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah Exemptions Act.

(6) Unless the declaration provides otherwise, if two or more associations have liens for assessments on the same lot, the liens have equal priority, regardless of when the liens are created.

57-8a-302. Enforcement of a lien.

(1) (a) To enforce a lien established under Section **57-8a-301**, an association may:

(i) cause a lot to be sold through nonjudicial foreclosure as though the lien were a deed of trust, in the manner provided by:

(A) Sections **57-1-24**, **57-1-25**, **57-1-26**, and **57-1-27**; and

(B) this part; or

(ii) foreclose the lien through a judicial foreclosure in the manner provided by:

(A) law for the foreclosure of a mortgage; and

(B) this part.

(b) For purposes of a nonjudicial or judicial foreclosure as provided in Subsection (1)(a):

(i) the association is considered to be the beneficiary under a trust deed; and

(ii) the lot owner is considered to be the trustor under a trust deed.

(2) A lot owner's acceptance of the owner's interest in a lot constitutes a simultaneous conveyance of the lot in trust, with power of sale, to the trustee designated as provided in this section for the purpose of securing payment of all amounts due under the declaration and this chapter.

(3) (a) A power of sale and other powers of a trustee under this part and under Sections **57-1-19** through **57-1-34** may not be exercised unless the association appoints a qualified trustee.

(b) An association's execution of a substitution of trustee form authorized in Section **57-1-22** is sufficient for appointment of a trustee under Subsection (3)(a).

(c) A person may not be a trustee under this part unless the person qualifies as a trustee under Subsection **57-1-21**(1)(a)(i) or (iv).

(d) A trustee under this part is subject to all duties imposed on a trustee under Sections **57-1-19** through **57-1-34**.

(4) This part does not prohibit an association from bringing an action against a lot owner to recover an amount for which a lien is created under Section **57-8a-301** or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the lot owner's lot under this part.

57-8a-303. Notice of nonjudicial foreclosure -- Nonjudicial foreclosure prohibited if unit owner demands judicial foreclosure.

(1) At least 30 calendar days before initiating a nonjudicial foreclosure, an association shall provide notice to the owner of the lot that is the intended subject of the nonjudicial foreclosure.

(2) The notice under Subsection (1):

(a) shall:

(i) notify the lot owner that the association intends to pursue nonjudicial foreclosure with respect to the owner's lot to enforce the association's lien for an unpaid assessment;

(ii) notify the lot owner of the owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure;

(iii) be in substantially the following form:

"NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association), the association for the project in which your lot is located, intends to foreclose upon your lot and allocated interest in the common areas using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your lot and to collect the amount of an unpaid assessment against your lot, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher

than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure proceeding upon my lot,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the association's address for receipt of a demand)."; and

(iv) be sent to the lot owner by certified mail, return receipt requested; and

(b) may be included with other association correspondence to the lot owner.

(3) An association may not use a nonjudicial foreclosure to enforce a lien if the lot owner mails the association a written demand for judicial foreclosure:

(a) by U.S. mail, certified with a return receipt requested;

(b) to the address stated in the association's notice under Subsection (1); and

(c) within 15 days after the date of the postmark on the envelope of the association's notice under Subsection (1).

57-8a-304. Provisions applicable to nonjudicial foreclosure.

(1) An association's nonjudicial foreclosure of a lot is governed by:

(a) Sections **57-1-19** through **57-1-34**, to the same extent as though the association's lien were a trust deed; and

(b) this part.

(2) If there is a conflict between a provision of this part and a provision of Sections **57-1-19** through **57-1-34** with respect to an association's nonjudicial foreclosure of a lot, the provision of this part controls.

57-8a-305. One-action rule not applicable -- Abandonment of enforcement proceeding.

(1) Subsection **78B-6-901**(1) does not apply to an association's judicial or nonjudicial foreclosure of a lot under this part.

(2) An association may abandon a judicial foreclosure, nonjudicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, nonjudicial foreclosure, or sheriff's sale if the initial judicial foreclosure, nonjudicial foreclosure, or sheriff's sale is not complete.

57-8a-306. Costs and attorney fees in lien enforcement action.

(1) A court entering a judgment or decree in a judicial action brought under this part shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the association is the prevailing party, any costs and reasonable attorney fees that the association incurs collecting the judgment.

(2) In a nonjudicial foreclosure, an association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, recording, and foreclosing a lien.

57-8a-307. Action to recover unpaid assessment.

An association need not pursue a judicial foreclosure or nonjudicial foreclosure to collect an unpaid assessment but may file an action to recover a money judgment for the unpaid assessment without waiving the lien under Section **57-8a-301**.

57-8a-308. Appointment of receiver.

In an action by an association to collect an assessment or to foreclose a lien for an unpaid assessment, a court may:

(1) appoint a receiver, in accordance with Section **7-2-9**, to collect and hold money alleged to be due and owing to a lot owner:

(a) before commencement of the action; or

(b) during the pendency of the action; and

(2) order the receiver to pay the association, to the extent of the association's common expense assessment, money the receiver holds under Subsection (1).

