

1 **HOMEOWNER ASSOCIATION RESERVE ACCOUNT**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephen H. Urquhart**

6 House Sponsor: Bradley G. Last

7

LONG TITLE

8 **General Description:**

9 This bill makes amendments to the reserve account requirements described in Title 57,
10 Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community
11 Association Act.
12

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ requires an association and an association of unit owners to:
 - 17 • vote annually whether to fund, and if so, how to fund, a reserve fund;
 - 18 • within 90 days after the day on which the vote to fund a reserve account occurs,

19 begin funding the reserve fund in the manner and amount determined by the
20 vote of the unit owners or lot owners; and

- 21 • within 30 days after the day on which the association or association of unit
22 owners begins funding a reserve fund, file a certificate of compliance with the
23 Department of Commerce;

- 24 ▶ states that if an association or an association of unit owners does not file a
25 certificate of compliance within the required 30 days, the association or association
26 of unit owners may not levy a special assessment until it files a certificate of
27 compliance; and



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **57-8-3**, as last amended by Laws of Utah 2012, Chapter 166

36 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369

37 **57-8a-102**, as last amended by Laws of Utah 2011, Chapter 355

38 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369



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

41 Section 1. Section **57-8-3** is amended to read:

42 **57-8-3. Definitions.**

43 As used in this chapter:

44 (1) "Assessment" means any charge imposed by the association, including:

45 (a) common expenses on or against a unit owner pursuant to the provisions of the
46 declaration, bylaws, or this chapter; and

47 (b) an amount that an association of unit owners assesses to a unit owner under
48 Subsection 57-8-43(9)(h).

49 (2) "Association of unit owners" means all of the unit owners:

50 (a) acting as a group in accordance with the declaration and bylaws; or

51 (b) organized as a legal entity in accordance with the declaration.

52 (3) "Building" means a building, containing units, and comprising a part of the
53 property.

54 (4) "Common areas and facilities" unless otherwise provided in the declaration or
55 lawful amendments to the declaration means:

56 (a) the land included within the condominium project, whether leasehold or in fee
57 simple;

58 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,

- 59 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;
- 60 (c) the basements, yards, gardens, parking areas, and storage spaces;
- 61 (d) the premises for lodging of janitors or persons in charge of the property;
- 62 (e) installations of central services such as power, light, gas, hot and cold water,
63 heating, refrigeration, air conditioning, and incinerating;
- 64 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
65 apparatus and installations existing for common use;
- 66 (g) such community and commercial facilities as may be provided for in the
67 declaration; and
- 68 (h) all other parts of the property necessary or convenient to its existence, maintenance,
69 and safety, or normally in common use.
- 70 (5) "Common expenses" means:
- 71 (a) all sums lawfully assessed against the unit owners;
- 72 (b) expenses of administration, maintenance, repair, or replacement of the common
73 areas and facilities;
- 74 (c) expenses agreed upon as common expenses by the association of unit owners; and
- 75 (d) expenses declared common expenses by this chapter, or by the declaration or the
76 bylaws.
- 77 (6) "Common profits," unless otherwise provided in the declaration or lawful
78 amendments to the declaration, means the balance of all income, rents, profits, and revenues
79 from the common areas and facilities remaining after the deduction of the common expenses.
- 80 (7) "Condominium" means the ownership of a single unit in a multiunit project
81 together with an undivided interest in common in the common areas and facilities of the
82 property.
- 83 (8) "Condominium plat" means a plat or plats of survey of land and units prepared in
84 accordance with Section 57-8-13.
- 85 (9) "Condominium project" means a real estate condominium project; a plan or project
86 whereby two or more units, whether contained in existing or proposed apartments, commercial
87 or industrial buildings or structures, or otherwise, are separately offered or proposed to be
88 offered for sale. Condominium project also means the property when the context so requires.
- 89 (10) "Condominium unit" means a unit together with the undivided interest in the

90 common areas and facilities appertaining to that unit. Any reference in this chapter to a
91 condominium unit includes both a physical unit together with its appurtenant undivided interest
92 in the common areas and facilities and a time period unit together with its appurtenant
93 undivided interest, unless the reference is specifically limited to a time period unit.

