

**COUNTY RECORDER AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to county recorders.

**Highlighted Provisions:**

This bill:

▶ for cities, counties, and towns:

• permits a county recorder in certain circumstances to assign a different name to a subdivision on a plat;

• clarifies plat recordation requirements;

• amends the requirements to submit a subdivision plat for recording;

• permits a recorder to record a document absent a certificate or written approval;

• amends provisions governing the conveyance of a common or community area parcel;

• amends provisions governing the recording of an amended plat; and

• amends recording requirements for a public street, right-of-way, or easement vacated by a legislative body;

▶ creates certain exceptions for abstracting an instrument in a tract index;

▶ prohibits a person from bringing an action against a recorder as a result of information contained in a recorded instrument;

▶ states that the recordation of an instrument does not cure a failure to give public notice caused by an error, omission, or defect in the instrument;



- 28           ▶ amends joint tenancy provisions;
- 29           ▶ amends provisions relating to the rescinding or cancelling of a trustee's deed;
- 30           ▶ for purposes of an assessment, states an effective date for a boundary change of a
- 31 taxing entity; and
- 32           ▶ makes technical corrections.

**33 Monies Appropriated in this Bill:**

34           None

**35 Other Special Clauses:**

36           None

**37 Utah Code Sections Affected:**

38 AMENDS:

- 39           **10-9a-603**, as last amended by Laws of Utah 2008, Chapter 326
- 40           **10-9a-604**, as last amended by Laws of Utah 2009, Chapter 338
- 41           **10-9a-605**, as last amended by Laws of Utah 2006, Chapter 240
- 42           **10-9a-606**, as last amended by Laws of Utah 2009, Chapter 338
- 43           **10-9a-607**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 44           **10-9a-608**, as last amended by Laws of Utah 2009, Chapters 67 and 338
- 45           **10-9a-609**, as last amended by Laws of Utah 2009, Chapter 338
- 46           **10-9a-609.5**, as last amended by Laws of Utah 2009, Chapter 338
- 47           **17-17-1**, as last amended by Laws of Utah 1999, Chapter 207
- 48           **17-21-6**, as last amended by Laws of Utah 2001, Chapter 241
- 49           **17-21-20**, as last amended by Laws of Utah 2009, Chapter 350
- 50           **17-27a-603**, as last amended by Laws of Utah 2008, Chapters 250 and 326
- 51           **17-27a-604**, as last amended by Laws of Utah 2009, Chapter 338
- 52           **17-27a-605**, as last amended by Laws of Utah 2009, First Special Session, Chapter 1
- 53           **17-27a-606**, as last amended by Laws of Utah 2009, Chapter 338
- 54           **17-27a-607**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 55           **17-27a-608**, as last amended by Laws of Utah 2009, Chapters 67 and 338
- 56           **17-27a-609**, as last amended by Laws of Utah 2009, Chapter 338
- 57           **17-27a-609.5**, as last amended by Laws of Utah 2009, Chapter 338
- 58           **38-9-1**, as last amended by Laws of Utah 2009, Chapter 69

- 59           **38-9-3**, as repealed and reenacted by Laws of Utah 1997, Chapter 125
- 60           **38-9-4**, as last amended by Laws of Utah 2008, Chapter 223
- 61           **57-1-5**, as last amended by Laws of Utah 2008, Chapters 97 and 250
- 62           **57-1-5.1**, as last amended by Laws of Utah 2008, Chapter 97
- 63           **57-1-28**, as last amended by Laws of Utah 2002, Chapter 209
- 64           **59-2-1304**, as repealed and reenacted by Laws of Utah 1988, Chapter 3
- 65           **59-2-1325**, as repealed and reenacted by Laws of Utah 1988, Chapter 3
- 66           **72-3-107**, as renumbered and amended by Laws of Utah 1998, Chapter 270

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

69           Section 1. Section **10-9a-603** is amended to read:

70           **10-9a-603. Plat required when land is subdivided -- Approval of plat -- Owner**  
71 **acknowledgment, surveyor certification, and underground utility facilities owner**  
72 **approval of plat -- Recording plat.**

73           (1) (a) Unless exempt under Section 10-9a-605 or excluded from the definition of  
74 subdivision under Subsection 10-9a-103(50), whenever any land is laid out and platted, the  
75 owner of the land shall provide an accurate plat that describes or specifies:

76           ~~[(a)]~~ (i) a subdivision name ~~[or designation of the subdivision]~~ that is distinct from any  
77 subdivision name on a plat ~~[already]~~ recorded in the county recorder's office;

78           ~~[(b)]~~ (ii) the boundaries, course, and dimensions of all of the parcels of ground divided,  
79 by their boundaries, course, and extent, whether the owner proposes that any parcel of ground  
80 is intended to be used as a street or for any other public use, and whether any such area is  
81 reserved or proposed for dedication for a public purpose;

82           ~~[(c)]~~ (iii) the lot or unit reference, block or building reference, street or site address,  
83 street name or coordinate address, acreage or square footage for all parcels, units, or lots, and  
84 length and width of the blocks and lots intended for sale; and

85           ~~[(d)]~~ (iv) every existing right-of-way and easement grant of record for underground  
86 facilities, as defined in Section 54-8a-2, and for other utility facilities.

87           (b) The county recorder may require a different name to a subdivision on a plat  
88 submitted for recording if necessary to make the plat comply with the requirement of  
89 Subsection (1)(a)(i).

90 (2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's  
91 ordinances and this part and has been approved by the culinary water authority and the sanitary  
92 sewer authority, the municipality shall approve the plat.

93 (b) Municipalities are encouraged to receive a recommendation from the fire authority  
94 before approving a plat.

95 (3) The municipality may withhold an otherwise valid plat approval until the owner of  
96 the land provides the legislative body with a tax clearance indicating that all taxes, interest, and  
97 penalties owing on the land have been paid.

98 ~~[(4) (a) The owner of the land shall acknowledge the plat before an officer authorized~~  
99 ~~by law to take the acknowledgment of conveyances of real estate and shall obtain the signature~~  
100 ~~of each individual designated by the municipality.]~~

101 (4) (a) A plat may not be submitted to a county recorder for recording unless:

102 (i) prior to recordation, each owner of record of land described on the plat has signed  
103 and dedicated the plat; and

104 (ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as  
105 provided by law.

106 (b) The surveyor making the plat shall certify that the surveyor:

107 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and  
108 Professional Land Surveyors Licensing Act;

109 (ii) has completed a survey of the property described on the plat in accordance with  
110 Section 17-23-17 and has verified all measurements; and

111 (iii) has placed monuments as represented on the plat.

112 (c) (i) As applicable, the owner or operator of the underground and utility facilities  
113 shall approve the:

114 (A) boundary, course, dimensions, and intended use of the right-of-way and easement  
115 grants of record;

116 (B) location of existing underground and utility facilities; and

117 (C) conditions or restrictions governing the location of the facilities within the  
118 right-of-way, and easement grants of records, and utility facilities within the subdivision.

119 (ii) The approval of an owner or operator under Subsection (4)(c)(i):

120 (A) indicates only that the plat approximates the location of the existing underground

121 and utility facilities but does not warrant or verify their precise location; and

122 (B) does not affect a right that the owner or operator has under:

123 (I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

124 (II) a recorded easement or right-of-way;

125 (III) the law applicable to prescriptive rights; or

126 (IV) any other provision of law.

