

- 28 bill relating to reserve funds;
- 29 ▶ requires an association or an association of unit owners to provide a 24-hour cure
- 30 period for a violation of the association's or the association of unit owners'
- 31 governing documents that poses a threat to health, safety, or property;
- 32 ▶ provides that, under certain circumstances, an association or an association of unit
- 33 owners may assess a fine for a repeat or continuing violation;
- 34 ▶ clarifies the procedures by which a lot owner or a unit owner may appeal an
- 35 assessed fine;
- 36 ▶ provides procedures by which an association or an association of unit owners may
- 37 collect an unpaid fine;
- 38 ▶ provides that the aggregate amount of fines assessed against a lot owner may not
- 39 exceed \$500 in any one-month period;
- 40 ▶ repeals future effective provisions that relate to reserve accounts; and
- 41 ▶ makes technical and conforming changes.

42 **Money Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **57-8-7.5 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

49 **57-8-37**, as enacted by Laws of Utah 2001, Chapter 317

50 **57-8-44**, as last amended by Laws of Utah 2013, Chapter 95

51 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

52 **57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

53 **57-8a-211 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

54 **57-8a-301**, as last amended by Laws of Utah 2013, Chapter 95

55 REPEALS:

56 **57-8-7.5 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,

57 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

58 **57-8a-211 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,

59 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

60

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

62 Section 1. Section **57-8-7.5 (Superseded 07/01/14)** is amended to read:

63 **57-8-7.5 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

64 (1) As used in this section~~[(a) "Reserve"],~~ "reserve analysis" means an analysis to
65 determine:

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

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

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

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

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

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

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

82 (3) ~~[The]~~ A management committee may conduct a reserve analysis itself or may
83 engage a reliable person or organization, as determined by the management committee, to
84 conduct the reserve analysis.

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

86 ~~[(a) a list of the components identified in the reserve analysis that will reasonably~~
87 ~~require reserve funds;]~~

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

90 ~~[(c) an estimate of the cost to repair, replace, or restore each component identified in~~
91 ~~the reserve analysis;]~~

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

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

97 ~~[(5) Each year, an association of unit owners shall provide:]~~

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

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

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

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

105 ~~[(i) the management committee, based on the reserve analysis and the amount that the~~
106 ~~management committee determines is prudent under the circumstances; or]~~

107 ~~[(ii) the declaration, if the declaration requires an amount greater than the amount~~
108 ~~determined under Subsection (6)(b)(i).]~~

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

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

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

121 ~~[(i) injunctive relief requiring the association of unit owners to comply with the~~
122 ~~requirements of Subsection (5) or (6);]~~

123 ~~[(ii) \$500 or actual damages, whichever is greater;]~~

124 ~~[(iii) any other remedy provided by law; and]~~

125 ~~[(iv) reasonable costs and attorney fees.]~~

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

129 ~~[(c) A notice described in Subsection (7)(b) shall state:]~~

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

132 ~~[(ii) a demand that the association of unit owners come into compliance with the~~
133 ~~requirements; and]~~

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

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

139 ~~[(8)]~~ (4) (a) A management committee may not use money in a reserve fund:

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

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

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

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

148 (5) An association of unit owners shall:

149 (a) annually, at the annual meeting of unit owners or at a special meeting of unit
150 owners:

151 (i) make available a copy of either the most recent reserve analysis or a summary of the

