

57-8-4.5 (Effective 07/01/14). Removing or altering partition or creating aperture between adjoining units.

(1) Subject to the declaration, a unit owner may, after acquiring an adjoining unit that shares a common wall with the unit owner's unit:

(a) remove or alter a partition between the unit owner's unit and the acquired unit, even if the partition is entirely or partly common areas and facilities; or

(b) create an aperture to the adjoining unit or portion of a unit.

(2) A unit owner may not take an action under Subsection (1) if the action would:

(a) impair the structural integrity or mechanical systems of the building or either unit;

(b) reduce the support of any portion of the common areas and facilities or another unit; or

(c) constitute a violation of Section 10-9a-608 or 17-27a-608, as applicable, a local government land use ordinance, or a building code.

(3) The management committee may require a unit owner to submit, at the unit owner's expense, a registered professional engineer's or registered architect's opinion stating that a proposed change to the unit owner's unit will not:

(a) impair the structural integrity or mechanical systems of the building or either unit;

(b) reduce the support or integrity of common areas and facilities; or

(c) compromise structural components.

(4) The management committee may require a unit owner to pay all of the legal and other expenses of the association of unit owners related to a proposed alteration to the unit or building under this section.

(5) An action under Subsection (1) does not change an assessment or voting right attributable to the unit owner's unit or the acquired unit, unless the declaration provides otherwise.

Enacted by Chapter 152, 2013 General Session

57-8-7 (Effective 07/01/14). Common areas and facilities.

(1) As used in this section:

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

(b) "Reasonable notice" means:

(i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed entry; or

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

(2) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentages or fractions expressed in the declaration. The declaration may allocate to each unit an undivided interest in the common areas and facilities proportionate to either the size or par value of the unit. Otherwise, the declaration shall allocate to each unit an equal undivided interest in the common areas and facilities, subject to the following exception: each convertible space depicted on the

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

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

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

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

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

(7) Except as otherwise provided in the declaration or Section 57-8-43:

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

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

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

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

(b) for making emergency repairs.

(9) (a) An association of unit owners is liable to repair damage it causes to the

common areas and facilities or to a unit the association of unit owners uses to access the common areas and facilities.

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

Amended by Chapter 152, 2013 General Session

57-8-7.5 (Effective 07/01/14). Reserve analysis -- Reserve fund.

(1) As used in this section:

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

(i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and

(ii) the appropriate amount of any reserve fund.

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

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

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

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

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

(4) A reserve fund analysis shall include:

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

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

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

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

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

(5) An association of unit owners shall:

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

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

(6) In formulating its budget each year, an association of unit owners shall

include a reserve fund line item in:

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

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

(7) (a) Within 45 days after the day on which an association of unit owners adopts its annual budget, the unit owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association of unit owners at a special meeting called by the unit owners for the purpose of voting whether to veto a reserve fund line item.

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

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

(i) for daily maintenance expenses, unless a majority of the members of the association of unit owners 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 management committee shall maintain a reserve fund separate from other funds of the association of unit owners.

(c) This Subsection (9) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints

imposed by the declaration.

(10) Subsections (2) through (9) do not apply to an association of unit owners during the period of declarant control described in Subsection 57-8-16.5(1).

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

Amended by Chapter 152, 2013 General Session

Amended by Chapter 152, 2013 General Session, (Coordination Clause)

Amended by Chapter 419, 2013 General Session

57-8-10.3 (Effective 07/01/14). Indemnification and limit of liability.

Notwithstanding any conflict with the declaration or recorded bylaws, the organizational documents of an association of unit owners may indemnify and limit management committee member and officer liability to the extent permitted by the law under which the association of unit owners is organized.

Enacted by Chapter 152, 2013 General Session

57-8a-107 (Effective 07/01/14). Amending the declaration to make provisions of this chapter applicable.