94 (11) "Contractible condominium" means a condominium project from which one or
95 more portions of the land within the project may be withdrawn in accordance with provisions
96 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
97 termination of one or more leases, then the condominium project is not a contractible
98 condominium within the meaning of this chapter.

99 (12) "Convertible land" means a building site which is a portion of the common areas
100 and facilities, described by metes and bounds, within which additional units or limited common
101 areas and facilities may be created in accordance with this chapter.

102 (13) "Convertible space" means a portion of the structure within the condominium
103 project, which portion may be converted into one or more units or common areas and facilities,
104 including limited common areas and facilities in accordance with this chapter.

105 (14) "Declarant" means all persons who execute the declaration or on whose behalf the
106 declaration is executed. From the time of the recordation of any amendment to the declaration
107 expanding an expandable condominium, all persons who execute that amendment or on whose
108 behalf that amendment is executed shall also come within this definition. Any successors of
109 the persons referred to in this subsection who come to stand in the same relation to the
110 condominium project as their predecessors also come within this definition.

111 (15) "Declaration" means the instrument by which the property is submitted to the
112 provisions of this act, as it from time to time may be lawfully amended.

113 (16) "Expandable condominium" means a condominium project to which additional
114 land or an interest in it may be added in accordance with the declaration and this chapter.

115 (17) "Leasehold condominium" means a condominium project in all or any portion of
116 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
117 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
118 condominium project including leased land, or an interest in the land, upon which no units are
119 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

120 (18) "Limited common areas and facilities" means those common areas and facilities

121 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
122 other units.

123 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the
124 declaration or lawful amendments to the declaration, means the owners of more than 50% in
125 the aggregate in interest of the undivided ownership of the common areas and facilities.

126 (20) "Management committee" means the committee as provided in the declaration
127 charged with and having the responsibility and authority to make and to enforce all of the
128 reasonable rules covering the operation and maintenance of the property.

129 (21) "Par value" means a number of dollars or points assigned to each unit by the
130 declaration. Substantially identical units shall be assigned the same par value, but units located
131 at substantially different heights above the ground, or having substantially different views, or
132 having substantially different amenities or other characteristics that might result in differences
133 in market value, may be considered substantially identical within the meaning of this
134 subsection. If par value is stated in terms of dollars, that statement may not be considered to
135 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
136 fair market transaction at a different figure may affect the par value of any unit, or any
137 undivided interest in the common areas and facilities, voting rights in the unit owners'
138 association, liability for common expenses, or right to common profits, assigned on the basis
139 thereof.

140 (22) "Person" means an individual, corporation, partnership, association, trustee, or
141 other legal entity.

142 (23) "Property" means the land, whether leasehold or in fee simple, the building, if any,
143 all improvements and structures thereon, all easements, rights, and appurtenances belonging
144 thereto, and all articles of personal property intended for use in connection therewith.

145 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
146 57, Chapter 3, Recording of Documents.

147 (25) "Size" means the number of cubic feet, or the number of square feet of ground or
148 floor space, within each unit as computed by reference to the record of survey map and rounded
149 off to a whole number. Certain spaces within the units including attic, basement, or garage
150 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the
151 same basis of calculation is employed for all units in the condominium project and if that basis

152 is described in the declaration.

153 (26) "Special assessment" means an assessment levied by an association of unit owners
154 that is intended to pay for unexpected, nonrecurring common expenses that are not included in
155 the association of unit owners' annual budget.

156 [~~26~~] (27) "Time period unit" means an annually recurring part or parts of a year
157 specified in the declaration as a period for which a unit is separately owned and includes a
158 timeshare estate as defined in Subsection 57-19-2(19).

159 [~~27~~] (28) "Unit" means either a separate physical part of the property intended for any
160 type of independent use, including one or more rooms or spaces located in one or more floors
161 or part or parts of floors in a building or a time period unit, as the context may require. A
162 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
163 proposed condominium unit under an expandable condominium project, not constructed, is a
164 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

165 [~~28~~] (29) "Unit number" means the number, letter, or combination of numbers and
166 letters designating the unit in the declaration and in the record of survey map.