152 most recent reserve analysis to each unit owner who is present, in person at the meeting;
153 (ii) provide an opportunity for unit owners to discuss reserve funds and the reserve
154 analysis; and
155 (iii) have a vote of the unit owners on whether to fund a reserve fund, and, if so, how to
156 fund the reserve fund and in what amount;
157 (b) prepare and keep minutes of each meeting held under Subsection (5)(a) and
158 indicate in the minutes any decision that relates to funding a reserve fund; and
159 (c) (i) provide a copy of either the reserve analysis or a summary of the reserve analysis
160 and any update to the reserve analysis to each unit owner within 30 days after the day on which
161 the reserve analysis or the update is complete; and
162 (ii) provide a complete copy of the most recent reserve analysis and any update to the
163 reserve analysis to a unit owner upon request.
164 (6) An association of unit owners shall fund a reserve fund in the greater of:
165 (a) the amount approved by the unit owners in a vote under Subsection (5)(a)(iii); or
166 (b) the amount required in the association of unit owners' declaration.
167 (7) (a) Subject to Subsection (7)(b), if an association of unit owners does not comply
168 with the requirements described in Subsection (5) or (6) and fails to remedy the noncompliance
169 within the time specified in Subsection (7)(c), a unit owner may file an action in state court for:
170 (i) injunctive relief requiring the association of unit owners to comply with the
171 requirements described in Subsection (5) or (6);
172 (ii) \$500 or the unit owner's actual damages, whichever is greater;
173 (iii) any other remedy provided by law; and
174 (iv) reasonable costs and attorney fees.
175 (b) No fewer than 90 days before the day on which a unit owner files an action under
176 Subsection (7)(a), the unit owner shall deliver written notice described in Subsection (7)(c) to
177 the association of unit owners.
178 (c) A notice described in Subsection (7)(b) shall state:
179 (i) the requirement in Subsection (5) or (6) with which the association of unit owners
180 has failed to comply;
181 (ii) a demand that the association of unit owners come into compliance with the
182 requirement; and

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

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

189 ~~[(9)]~~ (8) Subsections (2)[, (3), (4), and (6)] through (7) do not apply to an association
190 of unit owners during the period of declarant management.

191 ~~[(10)]~~ (9) This section applies to each association of unit owners, regardless of when
192 the association of unit owners was created.

193 Section 2. Section ~~57-8-37~~ is amended to read:

194 **57-8-37. Fines.**

195 (1) ~~[(a) If authorized in the declaration, bylaws, or association rules]~~ Unless otherwise
196 limited in an association of unit owners' governing documents, the management committee [of
197 a residential condominium project] may assess a fine against a unit owner [after the
198 requirements of Subsection (2) have been met for a violation of the rules and regulations of the
199 association of unit owners which have been promulgated in accordance with this chapter and
200 the declaration and bylaws.] for a violation of the association of unit owners' governing
201 documents in accordance with the provisions of this section.

202 ~~[(b) The management committee of a nonresidential condominium project may not~~
203 ~~assess a fine against a unit owner.]~~

204 (2) (a) Before assessing a fine under Subsection (1), the management committee shall
205 give ~~[notice to the unit owner of the violation and inform the owner that a fine will be imposed~~
206 ~~if the violation is not cured within the time provided in the declaration, bylaws, or association~~
207 ~~rules, which shall be at least 48 hours.]~~ the unit owner a written warning that:

208 (i) describes the violation;

209 (ii) states the provision of the association of unit owners' governing documents that the
210 unit owner's conduct violates; and

211 (iii) states that the management committee may assess a fine against the unit owner in
212 accordance with Subsection (2)(c), including the time by which the unit owner must cure the
213 violation.

214 (b) If, in accordance with Subsection (2)(c)(iii), a management committee gives a unit
215 owner 24 hours to cure a violation, in addition to the notice requirements described in
216 Subsection (2)(a), the management committee shall post a copy of the written warning on the
217 front door, if any, of the unit owner's unit.

218 (c) A management committee may assess a fine against a unit owner if:

219 (i) within one year after the day on which the management committee gives the unit
220 owner a written warning described in Subsection (2)(a), the unit owner commits another
221 violation that is similar to the violation described in the written warning;

222 (ii) the unit owner does not cure the violation within the time period that is:

223 (A) stated in the written warning described in Subsection (2)(a); and

224 (B) not less than 48 hours after the day on which the management committee gives the
225 unit owner the written warning; or

226 (iii) (A) the management committee or the management committee's agent determines
227 that the violation poses an immediate threat to health, safety, or property; and

228 (B) the unit owner does not cure the violation within 24 hours after the day on which
229 the management committee gives the unit owner the written warning described in Subsection
230 (2)(a).

231 (d) If permitted under the association of unit owners' governing documents, after the
232 management committee assesses a fine against a unit owner under this section, the
233 management committee may, without further warning under this Subsection (2), assess an
234 additional fine against the unit owner each time the unit owner:

235 (i) commits a similar violation within one year after the day on which the management
236 committee assesses the initial fine; or

237 (ii) allows a violation to continue for at least 10 days after the day on which the
238 management committee assessed the initial fine.

