

SB0064S01 compared with SB0064

~~{deleted text}~~ shows text that was in SB0064 but was deleted in SB0064S01.

inserted text shows text that was not in SB0064 but was inserted into SB0064S01.

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Senator Stephen H. Urquhart proposes the following substitute bill:

HOMEOWNER ASSOCIATION RESERVE ACCOUNT

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: ~~{ }~~ Bradley G. Last

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies the required contents of a reserve analysis;
- ▶ requires an association ~~{and}~~or an association of unit owners to provide each year:
 - ~~{vote annually whether to fund, and if so, how to fund, a reserve fund;~~

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- ~~— within 90 days after the day on which the vote to fund a reserve account occurs, begin funding the reserve fund in the manner and amount determined by the vote of the unit owners or lot owners; and~~
- ~~— within 30 days after the day on which the association or~~ a summary of the most recent reserve analysis to its members; and
 - a complete copy of the most recent reserve analysis, upon request;
 - ▶ requires an association or an association of unit owners ~~{begins funding a reserve fund, file a certificate of compliance with the Department of Commerce;~~
- ~~— states that if~~ to include a reserve fund line item in its annual budget;
 - ▶ requires the management committee of an association or an association of unit owners ~~{does not file a certificate of compliance within the required 30 days, the association or~~ to determine the amount of the reserve fund line item;
 - ▶ provides procedures for the members of an association or an association of unit owners ~~{may not levy a special assessment until it files a certificate of compliance}~~ to veto the management committee's reserve fund line item;
 - ▶ provides enforcement procedures; and
 - ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- ~~{ 57-8-3, as last amended by Laws of Utah 2012, Chapter 166~~
- ~~‡ 57-8-7.5, as last amended by Laws of Utah 2012, Chapters 83 and 369~~
- ~~{ 57-8a-102, as last amended by Laws of Utah 2011, Chapter 355~~
- ~~‡ 57-8a-211, as last amended by Laws of Utah 2012, Chapters 83 and 369~~

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

Section 1. Section ~~{57-8-3}~~ 57-8-7.5 is amended to read:

~~{ 57-8-3. Definitions.~~

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~~As used in this chapter:~~

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

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

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

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

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

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

~~(3) "Building" means a building, containing units, and comprising a part of the property:~~

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

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

~~(b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;~~

~~(c) the basements, yards, gardens, parking areas, and storage spaces;~~

~~(d) the premises for lodging of janitors or persons in charge of the property;~~

~~(e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;~~

~~(f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;~~

~~(g) such community and commercial facilities as may be provided for in the declaration; and~~

~~(h) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.~~

~~(5) "Common expenses" means:~~

~~(a) all sums lawfully assessed against the unit owners;~~

~~(b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;~~

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~~—— (c) expenses agreed upon as common expenses by the association of unit owners; and~~
~~—— (d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.~~

~~—— (6) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.~~

~~—— (7) "Condominium" means the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.~~

~~—— (8) "Condominium plat" means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.~~

~~—— (9) "Condominium project" means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.~~

~~—— (10) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.~~

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

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

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

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

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

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

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

~~—— (18) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.~~

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

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

~~—— (21) "Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or~~

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~~fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.~~

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section ~~["reserve"]~~:

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

~~[(a)] (i)~~ the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, ~~[and] or~~ restoring common areas and facilities that have a useful life of no fewer than three years ~~[or more]~~ but less than 30 years, ~~[but excluding any]~~ when the cost ~~[that can]~~ cannot reasonably be funded from the general budget or other funds of the association of unit owners; and

~~[(b)] (ii)~~ the appropriate amount of any reserve fund.

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

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

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

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

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

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

(4) A reserve analysis shall include:

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

(b) a statement of the probable remaining useful life, as of the date of the reserve

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analysis, of each component identified in the reserve analysis;

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

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

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

(5) Each year, an association of unit owners shall provide:

(a) a summary of the most recent reserve analysis, including any updates, to each unit owner; and

(b) a complete copy of the most recent reserve analysis, including any updates, to a unit owner upon request.

(6) (a) An association of unit owners shall include a reserve fund line item in its annual budget.

(b) The amount of the reserve fund line item shall be determined by:

(i) the management committee, based on the reserve analysis and the amount that the management committees determines is prudent under the circumstances; or

(ii) the declaration, if the declaration requires an amount greater than the amount determined under Subsection (6)(b)(i).