167 [~~29~~] (30) "Unit owner" means the person or persons owning a unit in fee simple and
168 an undivided interest in the fee simple estate of the common areas and facilities in the
169 percentage specified and established in the declaration or, in the case of a leasehold
170 condominium project, the person or persons whose leasehold interest or interests in the
171 condominium unit extend for the entire balance of the unexpired term or terms.

172 Section 2. Section 57-8-7.5 is amended to read:

173 **57-8-7.5. Reserve analysis -- Reserve fund.**

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

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

179 (b) the appropriate amount of any reserve fund.

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

181 (a) [~~(i) subject to Subsection (2)(a)(ii);~~] cause a reserve analysis to be conducted no
182 less frequently than every six years; and

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

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

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

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

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

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

194 (b) A management committee shall maintain a reserve fund separate from other funds
 195 of the association of unit owners.

196 (c) This Subsection (4) may not be construed to limit a management committee from
 197 prudently investing money in a reserve fund, subject to any investment constraints imposed by
 198 the declaration.

199 (5) Subsections (2), (3), (4), and (6) do not apply to an association of unit owners
 200 during the period of declarant management.

201 (6) ~~§~~ **→ [An] Each year that a new or updated reserve analysis is completed, an ←** ~~§~~
 201a association of unit owners shall:

202 (a) ~~§~~ **→ [annually,] ←** ~~§~~ at the annual meeting of unit owners or at a special meeting of unit
 203 owners:

204 (i) present the reserve ~~[study]~~ analysis; ~~[and]~~

205 (ii) ~~[provide an opportunity for unit owners to]~~ discuss reserves and ~~[to]~~ the reserve
 206 analysis; and

207 (iii) vote ~~[on]~~, by a majority of unit owners **§** **→ present at the annual meeting of unit**
 207a **owners ←** ~~§~~ , whether to fund a reserve fund ~~[and, if so,~~

208 ~~how to fund it and in what amount]~~ in the manner and amount suggested in the reserve analysis
 209 or in some other manner and amount; and

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

212 (7) Within 90 days after the day on which a majority of unit owners vote to fund a
 213 reserve fund under Subsection (6)(a), the association of unit owners shall begin funding the

214 reserve account in accordance with the manner and amount approved by a majority of unit
215 owners.

216 (8) Within 30 days after the day on which an association of unit owners complies with
217 the requirements described in Subsection (7) the association of unit owners shall file a
218 certificate of compliance with the Department of Commerce that is signed by an officer of the
219 association of unit owners and states that the association of unit owners has implemented the
220 manner and amount of funding approved by a majority of unit owners.

221 (9) An association of unit owners that does not file a certificate of compliance
222 described in Subsection (8) within 30 days after the day on which the association of unit
223 owners complies with the requirements of Subsection (7) may not levy a special assessment
224 until the day on which the association of unit owners files a certificate of compliance described
225 in Subsection (8).

226 [~~7~~] (10) This section applies to each association of unit owners, regardless of when
227 the association of unit owners was created.

228 Section 3. Section **57-8a-102** is amended to read:

229 **57-8a-102. Definitions.**

230 As used in this chapter:

231 (1) (a) "Assessment" means a charge imposed or levied:

232 (i) by the association;

233 (ii) on or against a lot or a lot owner; and

234 (iii) pursuant to a governing document recorded with the county recorder.

235 (b) "Assessment" includes:

236 (i) a common expense; and

237 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(8).

238 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
239 other legal entity, each member of which:

240 (i) is an owner of a residential lot located within the jurisdiction of the association, as
241 described in the governing documents; and

242 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

243 (A) real property taxes;

244 (B) insurance premiums;

