

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 or an association of unit owners to provide each year:
 - 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 to include a reserve fund line item in its annual budget;
- ▶ requires the management committee of an association or an association of unit owners to determine the amount of the reserve fund line item;
- ▶ provides procedures for the members of an association or an association of unit owners to veto the management committee's reserve fund line item;



- 26 ▶ provides enforcement procedures; and
- 27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **57-8-7.5**, as last amended by Laws of Utah 2012, Chapters 83 and 369

35 **57-8a-211**, as last amended by Laws of Utah 2012, Chapters 83 and 369



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

38 Section 1. Section **57-8-7.5** is amended to read:

39 **57-8-7.5. Reserve analysis -- Reserve fund.**

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

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

42 [~~(a)~~] (i) the need for a reserve fund to accumulate money to cover the cost of repairing,

43 replacing, [~~and~~] or restoring common areas and facilities that have a useful life of no fewer

44 than three years [~~or more~~] but less than 30 years, [~~but excluding any~~] when the cost [~~that can~~]

45 cannot reasonably be funded from the general budget or other funds of the association of unit

46 owners; and

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

48 (b) "Reserve fund line item" means a line item in the annual budget of an association of

49 unit owners that identifies the amount to be placed into a reserve fund.

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

51 (a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less

52 frequently than every six years; and

53 (ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve

54 analysis to be conducted before July 1, 2012; and

55 (b) review and, if necessary, update a previously conducted reserve analysis no less

56 frequently than every three years.

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

60 (4) A reserve analysis shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

98 (iii) any other remedy provided by law; and

99 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

113 ~~(4)~~ (8) (a) A management committee may not use money in a reserve fund:

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

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

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

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

122 ~~[(5)]~~ (9) Subsections (2), (3), (4), and (6) do not apply to an association of unit owners
 123 during the period of declarant management.

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

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

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

128 ~~[(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether
 129 to fund a reserve fund and, if so, how to fund it and in what amount; and]~~

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

132 ~~[(7)]~~ (10) This section applies to each association of unit owners, regardless of when
 133 the association of unit owners was created.

134 Section 2. Section **57-8a-211** is amended to read:

135 **57-8a-211. Reserve analysis -- Reserve fund.**

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

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

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

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

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

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

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

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

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

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

154 (4) A reserve analysis shall include:

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

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

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

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

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

166 (5) Each year, an association shall provide:

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

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

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

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

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

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

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

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

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

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

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

191 (iii) any other remedy provided by law; and

192 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

206 ~~[(4)]~~ (8) (a) A board may not use money in a reserve fund:

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

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

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

211 (c) This Subsection (4) may not be construed to limit a board from prudently investing

212 money in a reserve fund, subject to any investment constraints imposed by the governing
213 documents.

214 [~~(5)~~ (9) Subsections (2), (3), (4), and (6) do not apply to an association during the
215 period of administrative control.

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

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

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

220 [~~(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to
221 fund a reserve fund and, if so, how to fund it and in what amount; and~~]

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

224 [~~(7)~~ (10) This section applies to each association, regardless of when the association
225 was created.