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

(d) If the unit owners veto a reserve fund line item under Subsection (6)(c) and a reserve fund line item exists in a previously approved annual budget of the association of unit owners that was not vetoed, the association of unit owners shall fund the reserve account in accordance with that prior reserve fund line item.

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

(b) No fewer than 90 days before the day on which a unit owner files a complaint under Subsection (7)(a), the unit owner shall deliver written notice described in Subsection (7)(c) to the association of unit owners.

(c) A notice described in Subsection (7)(b) shall state:

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

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

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

(d) In a case filed under Subsection (7)(a), a court may order an association of unit owners to produce the summary of the reserve analysis or the complete reserve analysis on an expedited basis and at the association of unit owners' expense.

~~[(4)]~~ [(8)] (a) A management committee may not use money in a reserve fund:

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

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

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

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

~~[(5)]~~ [(9)] Subsections (2), (3), (4), and (6) do not apply to an association of unit owners during the period of declarant management.

~~[(6) An association of unit owners shall:]~~

~~[(a) annually, at the annual meeting of unit owners or at a special meeting of unit~~

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owners:]

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

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

~~—— [(iii) vote [on], by a majority of unit owners,] to vote on whether to fund a reserve fund {} and, if so, how to fund it and in what amount {} in the manner and amount suggested in the reserve analysis or in some other manner and amount]; and]~~

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

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

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

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

~~{]~~

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

~~Section {3}2. Section {57-8a-102} 57-8a-211 is amended to read:~~

~~{57-8a-102. Definitions:~~

~~—— As used in this chapter:~~

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

~~—— (i) by the association;~~

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- ~~—— (ii) on or against a lot or a lot owner; and~~
- ~~—— (iii) pursuant to a governing document recorded with the county recorder.~~
- ~~—— (b) "Assessment" includes:~~
 - ~~—— (i) a common expense; and~~
 - ~~—— (ii) an amount assessed against a lot owner under Subsection 57-8a-405(8).~~
- ~~—— (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or other legal entity, each member of which:~~
 - ~~—— (i) is an owner of a residential lot located within the jurisdiction of the association, as described in the governing documents; and~~
 - ~~—— (ii) by virtue of membership or ownership of a residential lot is obligated to pay:~~
 - ~~—— (A) real property taxes;~~
 - ~~—— (B) insurance premiums;~~
 - ~~—— (C) maintenance costs; or~~
 - ~~—— (D) for improvement of real property not owned by the member.~~
- ~~—— (b) "Association" or "homeowner association" does not include an association created under Title 57, Chapter 8, Condominium Ownership Act.~~
- ~~—— (3) "Board of directors" or "board" means the entity, regardless of name, with primary authority to manage the affairs of the association.~~
- ~~—— (4) "Common areas" means property that the association:~~
 - ~~—— (a) owns;~~
 - ~~—— (b) maintains;~~
 - ~~—— (c) repairs; or~~
 - ~~—— (d) administers.~~
- ~~—— (5) "Common expense" means costs incurred by the association to exercise any of the powers provided for in the association's governing documents.~~
- ~~—— (6) "Declarant":~~
 - ~~—— (a) means the person who executes a declaration and submits it for recording in the office of the recorder of the county in which the property described in the declaration is located; and~~
 - ~~—— (b) includes the person's successor and assign.~~
- ~~—— (7) (a) "Governing documents" means a written instrument by which the~~

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~~association may:~~

- ~~—— (i) exercise powers; or~~
- ~~—— (ii) manage, maintain, or otherwise affect the property under the jurisdiction of~~

~~the association:~~

~~—— (b) "Governing documents" includes:~~

- ~~—— (i) articles of incorporation;~~
- ~~—— (ii) bylaws;~~
- ~~—— (iii) a plat;~~
- ~~—— (iv) a declaration of covenants, conditions, and restrictions; and~~
- ~~—— (v) rules of the association.~~

~~—— (8) "Judicial foreclosure" means a foreclosure of a lot:~~

- ~~—— (a) for the nonpayment of an assessment; and~~
- ~~—— (b) (i) in the manner provided by law for the foreclosure of a mortgage on real property; and~~

~~—— (ii) as provided in Part 3, Collection of Assessments.~~

~~—— (9) "Lease" or "leasing" means regular, exclusive occupancy of a lot:~~

- ~~—— (a) by a person or persons other than the owner; and~~
- ~~—— (b) for which the owner receives a consideration or benefit, including a fee, service, gratuity, or emolument.~~

