

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  
8 **LONG TITLE**

9 **General Description:**

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

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 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, 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 association shall:

332 (a) annually, at the annual meeting of lot owners or at a special meeting of lot 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, 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**