239 (e) The aggregate amount of fines assessed against a unit owner under this section may
240 not exceed \$500 in any one calendar month.

241 (3) [(a)] A fine assessed under Subsection (1) shall:

242 [(i)] (a) be made only for a violation of a rule [or regulation which is specifically listed
243 in the declaration, bylaws, or association rules as an offense which is subject to a fine],
244 covenant, condition, or restriction that is in the association of unit owners' governing

245 documents;

246 ~~[(ii)]~~ (b) be in the amount [~~specifically~~] provided for in the [~~declaration, bylaws, or~~
247 ~~association rules for that specific type of violation, not to exceed \$500~~] association of unit
248 owners' governing documents; and

249 ~~[(iii)]~~ (c) accrue interest and late fees as provided in the [~~declaration, bylaws, or~~
250 ~~association rules~~] association of unit owners' governing documents.

251 ~~[(b) Cumulative fines for a continuing violation may not exceed \$500 per month.]~~

252 (4) (a) A unit owner who is assessed a fine under Subsection (1) may request an
253 informal hearing before the management committee to [~~protest or~~] dispute the fine within 30
254 days [~~from the date~~] after the day on which the unit owner receives notice that the fine is
255 assessed.

256 (b) [~~The~~] A management committee shall conduct a hearing [~~shall be conducted~~] under
257 Subsection (4)(a) in accordance with:

258 (i) the standards provided in the [~~declaration, bylaws, or association rules.~~] association
259 of unit owners' governing documents; or

260 (ii) if the association of unit owners' governing documents do not provide standards for
261 a hearing described in Subsection (4)(a), the standards established by the management
262 committee in accordance with Subsection (4)(c).

263 (c) The standards described in Subsection (4)(b)(ii) shall provide the unit owner an
264 opportunity to present the unit owner's position, in person, to the management committee.

265 (d) [~~No~~] If a unit owner timely requests a hearing under Subsection (4)(a), no interest
266 or late fees may accrue until after the management committee conducts the hearing [~~has been~~
267 ~~conducted~~] and issues a final decision [~~has been rendered~~].

268 (5) A unit owner may appeal a fine [~~issued~~] assessed under Subsection (1) by initiating
269 a civil action within 180 days after the day on which:

270 (a) [~~a hearing has been held and a final decision has been rendered by~~] the management
271 committee issues a final decision after a hearing under Subsection (4); or

272 (b) if the unit owner does not timely request a hearing under Subsection (4), the time to
273 request [~~an informal~~] a hearing under Subsection (4) [~~has expired without the unit owner~~
274 ~~making such a request~~] expires.

275 [~~(6) A fine assessed under Subsection (1) which remains unpaid after the time for~~

276 appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the
277 property in accordance with the same standards as a lien for the nonpayment of common
278 expenses under Section ~~57-8-20~~.]

279 (6) An association of unit owners may collect an unpaid fine as an unpaid assessment
280 in accordance with the provisions of this chapter.

281 (7) A management committee may delegate the management committee's rights and
282 responsibilities under this section to a managing agent.

283 (8) This section applies to an association of unit owners regardless of when the
284 association of unit owners is created.

285 Section 3. Section ~~57-8-44~~ is amended to read:

286 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
287 **collection.**

288 (1) (a) Except as provided in Section ~~57-8-13.1~~, an association of unit owners has a
289 lien on a unit for:

290 (i) an assessment;

291 (ii) except as provided in the declaration, fees, charges, and costs associated with
292 collecting an unpaid assessment, including:

293 (A) court costs and reasonable attorney fees;

294 (B) late charges;

295 (C) interest; and

296 (D) any other amount that the association of unit owners is entitled to recover under the
297 declaration, this chapter, or an administrative or judicial decision; and

298 (iii) a fine that the association of unit owners imposes against ~~[the owner of the unit.]~~ a
299 unit owner in accordance with Section ~~57-8-37~~, if:

300 (A) the time for appeal described in Subsection ~~57-8-37(5)~~ has expired and the unit
301 owner did not file an appeal; or

302 (B) the unit owner timely filed an appeal under Subsection ~~57-8-37(5)~~ and the district
303 court issued a final order upholding a fine imposed under Subsection ~~57-8-37(1)~~.