127 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the

128 land shall, within the time period designated by ordinance, record the plat in the county

129 recorder's office in the county in which the lands platted and laid out are situated.

130 (b) An owner's failure to record a plat within the time period designated by ordinance

131 renders the plat voidable.

132 Section 2. Section **10-9a-604** is amended to read:

133 **10-9a-604. Subdivision plat approval procedure -- Effect of not complying.**

134 (1) A person may not submit a subdivision plat to the county recorder's office for

135 recording unless:

136 (a) the person has complied with the requirements of Subsection 10-9a-603(4)(a);

137 [~~(a)~~] (b) the plat has been approved by:

138 (i) the land use authority of the municipality in which the land described in the plat is

139 located; and

140 (ii) other officers that the municipality designates in its ordinance; and

141 [~~(b)~~] (c) all approvals described in Subsection (1)(b) are entered in writing on the plat

142 by the designated officers.

143 (2) A subdivision plat recorded without the signatures required under this section is

144 void.

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

146 Section 3. Section **10-9a-605** is amended to read:

147 **10-9a-605. Exemptions from plat requirement.**

148 (1) Notwithstanding Sections 10-9a-603 and 10-9a-604, the land use authority may

149 approve a subdivision of 10 lots or less without a plat, by certifying in writing that:

150 (a) the municipality has provided notice as required by ordinance; and

151 (b) the proposed subdivision:

152 (i) is not traversed by the mapped lines of a proposed street as shown in the general  
153 plan and does not require the dedication of any land for street or other public purposes;

154 (ii) has been approved by the culinary water authority and the sanitary sewer authority;

155 (iii) is located in a zoned area; and

156 (iv) conforms to all applicable land use ordinances or has properly received a variance  
157 from the requirements of an otherwise conflicting and applicable land use ordinance.

158 (2) (a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural  
159 land is exempt from the plat requirements of Section 10-9a-603 if the lot or parcel:

160 (i) qualifies as land in agricultural use under Section 59-2-502;

161 (ii) meets the minimum size requirement of applicable land use ordinances; and

162 (iii) is not used and will not be used for any nonagricultural purpose.

163 (b) The boundaries of each lot or parcel exempted under Subsection [~~(1)~~] (2)(a) shall  
164 be graphically illustrated on a record of survey map that, after receiving the same approvals as  
165 are required for a plat under Section 10-9a-604, shall be recorded with the county recorder.

166 (c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural  
167 purpose, the municipality may require the lot or parcel to comply with the requirements of  
168 Section 10-9a-603.

169 (3) (a) Documents recorded in the county recorder's office that divide property by a  
170 metes and bounds description do not create an approved subdivision allowed by this part unless  
171 the land use authority's certificate of written approval required by Subsection (1) is attached to  
172 the document.

173 (b) The absence of the certificate or written approval required by Subsection (1) does  
174 not;

175 (i) prohibit the county recorder from recording a document; or

176 (ii) affect the validity of a recorded document.

177 (c) A document which does not meet the requirements of Subsection (1) may be  
178 corrected by the recording of an affidavit to which the required certificate or written approval is  
179 attached in accordance with Section 57-3-106.

180 Section 4. Section **10-9a-606** is amended to read:

181 **10-9a-606. Common or community area parcels on a plat -- No separate**  
182 **ownership -- Ownership interest equally divided among other parcels on plat and**

183 **included in description of other parcels.**

184 (1) (a) A parcel designated as a common or community area on a plat recorded in  
185 compliance with this part may not be separately owned or conveyed independent of the other  
186 lots, units, or parcels created by the plat unless:

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

189 [~~(b)~~] (ii) the [~~separate ownership or~~] conveyance is approved by the owners of at least  
190 75% of the lots, units, or parcels on the plat, after the municipality gives its approval.

191 (b) A notice of the owner approval described in Subsection (1)(a)(ii) shall be:

192 (i) attached as an exhibit to the document of conveyance; or

193 (ii) recorded concurrently with the conveyance as a separate document.

194 (2) The ownership interest in a parcel described in Subsection (1) shall:

195 (a) for purposes of assessment, be divided equally among all parcels created by the  
196 plat, unless a different division of interest for assessment purposes is indicated on the plat or an  
197 accompanying recorded document; and

198 (b) be considered to be included in the description of each instrument describing a  
199 parcel on the plat by its identifying plat number, even if the common or community area  
200 interest is not explicitly stated in the instrument.

201 Section 5. Section **10-9a-607** is amended to read:

202 **10-9a-607. Dedication of streets and other public places.**

203 (1) [~~Plats, when made, acknowledged, and recorded~~] A plat that is signed, dedicated,  
204 and acknowledged by each owner of record, and approved according to the procedures  
205 specified in this part, [~~operate~~] operates, when recorded, as a dedication of all streets and other  
206 public places, and [~~vest~~] vests the fee of those parcels of land in the municipality for the public  
207 for the uses named or intended in [~~those plats~~] the plat.

208 (2) The dedication established by this section does not impose liability upon the  
209 municipality for streets and other public places that are dedicated in this manner but are  
210 unimproved.

211 Section 6. Section **10-9a-608** is amended to read:

212 **10-9a-608. Vacating or amending a subdivision plat.**

213 (1) (a) A fee owner of land, as shown on the last county assessment roll, in a

214 subdivision that has been laid out and platted as provided in this part may file a written petition  
215 with the land use authority to have some or all of the plat vacated~~[-altered,]~~ or amended.

216 (b) If a petition is filed under Subsection (1)(a), the land use authority shall hold a  
217 public hearing within 45 days after the day on which the petition is filed if:

218 (i) any owner within the plat notifies the municipality of the owner's objection in  
219 writing within 10 days of mailed notification; or

220 (ii) a public hearing is required because all of the owners in the subdivision have not  
221 signed the revised plat.

222 (2) The public hearing requirement of Subsection (1)(b) does not apply and a land use  
223 authority may consider at a public meeting an owner's petition to ~~[alter]~~ vacate or amend a  
224 subdivision plat if:

225 (a) the petition seeks to join two or more of the owner's contiguous, residential lots;  
226 and

227 (b) notice has been given to adjacent property owners and pursuant to local ordinance.

228 (3) Each request to vacate or ~~[alter]~~ amend a plat that contains a request to vacate or  
229 ~~[alter]~~ amend a public street, right-of-way, or easement is also subject to Section 10-9a-609.5.

230 (4) Each petition to vacate~~[-alter,]~~ or amend an entire plat or a portion of a plat shall  
231 include:

232 (a) the name and address of each owner of record of the land contained in the entire  
233 plat or on that portion of the plat described in the petition; and

234 (b) the signature of each ~~[of these owners]~~ owner described in Subsection (4)(a) who  
235 consents to the petition.

236 (5) (a) The owners of record of adjacent parcels that are described by either a metes  
237 and bounds description or by a recorded plat may exchange title to portions of those parcels if  
238 the exchange of title is approved by the land use authority in accordance with Subsection  
239 (5)(b).

240 (b) The land use authority shall approve an exchange of title under Subsection (5)(a) if  
241 the exchange of title will not result in a violation of any land use ordinance.

242 (c) If an exchange of title is approved under Subsection (5)(b):

243 (i) a notice of approval shall be recorded in the office of the county recorder which:

244 (A) is executed by each owner included in the exchange and by the land use authority;



245 (B) contains an acknowledgment for each party executing the notice in accordance with  
 246 the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and

247 (C) recites the descriptions of both the original parcels and the parcels created by the  
 248 exchange of title; and

249 (ii) a document of conveyance [~~of title reflecting the approved change~~] shall be  
 250 recorded in the office of the county recorder.

