

CONSOLIDATION OF MULTIPLE UNITS

INFORMATION ABOUT THE CONSOLIDATION OF MULTIPLE UNITS



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I estimate that in one out of ten condominium associations an owner has purchased two units and physically merged the units into one dwelling. I see it less frequently in townhomes (connected structures that are not condominiums), but it is not unheard of. In a PUD or HOA where the homes are not attached and they all rest on independent lots, the closely related issue is the person who wants to join two lots and build one home on the joined lots and use the second lot as an extended yard. Generally, with a clear understanding of two key issues, the joining of lots or units is nothing to fear from the Association's standpoint and does not really affect anyone. Aside from the Association issues, there are the issue of zoning, setbacks, building code requirements, and building permits, but I leave that to another article.

Assuming the joining of lots or units is permitted by the appropriate municipality and zoning authority, it inevitably comes for review before an association board or the developer in control of the association prior to turnover. Developers are typically eager to sell lots and homes. The type of person who can afford two units or lots is the developer's kind of person. So, developers will often go to great lengths to accommodate this type of buyer, including sometimes amending plats and declarations. In some commercial condominiums, I have seen this concept taken to the ultimate extreme where the developer permitted unit owners to purchase any size or configuration of unit and then modified the plat for each purchase. Developers often have this flexibility early on, but typically after the period of developer control, an association will not.

When an Association (after developer control) is confronted with an owner who wants to join two units or lots in a community association, there are two critical issues that need to be addressed. The first is the payment of assessments and the legal status of each unit or lot after the joining. For the most part, the only practical way to join units is to physically join them while maintaining their separate legal identity. This means that the owner must continue to pay two assessments. When this issue is not clearly addressed up front, it can turn into a problem down the road as owners of joined units will frequently press boards over time to only charge them one assessment. They may even try to push a modification of the legal boundaries through the local municipality. A clear written understanding that the owner will always be responsible for two assessments, up front, is the best solution to this problem.

The second issue is of critical importance in a condominium or an attached PUD is to ensure that the physical modifications proposed to join the units do not impair the structural integrity of the building and potentially negatively affect other unit owners. This can be dealt with effectively and efficiently with some up-front rules related to joining units, including the requirement for an architectural review of any planned physical modifications.

Senate Bill 90 that just passed in the Utah legislature adds new guidance for condominiums and other community associations when an owner wants to join attached units and lots. In short, it incorporates the concepts described above and also allows for an association to charge any legal and architectural review costs to an owner who desires to join two units. It further addresses the potentially touchy issue of the sliver of common area that may exist between the units that are being joined. Basically, it allows the joining notwithstanding that a small portion of this common area may be incorporated into the living space of someone's unit.

Importantly, these sections (Utah Code Ann. § 57-8- 4.5 and § 57-8a-222) do not take effect until July 1, 2014. They are also not expressly applicable to associations formed prior to their enactment, so an association should consult with an attorney as to the application of these sections in any particular circumstance. At the very least, however, this well written statute provides a great road map for any association faced with an owner who is asking to join two units or lots.

In summary, Associations have nothing to fear from an owner who wants to join two units or lots, as long as the two principles discussed above are clearly addressed in the process. Senate Bill 90 now codifies these good principles and provides a great reference for community associations even if it is not applicable to that association.

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REFERENCED DOCUMENTS

- Senate Bill 90
- Utah Code Ann. § 57-8- 4.5 and § 57-8a-222