304 (b) The recording of a declaration constitutes record notice and perfection of a lien
305 described in Subsection (1)(a).

306 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)

307 is for the full amount of the assessment from the time the first installment is due, unless the
308 association of unit owners otherwise provides in a notice of assessment.

309 (3) An unpaid assessment or fine accrues interest at the rate provided:

310 (a) in Subsection 15-1-1(2); or

311 (b) in the governing documents, if the governing documents provide for a different
312 interest rate.

313 (4) A lien under this section has priority over each other lien and encumbrance on a
314 unit except:

315 (a) a lien or encumbrance recorded before the declaration is recorded;

316 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
317 that is recorded before a recorded notice of lien by or on behalf of the association of unit
318 owners; or

319 (c) a lien for real estate taxes or other governmental assessments or charges against the
320 unit.

321 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
322 Exemptions Act.

323 (6) Unless the declaration provides otherwise, if two or more associations of unit
324 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
325 when the liens are created.

326 Section 4. Section 57-8a-102 is amended to read:

327 **57-8a-102. Definitions.**

328 As used in this chapter:

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

330 (i) by the association;

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

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

333 (b) "Assessment" includes:

334 (i) a common expense; and

335 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

336 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
337 other legal entity, any member of which:

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

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

341 (A) real property taxes;

342 (B) insurance premiums;

343 (C) maintenance costs; or

344 (D) for improvement of real property not owned by the member.

345 (b) "Association" or "homeowner association" does not include an association created
346 under Title 57, Chapter 8, Condominium Ownership Act.

347 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
348 authority to manage the affairs of the association.

349 (4) "Common areas," unless otherwise provided in the declaration, means property that
350 the association:

351 (a) owns;

352 (b) maintains;

353 (c) repairs; or

354 (d) administers.

355 (5) "Common expense" means costs incurred by the association to exercise any of the
356 powers provided for in the association's governing documents.

357 (6) "Declarant":

358 (a) means the person who executes a declaration and submits it for recording in the
359 office of the recorder of the county in which the property described in the declaration is
360 located; and

361 (b) includes the person's successor and assign.

362 (7) (a) "Governing documents" means a written instrument by which the association
363 may:

364 (i) exercise powers; or

365 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
366 association.

367 (b) "Governing documents" includes:

368 (i) articles of incorporation;

- 369 (ii) bylaws;
- 370 (iii) a plat;
- 371 (iv) a declaration of covenants, conditions, and restrictions; and
- 372 (v) rules of the association.
- 373 (8) "Independent third party" means a person that:
- 374 (a) is not related to the owner of the residential lot;
- 375 (b) shares no pecuniary interests with the owner of the residential lot; and
- 376 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 377 or future lienholder.
- 378 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 379 (a) for the nonpayment of an assessment; and
- 380 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 381 property; and
- 382 (ii) as provided in Part 3, Collection of Assessments.
- 383 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 384 (a) by a person or persons other than the owner; and
- 385 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 386 gratuity, or emolument.
- 387 (11) "Limited common areas" means common areas described in the declaration and
- 388 allocated for the exclusive use of one or more lot owners.
- 389 (12) "Lot" means:
- 390 (a) a lot, parcel, plot, or other division of land:
- 391 (i) designated for separate ownership or occupancy; and
- 392 (ii) (A) shown on a recorded subdivision plat; or
- 393 (B) the boundaries of which are described in a recorded governing document; or
- 394 (b) (i) a unit in a condominium association if the condominium association is a part of
- 395 a development; or
- 396 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 397 development.
- 398 (13) "Mixed-use project" means a project under this chapter that has both residential
- 399 and commercial lots in the project.

400 (14) "Nonjudicial foreclosure" means the sale of a lot:
401 (a) for the nonpayment of an assessment; and
402 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
403 57-1-34; and
404 (ii) as provided in Part 3, Collection of Assessments.