251 (d) A notice of approval recorded under this Subsection (5) does not act as a  
 252 conveyance of title to real property and is not required [~~for the recording of~~] in order to record  
 253 a document [~~purporting to convey~~] conveying title to real property.

254 (6) (a) The name of a recorded subdivision may be changed by recording an amended  
 255 plat making that change, as provided in this section and subject to Subsection (6)(c).

256 (b) The surveyor preparing the amended plat shall certify that the surveyor:

257 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and  
 258 Professional Land Surveyors Licensing Act;

259 (ii) has completed a survey of the property described on the plat in accordance with  
 260 Section 17-23-17 and has verified all measurements; and

261 (iii) has placed monuments as represented on the plat.

262 (c) An owner of land may not submit for recording an amended plat that gives the  
 263 subdivision described in the amended plat the same name as a subdivision in a plat already  
 264 recorded in the county recorder's office.

265 (d) Except as provided in Subsection (6)(a), the recording of a declaration or other  
 266 document that purports to change the name of a recorded plat is [~~voidable~~] void.

267 Section 7. Section **10-9a-609** is amended to read:

268 **10-9a-609. Land use authority approval of vacation, alteration, or amendment of**  
 269 **plat -- Recording the amended plat.**

270 (1) The land use authority may approve the vacation[~~-, alteration,~~] or amendment of a  
 271 plat by signing an amended plat showing the vacation[~~-, alteration,~~] or amendment if the land  
 272 use authority finds that:

273 (a) there is good cause for the vacation[~~-, alteration,~~] or amendment; and

274 (b) no public street, right-of-way, or easement has been vacated or [~~altered~~] amended.

275 (2) The land use authority shall ensure that the amended plat showing the vacation[;

276 alteration,] or amendment is recorded in the office of the county recorder in which the land is  
277 located.

278 ~~[(3) If an entire subdivision is vacated, the legislative body shall ensure that a~~  
279 ~~legislative body resolution containing a legal description of the entire vacated subdivision is~~  
280 ~~recorded in the county recorder's office.]~~

281 (3) A legislative body may vacate a subdivision or a portion of a subdivision by  
282 recording in the county recorder's office an ordinance describing the subdivision or the portion  
283 being vacated.

284 (4) An amended plat may not be submitted to the county recorder for recording unless  
285 it is signed, acknowledged, and dedicated by each owner of record of the portion of the plat  
286 that is amended.

287 (5) A management committee may sign and dedicate an amended plat as provided in  
288 Title 57, Chapter 8, Condominium Ownership Act.

289 (6) A plat may be corrected as provided in Section 57-3-106.

290 Section 8. Section **10-9a-609.5** is amended to read:

291 **10-9a-609.5. Vacating a street, right-of-way, or easement.**

292 (1) A petition to vacate some or all of a public street, right-of-way, or easement shall  
293 include:

294 (a) the name and address of each owner of record of land that is:

295 (i) adjacent to the public street, right-of-way, or easement; or

296 (ii) accessed exclusively by or within 300 feet of the public street, right-of-way, or  
297 easement; and

298 (b) the signature of each owner under Subsection (1)(a) who consents to the vacation.

299 (2) If a petition is submitted containing a request to vacate some or all of a street,  
300 right-of-way, or easement, the legislative body shall hold a public hearing in accordance with  
301 Section 10-9a-208 and determine whether:

302 (a) good cause exists for the vacation; and

303 (b) the public interest or any person will be materially injured by the proposed  
304 vacation.

305 (3) The legislative body may adopt an ordinance granting a petition to vacate some or  
306 all of a public street, right-of-way, or easement if the legislative body finds that:

307 (a) good cause exists for the vacation; and  
 308 (b) neither the public interest nor any person will be materially injured by the vacation.  
 309 (4) If the legislative body adopts an ordinance vacating some or all of a public street,  
 310 right-of-way, or easement, the legislative body shall ensure that ~~[a plat reflecting the vacation]~~  
 311 one or both of the following is recorded in the office of the recorder of the county in which the  
 312 land is located[-]:

- 313 (a) a plat reflecting the vacation; or
- 314 (b) an ordinance described in Subsection (3).

315 (5) The action of the legislative body vacating some or all of a street, right-of-way, or  
 316 easement that has been dedicated to public use:

- 317 (a) operates to the extent to which it is vacated, upon the effective date of the recorded  
 318 plat, as a revocation of the acceptance of and the relinquishment of the municipality's fee in the  
 319 vacated street, right-of-way, or easement; and
- 320 (b) may not be construed to impair:
  - 321 (i) any right-of-way or easement of any lot owner; or
  - 322 (ii) the franchise rights of any public utility.

323 Section 9. Section **17-17-1** is amended to read:

324 **17-17-1. Duties of assessor -- Effective date of boundary changes for assessment.**

325 (1) The assessor, in cooperation with the State Tax Commission, shall:  
 326 ~~[(1)]~~ (a) perform the duties required in Title 59, Chapter 2, Part 13, Collection of  
 327 Taxes, except those duties that have been reassigned to the treasurer in an ordinance adopted  
 328 under Section 17-16-5.5; and

329 ~~[(2)]~~ (b) perform any other duties required by law.

330 (2) An assessment shall be collected in accordance with the effective date and  
 331 boundary adjustment provisions in Subsection 17-2-209(4).

332 Section 10. Section **17-21-6** is amended to read:

333 **17-21-6. General duties of recorder -- Records and indexes.**

334 (1) Each recorder shall:

- 335 (a) keep an entry record, in which the recorder shall, upon acceptance and recording of  
 336 any instrument, enter the instrument in the order of its ~~[reception]~~ recording, the names of the  
 337 parties to the instrument, its date, the hour, the day of the month and the year of recording, and

338 a brief description, and endorse upon each instrument a number corresponding with the number  
339 of the entry;

340 (b) keep a grantors' index, in which the recorder shall index deeds and final judgments  
341 or decrees partitioning or affecting the title to or possession of real property, which shall show  
342 the entry number of the instrument, the name of each grantor in alphabetical order, the name of  
343 the grantee, the date of the instrument, the time of recording, the kind of instrument, the book  
344 and page, and a brief description;

345 (c) keep a grantees' index, in which the recorder shall index deeds and final judgments  
346 or decrees partitioning or affecting the title to or possession of real property, which shall show  
347 the entry number of the instrument, the name of each grantee in alphabetical order, the name of  
348 the grantor, the date of the instrument, the time of recording, the kind of instrument, the book  
349 and page, and a brief description;

350 (d) keep a mortgagors' index, in which the recorder shall enter all mortgages, deeds of  
351 trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall  
352 show the entry number of the instrument, the name of each mortgagor, debtor, or person  
353 charged with the encumbrance in alphabetical order, the name of the mortgagee, lien holder,  
354 creditor, or claimant, the date of the instrument, the time of recording, the instrument,  
355 consideration, the book and page, and a brief description;

356 (e) keep a mortgagees' index, in which the recorder shall enter all mortgages, deeds of  
357 trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall  
358 show the entry number of the instrument, the name of each mortgagee, lien holder, creditor, or  
359 claimant, in alphabetical order, the name of the mortgagor or person charged with the  
360 encumbrance, the date of the instrument, the time of recording, the kind of instrument, the  
361 consideration, the book and page, and a brief description;