- 245 (C) maintenance costs; or
- 246 (D) for improvement of real property not owned by the member.
- 247 (b) "Association" or "homeowner association" does not include an association created
- 248 under Title 57, Chapter 8, Condominium Ownership Act.
- 249 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 250 authority to manage the affairs of the association.
- 251 (4) "Common areas" means property that the association:
- 252 (a) owns;
- 253 (b) maintains;
- 254 (c) repairs; or
- 255 (d) administers.
- 256 (5) "Common expense" means costs incurred by the association to exercise any of the
- 257 powers provided for in the association's governing documents.
- 258 (6) "Declarant":
- 259 (a) means the person who executes a declaration and submits it for recording in the
- 260 office of the recorder of the county in which the property described in the declaration is
- 261 located; and
- 262 (b) includes the person's successor and assign.
- 263 (7) (a) "Governing documents" means a written instrument by which the association
- 264 may:
- 265 (i) exercise powers; or
- 266 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 267 association.
- 268 (b) "Governing documents" includes:
- 269 (i) articles of incorporation;
- 270 (ii) bylaws;
- 271 (iii) a plat;
- 272 (iv) a declaration of covenants, conditions, and restrictions; and
- 273 (v) rules of the association.
- 274 (8) "Judicial foreclosure" means a foreclosure of a lot:
- 275 (a) for the nonpayment of an assessment; and

276 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
277 property; and
278 (ii) as provided in Part 3, Collection of Assessments.
279 (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
280 (a) by a person or persons other than the owner; and
281 (b) for which the owner receives a consideration or benefit, including a fee, service,
282 gratuity, or emolument.
283 (10) "Limited common areas" means common areas described in the declaration and
284 allocated for the exclusive use of one or more lot owners.
285 (11) "Lot" means:
286 (a) a lot, parcel, plot, or other division of land:
287 (i) designated for separate ownership or occupancy; and
288 (ii) (A) shown on a recorded subdivision plat; or
289 (B) the boundaries of which are described in a recorded governing document; or
290 (b) (i) a unit in a condominium association if the condominium association is a part of
291 a development; or
292 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
293 development.
294 (12) "Nonjudicial foreclosure" means the sale of a lot:
295 (a) for the nonpayment of an assessment; and
296 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
297 57-1-34; and
298 (ii) as provided in Part 3, Collection of Assessments.
299 (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or
300 otherwise to primarily residential or recreational purposes.
301 (14) "Special assessment" means an assessment levied by an association that is
302 intended to pay for unexpected, nonrecurring common expenses that are not included in the
303 association's annual budget.
304 Section 4. Section **57-8a-211** is amended to read:
305 **57-8a-211. Reserve analysis -- Reserve fund.**
306 (1) As used in this section, "reserve analysis" means an analysis to determine:

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

311 (b) the appropriate amount of any reserve fund.

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

313 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no
 314 less frequently than every six years; and

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

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

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

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

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

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

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

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

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

331 (6) ~~§~~ **→ [An] Each year that a new or updated reserve analysis is completed, an ←§**
 331a association shall:

332 (a) ~~§~~ **→ [annually,] ←§** at the annual meeting of lot owners or at a special meeting of lot
 332a owners:

333 (i) present the reserve ~~[study]~~ analysis; ~~[and]~~

334 (ii) ~~[provide an opportunity for lot owners to]~~ discuss reserves and ~~[to]~~ the reserve
 335 analysis; and

336 (iii) vote ~~[on]~~, by a majority of lot owners **§** **→ present at the annual meeting of lot**
 336a **owners ←§**, whether to fund a reserve fund ~~[and, if so,~~

337 how to fund it and in what amount] in the manner and amount suggested in the reserve analysis

338 or in some other manner and amount; and

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

341 (7) Within 90 days after the day on which a majority of lot owners vote to fund a
342 reserve fund under Subsection (6)(a), the association shall begin funding the reserve account in
343 accordance with the manner and amount approved by a majority of lot owners.

344 (8) Within 30 days after the day on which an association complies with the
345 requirements described in Subsection (7), the association shall file a certificate of compliance
346 with the Department of Commerce that is signed by an officer of the association and states that
347 the association has implemented the manner and amount of funding approved by a majority of
348 lot owners.

349 (9) An association that does not file a certificate of compliance described in Subsection
350 (8) within 30 days after the day on which the association complies with the requirements of
351 Subsection (7) may not levy a special assessment until the day on which the association files a
352 certificate of compliance described in Subsection (8).

353 [~~7~~] (10) This section applies to each association, regardless of when the association
354 was created.

Legislative Review Note
as of 2-5-13 10:36 AM

Office of Legislative Research and General Counsel