57-8a-311. Statement from association's manager or board of unpaid assessment.

(1) An association's manager or board shall issue a written statement indicating any unpaid assessment with respect to a lot owner's lot upon:

- (a) a written request by the lot owner; and
- (b) payment of a reasonable fee not to exceed \$25.

(2) A written statement under Subsection (1) is conclusive in favor of a person who relies on the written statement in good faith.

57-8a-401. Definition.

As used in this part, "reasonably available" means available using typical insurance carriers and markets, irrespective of the ability of the association to pay.

57-8a-402. Applicability of part.

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

- (a) issued or renewed on or after July 1, 2011; and
- (b) issued to or renewed by:
 - (i) a lot owner; or
 - (ii) an association, regardless of when the association is formed.

(2) This part does not apply to a project if all of the project's lots are restricted to entirely nonresidential use.

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

- (a) the initial declaration for the project is recorded before January 1, 2012;
- (b) the project includes attached dwellings; and
- (c) the declaration requires each lot owner to insure the lot owner's dwelling.

(4) (a) An association that is subject to a declaration recorded before January 1, 2012 may amend the declaration, as provided in the declaration, to subject the association to this part.

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

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

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

(a) subject to Section **57-8a-405**, property insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and

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

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

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

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

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

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

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

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

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

(3) An insurer under a property insurance policy or liability insurance policy obtained under this part waives its right to subrogation under the policy against any lot owner or member of the lot owner's household.

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

(b) A provision of a governing document that is contrary to a provision of this part has no effect.

(c) A property insurance or liability insurance policy issued to an association may not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

57-8a-405. Property insurance.

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

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

(3) The total amount of coverage provided by blanket property insurance may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies.

(4) Property insurance shall include coverage for any fixture, improvement, or betterment installed by a lot owner to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a limited common area.

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

(6) Each lot owner is an insured person under a property insurance policy.

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

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

(b) notwithstanding Subsection (7)(a) and subject to Subsection (8):

(i) a lot owner is responsible for the association's policy deductible; and

(ii) the lot owner's policy applies to that portion of the loss attributable to the association's policy deductible.

(8) (a) As used in this Subsection (8):

(i) "Covered loss" means a loss, resulting from a single event or occurrence, that is covered by an association's property insurance policy.

(ii) "Lot damage" means damage to any combination of a lot, a dwelling on a lot, or a limited common area appurtenant to a lot or appurtenant to a dwelling on a lot.

(iii) "Lot damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to lot damage.

(b) A lot owner who owns a lot that has suffered lot damage as part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that lot to the amount of the deductible under the association's property insurance policy.

(c) If a lot owner does not pay the amount required under Subsection (8)(b) within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.

(9) An association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

(10) (a) An association shall provide notice in accordance with Section **57-8a-215** to each lot owner of the lot owner's obligation under Subsection (8) for the association's policy deductible and of any change in the amount of the deductible.

(b) An association that fails to provide notice as provided in Subsection (10)(a) is responsible for the amount of the deductible increase that the association could have assessed to a lot owner under Subsection (8).

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

(11) If, in the exercise of the business judgment rule, the board determines that a claim is likely not to exceed the association's property insurance policy deductible:

(a) the lot owner's policy is considered the policy for primary coverage to the amount of the association's policy deductible;

(b) a lot owner who does not have a policy to cover the association's property insurance policy deductible is responsible for the loss to the amount of the association's policy deductible, as provided in Subsection (8); and

(c) the association need not tender the claim to the association's insurer.

(12) (a) An insurer under a property insurance policy issued to an association shall adjust with the association a loss covered under the association's policy.

(b) Notwithstanding Subsection (12)(a), the insurance proceeds for a loss under an association's property insurance policy:

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

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

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

(d) (i) Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property.

(ii) After the disbursements described in Subsection (12)(d)(i) are made and the damaged property has been completely repaired or restored or the project terminated, any surplus proceeds are payable to the association, lot owners, and lien holders.

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

(a) the association;

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

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

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

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

57-8a-406. Liability insurance.

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

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

(3) Each lot owner is an insured person under a liability insurance policy that an association obtains that insures against liability arising from the lot owner's interest in the common areas or from membership in the association.

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

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

- (i) the project is terminated;
- (ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or
- (iii) (A) at least 75% of the allocated voting interests of the lot owners in the association vote not to rebuild; and

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

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

(2) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

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

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

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

- (i) the lot owners of the lots that are not rebuilt;
- (ii) the lot owners of the lots to which those common areas that are not rebuilt were allocated; or
- (iii) lien holders; and

(c) the association shall distribute the remainder of the proceeds to all the lot owners or lien holders in proportion to the common expense liabilities of all the lots.

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

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

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