~~—— (10) "Limited common areas" means common areas described in the declaration and allocated for the exclusive use of one or more lot owners:~~

~~—— (11) "Lot" means:~~

- ~~—— (a) a lot, parcel, plot, or other division of land:~~
 - ~~—— (i) designated for separate ownership or occupancy; and~~
 - ~~—— (ii) (A) shown on a recorded subdivision plat; or~~
 - ~~—— (B) the boundaries of which are described in a recorded governing document; or~~
- ~~—— (b) (i) a unit in a condominium association if the condominium association is a part of a development; or~~
- ~~—— (ii) a unit in a real estate cooperative if the real estate cooperative is part of a development.~~

~~—— (12) "Nonjudicial foreclosure" means the sale of a lot:~~

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- ~~— (a) for the nonpayment of an assessment; and~~
~~— (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through 57-1-34; and~~
~~— (ii) as provided in Part 3, Collection of Assessments.~~
~~— (13) "Residential lot" means a lot, the use of which is limited by law, covenant, or otherwise to primarily residential or recreational purposes.~~
~~— (14) "Special assessment" means an assessment levied by an association that is intended to pay for unexpected, nonrecurring common expenses that are not included in the association's annual budget.~~

~~— Section 4. Section 57-8a-211 is amended to read:~~

~~— }57-8a-211. Reserve analysis -- Reserve fund.~~

(1) As used in this section ~~["reserve"]~~:

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

~~[(a)]~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, ~~[and] or~~ restoring common areas that have a useful life of no fewer than three years ~~[or more]~~ but less than 30 years, ~~[but excluding any]~~ when the cost ~~[that can]~~ cannot reasonably be funded from the association's general budget or from other association funds; and

~~[(b)]~~ (ii) the appropriate amount of any reserve fund.

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

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

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

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

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

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

~~[(4)]~~ (4) A reserve analysis shall include:

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

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require reserve funds:

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

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

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

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

(5) Each year, an association shall provide:

(a) a summary of the most recent reserve analysis, including any updates, to each lot owner; and

(b) a complete copy of the most recent reserve analysis, including any updates, to a lot owner upon request.

(6) (a) An association shall include a reserve fund line item in its annual budget.

(b) The amount of the reserve fund line item shall be determined by:

(i) the board, based on the reserve analysis and the amount that the board determines is prudent under the circumstances; or

(ii) the governing documents, if the governing documents require an amount greater than the amount determined under Subsection (6)(b)(i).

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

(d) If the lot owners veto a reserve fund line item under Subsection (6)(c) and a reserve fund line item exists in a previously approved annual budget of the association that was not vetoed, the association shall fund the reserve account in accordance with that prior reserve fund line item.

(7) (a) Subject to Subsection (7)(b), if an association does not comply with the requirements described in Subsection (5) or (6) and fails to remedy the noncompliance within

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the time specified in Subsection (7)(c), a lot owner may file an action in state court for:

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

(b) No fewer than 90 days before the day on which a lot owner files a complaint under Subsection (7)(a), the lot owner shall deliver written notice described in Subsection (7)(c) to the association.

(c) A notice described in Subsection (7)(b) shall state:

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

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

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

(d) In a case filed under Subsection (7)(a), a court may summarily order an association to produce the summary of the reserve analysis or the complete reserve analysis on an expedited basis and at the association's expense.

~~[(4)]~~ (8) (a) A board may not use money in a reserve fund:

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

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

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

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

~~[(5)]~~ (9) Subsections (2), (3), (4), and (6) do not apply to an association during the period of administrative control.

~~[(6) An association shall:]~~

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

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owners:]

(i) present the reserve ~~{}~~ study { analysis}; ~~{}~~ and]

(ii) ~~{}~~ provide an opportunity for lot owners to ~~{}~~ discuss reserves and ~~{to} the~~
reserve analysis; and

~~—— (iii) vote [on], by a majority of lot owners,} to vote on whether to fund a reserve fund~~
~~{}~~ and, if so, how to fund it and in what amount ~~{}~~ in the manner and amount suggested in the
reserve analysis or in some other manner and amount}; and]

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

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

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

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

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

~~†~~

Legislative Review Note

~~—— as of 2-5-13 10:36 AM~~

~~Office of Legislative Research and General Counsel}~~