362 (f) subject to Subsection (3), keep a tract index, which shall show by description every  
363 instrument recorded, the date and the kind of instrument, the time of recording, and the book  
364 and page and entry number;

365 (g) keep an index of recorded maps, plats, and subdivisions;

366 (h) keep an index of powers of attorney showing the date and time of recording, the  
367 book, the page, and the entry number;

368 (i) keep a miscellaneous index, in which the recorder shall enter all instruments of a

369 miscellaneous character not otherwise provided for in this section, showing the date of  
370 recording, the book, the page, the entry number, the kind of instrument, from, to, and the  
371 parties;

372 (j) keep an index of judgments showing the judgment debtors, the judgment creditors,  
373 the amount of judgment, the date and time of recording, the satisfaction, and the book, the  
374 page, and the entry number; and

375 (k) keep a general recording index in which the recorder shall index all executions and  
376 writs of attachment, and any other instruments not required by law to be spread upon the  
377 records, and in separate columns the recorder shall enter the names of the plaintiffs in the  
378 execution and the names of the defendants in the execution.

379 (2) The recorder shall alphabetically arrange the indexes required by this section and  
380 keep a reverse index.

381 (3) (a) The tract index required by Subsection (1)(f) shall be kept so that it shows a true  
382 chain of title to each tract or parcel, together with ~~[their encumbrances]~~ each encumbrance on  
383 the tract or parcel, according to the records of the office.

384 (b) A recorder shall abstract an instrument in the tract index unless:

385 (i) the instrument is required to contain a legal description under Section 17-21-20 and  
386 does not contain that legal description; or

387 (ii) the instrument contains errors, omissions, or defects to the extent that the tract or  
388 parcel to which the instrument relates cannot be determined.

389 (c) If a recorder abstracts an instrument in the tract index or another index required by  
390 this section, the recorder may:

391 (i) use a tax parcel number;

392 (ii) use a site address;

393 (iii) reference to other instruments of record recited on the instrument; or

394 (iv) reference another instrument that is recorded concurrently with the instrument.

395 (d) A recorder is not required to go beyond the face of an instrument to determine the  
396 tract or parcel to which an instrument may relate.

397 (e) A person may not bring an action against a recorder for injuries or damages  
398 suffered as a result of information contained in an instrument recorded in a tract index or other  
399 index that is required by this section despite errors, omissions, or defects in the instrument.

400           (f) The fact that a recorded instrument described in Subsection (3)(e) is included in the  
401 tract index does not cure a failure to give public notice caused by an error, omission, or defect.

402           (g) A document that is indexed in all or part of the indexes required by this section  
403 shall give constructive notice.

404           (4) Nothing in this section prevents the recorder from using a single name index if that  
405 index includes all of the indexes required by this section.

406           Section 11. Section **17-21-20** is amended to read:

407           **17-21-20. Recording required -- Recorder may impose requirements on**  
408 **documents to be recorded -- Prerequisites -- Additional fee for noncomplying documents**  
409 **-- Recorder may require tax serial number -- Exceptions -- Requirements for recording**  
410 **final local entity plat.**

411           (1) Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required  
412 by law to be [~~filed~~] recorded in the office of the county recorder shall be recorded unless  
413 otherwise provided.

414           (2) Each document executed on or after July 1, 2007 that is submitted for recording to  
415 a county recorder's office shall:

416           (a) unless otherwise provided by law, be an original or certified copy of the document;

417           (b) be in English or be accompanied by an accurate English translation of the  
418 document;

419           (c) contain a brief title, heading, or caption on the first page stating the nature of the  
420 document;

421           (d) contain the legal description of the property that is the subject of the document;

422           (e) comply with the requirements of Section 17-21-25 and Subsections 57-3-105(1)  
423 and (2);

424           (f) be notarized with the notary stamp with the seal legible; and

425           (g) have original signatures.

426           (3) (a) Beginning September 1, 2007, a county recorder may require that each paper,  
427 notice, and instrument submitted for recording in the county recorder's office:

428           (i) be on white paper that is 8-1/2 inches by 11 inches in size;

429           (ii) have a margin of one inch on the left and right sides and at the bottom of each  
430 page;

431 (iii) have a space of 2-1/2 inches down and 4-1/2 inches across the upper right corner  
432 of the first page and a margin of one inch at the top of each succeeding page;

433 (iv) not be on sheets of paper that are continuously bound together at the side, top, or  
434 bottom;

435 (v) not contain printed material on more than one side of each page;

436 (vi) be printed in black ink and not have text smaller than seven lines of text per  
437 vertical inch; and

438 (vii) be sufficiently legible to make certified copies.

439 (b) A county recorder who intends to establish requirements under Subsection (3)(a)  
440 shall first:

441 (i) provide formal notice of the requirements; and

442 (ii) establish and publish an effective date for the requirements that is at least three  
443 months after the formal notice under Subsection (3)(b)(i).

444 (c) If a county recorder establishes requirements under this Subsection (3), the county  
445 recorder may charge and collect from persons who submit a document for recording that does  
446 not comply with the requirements, in addition to any other fee that the county recorder is  
447 authorized to charge and collect, a fee that:

448 (i) is calculated to recover the additional cost of handling and recording noncomplying  
449 documents; and

450 (ii) may not exceed \$2 per page.

451 (4) (a) To facilitate the abstracting of an instrument, a county recorder may require that  
452 the applicable tax serial number of each parcel ~~[affected by]~~ described in the instrument  
453 ~~[appear on each]~~ be noted on the instrument before it may be accepted for recording.

454 (b) If a county recorder requires the applicable tax serial number to be on an instrument  
455 before it may be recorded:

456 (i) the county recorder shall post a notice of that requirement in a conspicuous place at  
457 the recorder's office;

458 (ii) the tax serial number may not be considered to be part of the legal description and  
459 may be indicated on the margin of the instrument; and

460 (iii) an error in the tax serial number does not affect the validity of the instrument or  
461 effectiveness of the recording.

- 462 (5) Subsections (2), (3), and (4) do not apply to:
- 463 (a) a map;
- 464 (b) a certificate or affidavit of death;
- 465 (c) a military discharge;
- 466 (d) a document regarding taxes that is issued by the Internal Revenue Service of the
- 467 United States Department of the Treasury;
- 468 (e) a document submitted for recording that has been filed with a court and conforms to
- 469 the formatting requirements established by the court; or
- 470 (f) a document submitted for recording that is in a form required by law.
- 471 (6) (a) As used in this Subsection (6):
- 472 (i) "Boundary action" has the same meaning as defined in Section 17-23-20.
- 473 (ii) "Local entity" has the same meaning as defined in Section 67-1a-6.5.
- 474 (b) A person may not submit to a county recorder for recording a plat depicting the
- 475 boundary of a local entity as the boundary exists as a result of a boundary action, unless:
- 476 (i) the plat has been approved under Section 17-23-20 by the county surveyor as a final
- 477 local entity plat, as defined in Section 17-23-20; and
- 478 (ii) the person also submits for recording:
- 479 (A) the original notice of an impending boundary action, as defined in Section
- 480 67-1a-6.5, for the boundary action for which the plat is submitted for recording; and
- 481 (B) the original applicable certificate, as defined in Section 67-1a-6.5, issued by the
- 482 lieutenant governor under Section 67-1a-6.5 for the boundary action for which the plat is
- 483 submitted for recording; and
- 484 (C) each other document required by statute to be submitted for recording with the
- 485 notice of an impending boundary action and applicable certificate.
- 486 (c) Promptly after recording the documents described in Subsection (6)(b) relating to a
- 487 boundary action, but no later than 10 days after recording, the county recorder shall send a copy
- 488 of all those documents to the State Tax Commission.