(1) An association may amend the declaration to make applicable to the association a provision of this chapter that is enacted after the creation of the association, by complying with:

(a) the amendment procedures and requirements specified in the declaration and applicable provisions of this chapter; or

(b) the amendment procedures and requirements of this chapter, if the declaration being amended does not contain amendment procedures and requirements.

(2) If an amendment under Subsection (1) adopts a specific section of this chapter:

(a) the amendment grants a right, power, or privilege permitted by that specific section; and

(b) all correlative obligations, liabilities, and restrictions in that section also apply.

Enacted by Chapter 152, 2013 General Session

57-8a-108 (Effective 07/01/14). Rules against perpetuities and unreasonable restraints -- Insubstantial failure to comply.

(1) The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of a governing document.

(2) (a) A declaration that fails to comply with this chapter does not render a title to a lot and common areas unmarketable or otherwise affect the title if the failure is insubstantial.

(b) This chapter does not affect whether a substantial failure impairs marketability.

Enacted by Chapter 152, 2013 General Session

57-8a-211 (Effective 07/01/14). Reserve analysis -- Reserve fund.

- (1) As used in this section:
 - (a) "Reserve analysis" means an analysis to determine:
 - (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, or restoring common areas that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the association's general budget or from other association funds; and
 - (ii) the appropriate amount of any reserve fund.
 - (b) "Reserve fund line item" means the line item in an association's annual budget that identifies the amount to be placed into a reserve fund.
- (2) Except as otherwise provided in the governing documents, a board shall:
 - (a) cause a reserve analysis to be conducted no less frequently than every six years; and
 - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three 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 reserve fund analysis shall include:
 - (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;
 - (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
 - (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;
 - (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and
 - (e) a reserve funding plan that recommends how the association may fund the annual contribution described in Subsection (4)(d).
- (5) An association shall:
 - (a) annually provide lot owners a summary of the most recent reserve analysis or update; and
 - (b) provide a copy of the complete reserve analysis or update to a lot owner who requests a copy.
- (6) In formulating its budget each year, an association shall include a reserve fund line item in:
 - (a) an amount the board determines, based on the reserve analysis, to be prudent; or
 - (b) an amount required by the governing documents, if the governing documents require an amount higher than the amount determined under Subsection (6)(a).
- (7) (a) Within 45 days after the day on which an association adopts its annual budget, the lot owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association at a special meeting called by the lot

owners for the purpose of voting whether to veto a reserve fund line item.

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

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

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

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

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

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

(9) (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 (9) 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.

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

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

Amended by Chapter 152, 2013 General Session, (Coordination Clause)

Amended by Chapter 152, 2013 General Session

Amended by Chapter 419, 2013 General Session

57-8a-212 (Effective 07/01/14). Content of a declaration.

- (1) An initial declaration recorded on or after May 10, 2011 shall contain:
 - (a) the name of the project;
 - (b) the name of the association;
 - (c) a statement that the project is not a cooperative;
 - (d) a statement indicating any portions of the project that contain condominiums governed by Chapter 8, Condominium Ownership Act;
 - (e) if the declarant desires to reserve the option to expand the project, a statement reserving the option to expand the project;
 - (f) the name of each county in which any part of the project is located;
 - (g) a legally sufficient description of the real estate included in the project;
 - (h) a description of any limited common areas and any real estate that is or is required to become common areas;
 - (i) any restriction on the alienation of a lot, including a restriction on leasing; and
 - (j) (i) an appointment of a trustee who qualifies under Subsection 57-1-21(1)(a)(i) or (iv); and
(ii) the following statement: "The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to (name of trustee), with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the declaration."
- (2) A declaration may contain any other information the declarant considers appropriate, including any restriction on the use of a lot, the number of persons who may occupy a lot, or other qualifications of a person who may occupy a lot.
- (3) The location of a limited common area or real estate described in Subsection (1)(g) may be shown on a subdivision plat.

Amended by Chapter 152, 2013 General Session