405 (15) "Residential lot" means a lot, the use of which is limited by law, covenant, or
406 otherwise to primarily residential or recreational purposes.

407 Section 5. Section 57-8a-208 is amended to read:

408 **57-8a-208. Fines.**

409 (1) Unless otherwise [~~provided~~] limited in the association's governing documents, the
410 board of [~~a homeowner~~] an association may assess a fine against a lot owner for a violation of
411 the association's governing documents [~~after the requirements of Subsection (2) are met~~] in
412 accordance with the provisions of this section.

413 (2) (a) Before assessing a fine under Subsection (1), the board shall[:] give the lot
414 owner a written warning that:

415 [~~(a) notify the lot owner of the violation; and~~]

416 [~~(b) inform the owner that a fine will be imposed if the violation is not remedied within~~
417 ~~the time provided in the association's governing documents, which shall be at least 48 hours.]~~

418 (i) describes the violation;

419 (ii) states the provision of the association's governing documents that the lot owner's
420 conduct violates; and

421 (iii) states that the board may assess a fine against the lot owner in accordance with
422 Subsection (2)(c), including the time by which the unit owner must cure the violation.

423 (b) If, in accordance with Subsection (2)(c)(iii), a board gives a lot owner 24 hours to
424 cure a violation, in addition to the notice requirements described in Subsection (2)(a), the board
425 shall post a copy of the written warning on the front door of any dwelling on the lot owner's lot.

426 (c) A board may assess a fine against a lot owner if:

427 (i) within one year after the day on which the board gives the lot owner a written
428 warning described in Subsection (2)(a), the lot owner commits another violation that is similar
429 to the violation described in the written warning;

430 (ii) the lot owner does not cure the violation within the time period that is:

431 (A) stated in the written warning described in Subsection (2)(a); and
 432 (B) not less than 48 hours after the day on which the board gives the lot owner the
 433 written warning; or
 434 (iii) (A) the board or the board's agent determines that the violation poses an immediate
 435 threat to health, safety, or property; and
 436 (B) the lot owner does not cure the violation within 24 hours after the day on which the
 437 board gives the lot owner the written warning described in Subsection (2)(a).
 438 (d) If permitted under the association's governing documents, after the board assesses a
 439 fine against a lot owner under this section, the board may, without further warning under this
 440 Subsection (2), assess an additional fine against the lot owner each time the lot owner:
 441 (i) commits a similar violation within one year after the day on which the board
 442 assesses the initial fine; or
 443 (ii) allows a violation to continue for at least 10 days after the day on which the board
 444 assessed the initial fine.
 445 (e) The aggregate amount of fines assessed against a unit owner under this section may
 446 not exceed \$500 in any one calendar month.
 447 (3) ~~(a)~~ A fine assessed under Subsection (1) shall:
 448 ~~(i)~~ (a) be made only for a violation of a rule, covenant, condition, or restriction that is
 449 ~~[specifically listed]~~ in the association's governing documents;
 450 ~~(ii)~~ (b) be in the amount ~~[specifically]~~ provided for in the association's governing
 451 documents ~~[for that specific type of violation or in an amount commensurate with the nature of~~
 452 ~~the violation]~~; and
 453 ~~(iii)~~ (c) accrue interest and late fees as provided in the association's governing
 454 documents.
 455 ~~(b) Unpaid fines may be collected as an unpaid assessment as set forth in the~~
 456 ~~association's governing documents or in this chapter.]~~
 457 (4) (a) A lot owner who is assessed a fine under Subsection (1) may request an
 458 informal hearing before the board to ~~[protest or]~~ dispute the fine within ~~[14]~~ 30 days ~~[from the~~
 459 ~~date]~~ after the day on which the lot owner receives notice that the fine is assessed.
 460 (b) ~~[A]~~ A board shall conduct a hearing ~~[requested]~~ under Subsection (4)(a) ~~[shall be~~
 461 ~~conducted]~~ in accordance with;

462 (i) the standards provided in the association's governing documents[-]; or
 463 (ii) if the association's governing documents do not provide standards for a hearing
 464 described in Subsection (4)(a), the standards established by the board in accordance with
 465 Subsection (4)(c).