Section 12. Section **17-27a-603** is amended to read:

**17-27a-603. Plat required when land is subdivided -- Approval of plat --**

**Recording plat.**

- 492 (1) (a) Unless exempt under Section 17-27a-605 or excluded from the definition of



493 subdivision under Subsection 17-27a-103(48), whenever any land is laid out and platted, the  
494 owner of the land shall provide an accurate plat that describes or specifies:

495 ~~[(a)]~~ (i) a subdivision name ~~[or designation of the subdivision]~~ that is distinct from any  
496 subdivision name on a plat ~~[already]~~ recorded in the county recorder's office;

497 ~~[(b)]~~ (ii) the boundaries, course, and dimensions of all of the parcels of ground divided,  
498 by their boundaries, course, and extent, whether the owner proposes that any parcel of ground  
499 is intended to be used as a street or for any other public use, and whether any such area is  
500 reserved or proposed for dedication for a public purpose;

501 ~~[(c)]~~ (iii) the lot or unit reference, block or building reference, street or site address,  
502 street name or coordinate address, acreage or square footage for all parcels, units, or lots, and  
503 length and width of the blocks and lots intended for sale; and

504 ~~[(d)]~~ (iv) every existing right-of-way and easement grant of record for underground  
505 facilities, as defined in Section 54-8a-2, and for other utility facilities.

506 (b) The county recorder may require that the name of a subdivision plat be modified to  
507 comply with Subsection (1)(a)(i) prior to recording.

508 (2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's  
509 ordinances and this part and has been approved by the culinary water authority and the sanitary  
510 sewer authority, the county shall approve the plat.

511 (b) Counties are encouraged to receive a recommendation from the fire authority before  
512 approving a plat.

513 (3) The county may withhold an otherwise valid plat approval until the owner of the  
514 land provides the legislative body with a tax clearance indicating that all taxes, interest, and  
515 penalties owing on the land have been paid.

516 ~~[(4) (a) The owner of the land shall acknowledge the plat before an officer authorized~~  
517 ~~by law to take the acknowledgment of conveyances of real estate and shall obtain the signature~~  
518 ~~of each individual designated by the county.]~~

519 (4) (a) A plat may not be submitted to a county recorder for recording unless:

520 (i) prior to recordation, each owner of record of land described on the plat has signed  
521 and dedicated the plat; and

522 (ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as  
523 provided by law.

524 (b) The surveyor making the plat shall certify that the surveyor:  
525 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and  
526 Professional Land Surveyors Licensing Act;  
527 (ii) has completed a survey of the property described on the plat in accordance with  
528 Section 17-23-17 and has verified all measurements; and  
529 (iii) has placed monuments as represented on the plat.

530 (c) (i) As applicable, the owner or operator of the underground and utility facilities  
531 shall approve the:

532 (A) boundary, course, dimensions, and intended use of the right-of-way and easement  
533 grants of record;

534 (B) location of existing underground and utility facilities; and

535 (C) conditions or restrictions governing the location of the facilities within the  
536 right-of-way, and easement grants of records, and utility facilities within the subdivision.

537 (ii) The approval of an owner or operator under Subsection (4)(c)(i):

538 (A) indicates only that the plat approximates the location of the existing underground  
539 and utility facilities but does not warrant or verify their precise location; and

540 (B) does not affect a right that the owner or operator has under:

541 (I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

542 (II) a recorded easement or right-of-way;

543 (III) the law applicable to prescriptive rights; or

544 (IV) any other provision of law.

545 (5) (a) After the plat has been acknowledged, certified, and approved, the owner of the  
546 land shall, within the time period designated by ordinance, record the plat in the county  
547 recorder's office in the county in which the lands platted and laid out are situated.

548 (b) An owner's failure to record a plat within the time period designated by ordinance  
549 renders the plat voidable.

550 Section 13. Section **17-27a-604** is amended to read:

551 **17-27a-604. Subdivision plat approval procedure -- Effect of not complying.**

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

554 (a) the person has complied with the requirements of Subsection 17-27a-603(4)(a);

555           ~~[(a)]~~ (b) the plat has been approved by:

556           (i) the land use authority of the county in whose unincorporated area the land described  
557 in the plat is located; and

558           (ii) other officers that the county designates in its ordinance; and

559           ~~[(b)]~~ (c) all approvals described in Subsection (1)(b) are entered in writing on the plat  
560 by designated officers.

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

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

563           Section 14. Section **17-27a-605** is amended to read:

564           **17-27a-605. Exemptions from plat requirement.**

565           (1) Notwithstanding Sections 17-27a-603 and 17-27a-604, the land use authority may  
566 approve the subdivision of unincorporated land into 10 lots or less without a plat, by certifying  
567 in writing that:

568           (a) the county has provided notice as required by ordinance; and

569           (b) the proposed subdivision:

570           (i) is not traversed by the mapped lines of a proposed street as shown in the general  
571 plan and does not require the dedication of any land for street or other public purposes;

572           (ii) has been approved by the culinary water authority and the sanitary sewer authority;

573           (iii) is located in a zoned area; and

574           (iv) conforms to all applicable land use ordinances or has properly received a variance  
575 from the requirements of an otherwise conflicting and applicable land use ordinance.

576           (2) (a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural  
577 land is exempt from the plat requirements of Section 17-27a-603 if the lot or parcel:

578           (i) qualifies as land in agricultural use under Section 59-2-502;

579           (ii) meets the minimum size requirement of applicable land use ordinances; and

580           (iii) is not used and will not be used for any nonagricultural purpose.

581           (b) The boundaries of each lot or parcel exempted under Subsection ~~[(1)]~~ (2)(a) shall  
582 be graphically illustrated on a record of survey map that, after receiving the same approvals as  
583 are required for a plat under Section 17-27a-604, shall be recorded with the county recorder.

584           (c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural  
585 purpose, the county may require the lot or parcel to comply with the requirements of Section

586 17-27a-603.

587 (3) (a) Except as provided in Subsection (4), a document recorded in the county  
588 recorder's office that divides property by a metes and bounds description does not create an  
589 approved subdivision allowed by this part unless the land use authority's certificate of written  
590 approval required by Subsection (1) is attached to the document.

591 (b) The absence of the certificate or written approval required by Subsection (1) does  
592 not:

593 (i) prohibit the county recorder from recording a document; or

594 (ii) affect the validity of a recorded document.

595 (c) A document which does not meet the requirements of Subsection (1) may be  
596 corrected by the recording of an affidavit to which the required certificate or written approval is  
597 attached in accordance with Section 57-3-106.

598 (4) (a) As used in this Subsection (4):

599 (i) "Divided land" means land that:

600 (A) is described as the land to be divided in a notice under Subsection (4)(b)(ii); and

601 (B) has been divided by a minor subdivision.

602 (ii) "Land to be divided" means land that is proposed to be divided by a minor  
603 subdivision.

604 (iii) "Minor subdivision" means a division of at least 100 contiguous acres of  
605 agricultural land in a county of the third, fourth, fifth, or sixth class to create one new lot that,  
606 after the division, is separate from the remainder of the original 100 or more contiguous acres  
607 of agricultural land.

608 (iv) "Minor subdivision lot" means a lot created by a minor subdivision.

609 (b) Notwithstanding Sections 17-27a-603 and 17-27a-604, an owner of at least 100  
610 contiguous acres of agricultural land may make a minor subdivision by submitting for  
611 recording in the office of the recorder of the county in which the land to be divided is located:

612 (i) a recordable deed containing the legal description of the minor subdivision lot; and

613 (ii) a notice:

614 (A) indicating that the owner of the land to be divided is making a minor subdivision;

615 (B) referring specifically to this section as the authority for making the minor  
616 subdivision; and

- 617 (C) containing the legal description of:
- 618 (I) the land to be divided; and
- 619 (II) the minor subdivision lot.
- 620 (c) A minor subdivision lot:
- 621 (i) may not be less than one acre in size;
- 622 (ii) may not be within 1,000 feet of another minor subdivision lot; and
- 623 (iii) is not subject to the subdivision ordinance of the county in which the minor
- 624 subdivision lot is located.
- 625 (d) Land to be divided by a minor subdivision may not include divided land.
- 626 (e) A county:
- 627 (i) may not deny a building permit to an owner of a minor subdivision lot based on:
- 628 (A) the lot's status as a minor subdivision lot; or
- 629 (B) the absence of standards described in Subsection (4)(e)(ii); and
- 630 (ii) may, in connection with the issuance of a building permit, subject a minor
- 631 subdivision lot to reasonable health, safety, and access standards that the county has established
- 632 and made public.

633 Section 15. Section **17-27a-606** is amended to read:

634 **17-27a-606. Common or community area parcels on a plat -- No separate**  
635 **ownership -- Ownership interest equally divided among other parcels on plat and**  
636 **included in description of other parcels.**

637 (1) (a) A parcel designated as a common or community area on a plat recorded in  
638 compliance with this part may not be separately owned or conveyed independent of the other  
639 lots, units, or parcels created by the plat unless:

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

642 ~~[(b)]~~ (ii) the ~~[separate ownership or]~~ conveyance is approved by the owners of at least  
643 75% of the lots, units, or parcels on the plat, after the county gives its approval.

644 (b) A notice of the approval required in Subsection (1)(a)(ii) shall be:

645 (i) attached as an exhibit to the document of conveyance; or

646 (ii) recorded concurrently with the conveyance as a separate document.

647 (2) The ownership interest in a parcel described in Subsection (1) shall:

648 (a) for purposes of assessment, be divided equally among all parcels created by the  
649 plat, unless a different division of interest for assessment purposes is indicated on the plat or an  
650 accompanying recorded document; and

651 (b) be considered to be included in the description of each instrument describing a  
652 parcel on the plat by its identifying plat number, even if the common or community area  
653 interest is not explicitly stated in the instrument.

654 Section 16. Section **17-27a-607** is amended to read:

655 **17-27a-607. Dedication of streets and other public places.**

656 (1) [~~Plats, when made, acknowledged, and recorded~~] A plat that is signed, dedicated,  
657 and acknowledged by each owner of record, and approved according to the procedures  
658 specified in this part, [~~operate~~] operates, when recorded, as a dedication of all streets and other  
659 public places, and [~~vest~~] vests the fee of those parcels of land in the county for the public for  
660 the uses named or intended in [~~those plats~~] the plat.

661 (2) The dedication established by this section does not impose liability upon the county  
662 for streets and other public places that are dedicated in this manner but are unimproved.

663 Section 17. Section **17-27a-608** is amended to read:

664 **17-27a-608. Vacating or amending a subdivision plat.**

665 (1) (a) A fee owner of land, as shown on the last county assessment roll, in a  
666 subdivision that has been laid out and platted as provided in this part may file a written petition  
667 with the land use authority to have some or all of the plat vacated[~~, altered,~~] or amended.

668 (b) If a petition is filed under Subsection (1)(a), the land use authority shall hold a  
669 public hearing within 45 days after the petition is filed if:

670 (i) any owner within the plat notifies the county of the owner's objection in writing  
671 within 10 days of mailed notification; or

672 (ii) a public hearing is required because all of the owners in the subdivision have not  
673 signed the revised plat.

674 (2) The public hearing requirement of Subsection (1)(b) does not apply and a land use  
675 authority may consider at a public meeting an owner's petition to [~~alter~~] vacate or amend a  
676 subdivision plat if:

677 (a) the petition seeks to join two or more of the owner's contiguous, residential lots;  
678 and

679 (b) notice has been given to adjacent property owners and pursuant to local ordinance.

680 (3) Each request to vacate or ~~[alter]~~ amend a plat that contains a request to vacate or  
681 ~~[alter]~~ amend a public street, right-of-way, or easement is also subject to Section 17-27a-609.5.

682 (4) Each petition to vacate~~[-alter,]~~ or amend an entire plat or a portion of a plat shall  
683 include:

684 (a) the name and address of each owner of record of the land contained in:

685 (i) the entire plat; or

686 (ii) that portion of the plat described in the petition; and

687 (b) the signature of each of these owners who consents to the petition.

688 (5) (a) The owners of record of adjacent parcels that are described by either a metes  
689 and bounds description or by a recorded plat may exchange title to portions of those parcels if  
690 the exchange of title is approved by the land use authority in accordance with Subsection  
691 (5)(b).

692 (b) The land use authority shall approve an exchange of title under Subsection (5)(a) if  
693 the exchange of title will not result in a violation of any land use ordinance.

694 (c) If an exchange of title is approved under Subsection (5)(b):

695 (i) a notice of approval shall be recorded in the office of the county recorder which:

696 (A) is executed by each owner included in the exchange and by the land use authority;

697 (B) contains an acknowledgment for each party executing the notice in accordance with  
698 the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and

699 (C) recites the descriptions of both the original parcels and the parcels created by the  
700 exchange of title; and

701 (ii) a document of conveyance of title reflecting the approved change shall be recorded  
702 in the office of the county recorder.

703 (d) A notice of approval recorded under this Subsection (5) does not act as a  
704 conveyance of title to real property and is not required ~~[for the recording of]~~ to record a  
705 document ~~[purporting to convey]~~ conveying title to real property.

706 (6) (a) The name of a recorded subdivision may be changed by recording an amended  
707 plat making that change, as provided in this section and subject to Subsection (6)(c).

708 (b) The surveyor preparing the amended plat shall certify that the surveyor:

709 (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and

710 Professional Land Surveyors Licensing Act;

711 (ii) has completed a survey of the property described on the plat in accordance with  
712 Section 17-23-17 and has verified all measurements; and

713 (iii) has placed monuments as represented on the plat.

714 (c) An owner of land may not submit for recording an amended plat that gives the  
715 subdivision described in the amended plat the same name as a subdivision [~~in a plat already~~]  
716 recorded in the county recorder's office.

717 (d) Except as provided in Subsection (6)(a), the recording of a declaration or other  
718 document that purports to change the name of a recorded plat is [~~voidable~~] void.

719 Section 18. Section ~~17-27a-609~~ is amended to read:

720 **17-27a-609. Land use authority approval of vacation or amendment of plat --**  
721 **Recording the amended plat.**

722 (1) The land use authority may approve the vacation[~~;~~ ~~alteration;~~] or amendment of a  
723 plat by signing an amended plat showing the vacation[~~;~~ ~~alteration;~~] or amendment if the land  
724 use authority finds that:

725 (a) there is good cause for the vacation[~~;~~ ~~alteration;~~] or amendment; and

726 (b) no public street, right-of-way, or easement has been vacated or [~~altered~~] amended.

727 (2) The land use authority shall ensure that the amended plat showing the vacation[  
728 ~~alteration;~~] or amendment is recorded in the office of the county recorder in which the land is  
729 located.

730 [~~(3) If an entire subdivision is vacated, the legislative body shall ensure that a  
731 legislative body resolution containing a legal description of the entire vacated subdivision is  
732 recorded in the county recorder's office.~~]

733 (3) A legislative body may vacate a subdivision or a portion of a subdivision by  
734 recording in the county recorder's office an ordinance describing the subdivision or the portion  
735 being vacated.

736 (4) An amended plat may not be submitted to the county recorder for recording unless  
737 it is signed, acknowledged, and dedicated by each owner of record of the portion of the plat  
738 that is amended.

739 (5) A management committee may sign and dedicate an amended plat as provided in  
740 Title 57, Chapter 8, Condominium Ownership Act.



741 (6) A plat may be corrected as provided in Section 57-3-106.

742 Section 19. Section **17-27a-609.5** is amended to read:

743 **17-27a-609.5. Vacating a street, right-of-way, or easement.**

744 (1) A petition to vacate some or all of a public street, right-of-way, or easement shall  
745 include:

746 (a) the name and address of each owner of record of land that is:

747 (i) adjacent to the public street, right-of-way, or easement; or

748 (ii) accessed exclusively by or within 300 feet of the public street, right-of-way, or  
749 easement; and

750 (b) the signature of each owner under Subsection (1)(a) who consents to the vacation.

751 (2) If a petition is submitted containing a request to vacate some or all of a street,  
752 right-of-way, or easement, the legislative body shall hold a public hearing in accordance with  
753 Section 17-27a-208 and determine whether:

754 (a) good cause exists for the vacation; and

755 (b) the public interest or any person will be materially injured by the proposed  
756 vacation.

757 (3) The legislative body may adopt an ordinance granting a petition to vacate some or  
758 all of a public street, right-of-way, or easement if the legislative body finds that:

759 (a) good cause exists for the vacation; and

760 (b) neither the public interest nor any person will be materially injured by the vacation.

761 (4) If the legislative body adopts an ordinance vacating some or all of a public street,  
762 right-of-way, or easement, the legislative body shall ensure that [a plat reflecting the vacation]  
763 one or both of the following is recorded in the office of the recorder of the county in which the  
764 land is located[-]:

765 (a) a plat reflecting the vacation; or

766 (b) an ordinance described in Subsection (3).

767 (5) The action of the legislative body vacating some or all of a street, right-of-way, or  
768 easement that has been dedicated to public use:

769 (a) operates to the extent to which it is vacated, upon the effective date of the recorded  
770 plat, as a revocation of the acceptance of and the relinquishment of the county's fee in the  
771 vacated street, right-of-way, or easement; and

- 772 (b) may not be construed to impair:
- 773 (i) any right-of-way or easement of any lot owner; or
- 774 (ii) the franchise rights of any public utility.

775 Section 20. Section **38-9-1** is amended to read:

776 **38-9-1. Definitions.**

777 As used in this chapter:

778 (1) "Interest holder" means a person who holds or possesses a present, lawful property  
779 interest in certain real property, including an owner, title holder, mortgagee, trustee, or  
780 beneficial owner.

781 (2) "Lien claimant" means a person claiming an interest in real property who offers a  
782 document for recording or filing with any county recorder in the state asserting a lien, or notice  
783 of interest, or other claim of interest in certain real property.

784 (3) "Owner" means a person who has a vested ownership interest in certain real  
785 property.

786 (4) (a) "Record interest holder" means a person who holds or possesses a present,  
787 lawful property interest in certain real property, including an owner, titleholder, mortgagee,  
788 trustee, or beneficial owner, and whose name and interest in that real property appears in the  
789 county recorder's records for the county in which the property is located.

790 (b) "Record interest holder" includes any grantor in the chain of the title in certain real  
791 property.

792 (5) "Record owner" means an owner whose name and ownership interest in certain real  
793 property is recorded or filed in the county recorder's records for the county in which the  
794 property is located.

795 (6) "Wrongful lien" means any document that purports to create a lien, notice of  
796 interest, or encumbrance on an owner's interest in certain real property and at the time it is  
797 recorded [~~or filed~~] is not:

798 (a) expressly authorized by this chapter or another state or federal statute;

799 (b) authorized by or contained in an order or judgment of a court of competent  
800 jurisdiction in the state; or

801 (c) signed by or authorized pursuant to a document signed by the owner of the real  
802 property.

803 Section 21. Section **38-9-3** is amended to read:

804 **38-9-3. County recorder may reject wrongful lien within scope of employment --**  
805 **Good faith requirement.**

806 (1) (a) A county recorder may reject recording of a lien if the county recorder  
807 determines the lien is a wrongful lien as defined in Section 38-9-1.

808 (b) If the county recorder rejects ~~the~~ a document to record a lien in accordance with  
809 Subsection (1)(a), the county recorder shall immediately return the original document together  
810 with a notice that the document was rejected pursuant to this section to the person attempting  
811 to record ~~or file~~ the document or to the address provided on the document.

812 (2) A county recorder who, within the scope of the county recorder's employment,  
813 rejects or accepts a document for recording ~~or filing~~ in good faith under this section ~~may~~ is  
814 not ~~be~~ liable for damages ~~except as otherwise provided by law~~.

815 (3) If a rejected document is later found to be recordable pursuant to a court order, it  
816 shall have no retroactive recording priority.

817 (4) Nothing in this chapter shall preclude any person from pursuing any remedy  
818 pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

819 Section 22. Section **38-9-4** is amended to read:

820 **38-9-4. Civil liability for recording wrongful lien -- Damages.**

821 (1) A lien claimant who records ~~or files~~ or causes a wrongful lien as defined in  
822 Section 38-9-1 to be recorded ~~or filed~~ in the office of the county recorder against real  
823 property is liable to a record interest holder for any actual damages proximately caused by the  
824 wrongful lien.

825 (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful  
826 lien within 10 days from the date of written request from a record interest holder of the real  
827 property delivered personally or mailed to the last-known address of the lien claimant, the  
828 person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever  
829 is greater, and for reasonable attorney fees and costs.

830 (3) A person is liable to the record owner of real property for \$10,000 or for treble  
831 actual damages, whichever is greater, and for reasonable attorney fees and costs, who records  
832 ~~or files~~ or causes to be recorded ~~or filed~~ a wrongful lien as defined in Section 38-9-1 in the  
833 office of the county recorder against the real property, knowing or having reason to know that

834 the document:

835 (a) is a wrongful lien;

836 (b) is groundless; or

837 (c) contains a material misstatement or false claim.

838 Section 23. Section **57-1-5** is amended to read:

839 **57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of**  
840 **joint tenancy -- Tenants by the entirety -- Tenants holding as community property.**

841 (1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to  
842 two persons in their own right who are designated as husband and wife in the granting  
843 documents is presumed to be a joint tenancy interest with rights of survivorship, unless  
844 severed, converted, or expressly declared in the grant to be otherwise.

845 (b) Every ownership interest in real estate that does not qualify for the joint tenancy  
846 presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest  
847 unless expressly declared in the grant to be otherwise.

848 (2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the  
849 survivor of them" or words of similar import means a joint tenancy.

850 (b) Use of words "tenancy in common" or "with no rights of survivorship" or  
851 "undivided interest" or words of similar import declare a tenancy in common.

852 (3) A sole owner of real property creates a joint tenancy in himself and another or  
853 others:

854 (a) by making a transfer to himself and another or others as joint tenants by use of the  
855 words as provided in Subsection (2)(a); or

856 (b) by conveying to another person or persons an interest in land in which an interest is  
857 retained by the grantor and by declaring the creation of a joint tenancy by use of the words as  
858 provided in Subsection (2)(a).

859 (4) In all cases, the interest of joint tenants shall be equal and undivided.

860 (5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide  
861 conveyance of the joint tenant's interest in property held in joint tenancy to himself or another,  
862 the joint tenancy is severed and converted into a tenancy in common.

863 (b) If there is more than one joint tenant remaining after a joint tenant severs a joint  
864 tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in

865 joint tenancy.

866 (6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no  
867 retrospective operation and shall govern instruments executed and recorded on or after May 5,  
868 1997.

869 (7) Tenants by the entirety are considered to be joint tenants.

870 (8) Tenants holding title as community property are considered to be joint tenants.

871 Section 24. Section **57-1-5.1** is amended to read:

872 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

873 (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional  
874 interest in real estate may be terminated by an affidavit that:

875 (a) meets the requirements of Subsection (2); and

876 (b) is recorded in the office of the recorder of the county in which the affected property  
877 is located.

878 (2) Each affidavit required by Subsection (1) shall:

879 (a) cite the interest that is being terminated;

880 (b) contain a legal description of the real property that is affected;

881 (c) reference the entry number and the book and page of the instrument creating the  
882 interest to be terminated; and

883 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the  
884 death certificate or other document issued by a governmental agency as described in Section  
885 75-1-107 certifying the death.

886 (3) The affidavit required by Subsection (1) may be in substantially the following form:

887 "Affidavit

888 State of Utah )

889 ) ss

890 County of \_\_\_\_\_)

891 I, (name of affiant), being of legal age and being first duly sworn, depose and state as  
892 follows:

893 (The name of the deceased person), the decedent in the attached certificate of death or  
894 other document witnessing death is the same person as (the name of the deceased person)

895 named as a party in the document dated (date of document) as entry \_\_\_\_\_ in book \_\_\_\_\_,

896 page \_\_\_\_\_ in the records of the (name of county) County Recorder.

897 This affidavit is given to terminate the decedent's interest in the following described  
898 property located in \_\_\_\_\_ County, State of Utah: (description of the  
899 property).

900 Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

901 \_\_\_\_\_

902 (Signature of affiant)

903 Subscribed to and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

904 \_\_\_\_\_

905 Notary public"

906 Section 25. Section 57-1-28 is amended to read:

907 **57-1-28. Sale of trust property by trustee -- Payment of bid -- Trustee's deed**  
908 **delivered to purchaser -- Recitals -- Effect.**

909 (1) (a) The purchaser at the sale shall pay the price bid as directed by the trustee.

910 (b) The beneficiary shall receive a credit on the beneficiary's bid in an amount not to  
911 exceed the amount representing:

912 (i) the unpaid principal owed;

913 (ii) accrued interest as of the date of the sale;

914 (iii) advances for the payment of:

915 (A) taxes;

916 (B) insurance; and

917 (C) maintenance and protection of the trust property;

918 (iv) the beneficiary's lien on the trust property; and

919 (v) costs of sale, including reasonable trustee's and attorney's fees.

920 (2) (a) (i) Within three business days of the day the trustee receives payment of the  
921 price bid, the trustee shall make the trustee's deed available to the purchaser.

922 (ii) If the trustee does not comply with this Subsection (2)(a), the trustee is liable for  
923 any loss incurred by the purchaser because of the trustee's failure to comply with this  
924 Subsection (2)(a).

925 (b) The trustee's deed may contain recitals of compliance with the requirements of  
926 Sections 57-1-19 through 57-1-36 relating to the exercise of the power of sale and sale of the

927 property described in the trustee's deed, including recitals concerning:

928 (i) any mailing, personal delivery, and publication of the notice of default;

929 (ii) any mailing and the publication and posting of the notice of sale; and

930 (iii) the conduct of sale.

931 (c) The recitals described in Subsection (2)(b):

932 (i) constitute prima facie evidence of compliance with Sections 57-1-19 through  
933 57-1-36; and

934 (ii) are conclusive evidence in favor of bona fide purchasers and encumbrancers for  
935 value and without notice.

936 (3) The trustee's deed shall operate to convey to the purchaser, without right of  
937 redemption, the trustee's title and all right, title, interest, and claim of the trustor and the  
938 trustor's successors in interest and of all persons claiming by, through, or under them, in and to  
939 the property sold, including all right, title, interest, and claim in and to the property acquired by  
940 the trustor or the trustor's successors in interest subsequent to the execution of the trust deed,  
941 which trustee's deed shall be considered effective and relate back to the time of the sale.

942 (4) In accordance with Section 57-3-106, an interest of a purchaser in a trustee's deed  
943 that is recorded with the county recorder may not be divested if a person records an affidavit or  
944 other document purporting to rescind or cancel the trustee's deed.

945 Section 26. Section **59-2-1304** is amended to read:

946 **59-2-1304. Rate of previous year governs -- Proration among taxing units --**  
947 **Effective date of boundary changes for assessment.**

948 (1) (a) The amount of taxes to be collected in the current year on personal property  
949 assessed by the county assessor shall be based on the tax rates levied by all taxing entities for  
950 the previous year, and the tax so billed shall be the full tax on the property for the current year.

951 (b) The money collected in accordance with Subsection (1)(a) shall be paid:

952 (i) into the county treasury; and ~~paid~~

953 (ii) by the treasurer to the various taxing entities pro rata in accordance with the tax  
954 rates levied and approved for the current year, including new entities levying for the first time.

955 (2) An assessment shall be collected in accordance with the effective date and  
956 boundary adjustment provisions in Subsection 17-2-209(4).

957 Section 27. Section **59-2-1325** is amended to read:

958 **59-2-1325. Nature and extent of lien -- Time of attachment -- Effective date of**  
959 **boundary changes for assessment.**

960 (1) (a) A tax upon real property is a lien against the property assessed.

961 (b) A tax due upon improvements upon real property assessed to a person other than  
962 the owner of the real property is a lien upon the property and improvements. [~~These liens~~  
963 ~~attach as of]~~

964 (c) A lien described in Subsection (1)(a) or (b) shall attach on January 1 of each year.

965 (2) An assessment shall be collected in accordance with the effective date and

966 boundary adjustment provisions in Subsection 17-2-209(4).

967 Section 28. Section **72-3-107** is amended to read:

968 **72-3-107. County executive to keep plats of roads and highways.**

969 (1) The county executive of each county shall determine all county roads existing in  
970 the county and prepare and keep current plats and specific descriptions of the county roads.

971 (2) (a) The plats and specific descriptions shall be kept on file in the office of the  
972 county clerk or recorder.

973 (b) A county executive may not remove a platted road from the records unless the  
974 legislative body has vacated the road after a public hearing in accordance with Section  
975 72-3-108.

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**Legislative Review Note**  
**as of 1-29-10 1:51 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 279 - County Recorder Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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