466 (c) The standards described in Subsection (4)(b)(ii) shall provide the lot owner an
 467 opportunity to present the lot owner's position, in person, to the board.

468 ~~[(c)]~~ (d) [No] If a lot owner timely requests an informal hearing under Subsection
 469 (4)(a), no interest or late fees may accrue until after the board conducts the hearing [has been
 470 conducted] and issues a final decision [has been rendered].

471 (5) A lot owner may appeal a fine issued under Subsection (1) by initiating a civil
 472 action:

473 (a) if the lot owner timely requests an informal hearing under Subsection (4), within
 474 180 days after the day on which a final decision from the informal hearing is issued; or

475 (b) if the lot owner does not timely request an informal hearing under Subsection (4),
 476 within 180 days after the day on which the time to request an informal hearing expires.

477 (6) An association may collect an unpaid fine as an unpaid assessment in accordance
 478 with the provisions of this chapter.

479 (7) A board may delegate the board's rights and responsibilities under this section to a
 480 managing agent.

481 (8) This section applies to an association regardless of when the association is created.

482 Section 6. Section **57-8a-211 (Superseded 07/01/14)** is amended to read:

483 **57-8a-211 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

484 (1) As used in this section[:(a) "Reserve"], "reserve analysis" means an analysis to
 485 determine:

486 (i) (a) the need for a reserve fund to accumulate money to cover the cost of repairing,
 487 replacing, or restoring [common areas] structures, components, and systems that the
 488 association is responsible to maintain and replace and that have a useful life of no fewer than
 489 three years [but less than 30 years, when the], but excluding any cost [cannot] that can
 490 reasonably be funded from the association's general budget or from other association funds;
 491 and

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

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

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

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

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

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

502 (3) ~~[The]~~ A board may conduct a reserve analysis itself or may engage a reliable person
503 or organization, as determined by the board, to conduct the reserve analysis.

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

505 ~~[(a) a list of the components identified in the reserve analysis that will reasonably~~
506 ~~require reserve funds;]~~

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

509 ~~[(c) an estimate of the cost to repair, replace, or restore each component identified in~~
510 ~~the reserve analysis;]~~

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

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

516 ~~[(5) Each year, an association shall provide:]~~

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

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

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

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

523 ~~[(i) the board, based on the reserve analysis and the amount that the board determines~~

524 is prudent under the circumstances; or]

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

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

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

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

538 ~~[(i) injunctive relief requiring the association to comply with the requirements of~~
539 ~~Subsection (5) or (6);]~~

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

541 ~~[(iii) any other remedy provided by law; and]~~

542 ~~[(iv) reasonable costs and attorney fees.]~~

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

546 ~~[(c) A notice described in Subsection (7)(b) shall state:]~~

547 ~~[(i) the requirement in Subsection (5) or (6) with which the association has failed to~~
548 ~~comply;]~~

549 ~~[(ii) a demand that the association of unit owners come into compliance with the~~
550 ~~requirements; and]~~

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

553 ~~[(d) In a case filed under Subsection (7)(a), a court may summarily order an association~~
554 ~~to produce the summary of the reserve analysis or the complete reserve analysis on an~~

555 ~~expedited basis and at the association's expense.]~~

556 ~~[(8)]~~ (4) (a) A board may not use money in a reserve fund:

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

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

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

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

564 (5) An association shall:

565 (a) annually, at the annual meeting of lot owners or at a special meeting of lot owners:

566 (i) make available a copy of either the most recent reserve analysis or a summary of the
567 most recent reserve analysis to each lot owner who is present, in person, at the meeting;

568 (ii) provide an opportunity for lot owners to discuss reserve funds and the reserve
569 analysis; and

570 (iii) have a vote of the lot owners on whether to fund a reserve fund and, if so, how to
571 fund the reserve fund and in what amount;

572 (b) prepare and keep minutes of each meeting held under Subsection (5)(a) and
573 indicate in the minutes any decision that relates to funding a reserve fund; and

574 (c) (i) provide either a copy of the reserve analysis or a summary of the reserve analysis
575 and any update to the reserve analysis to each lot owner within 30 days after the day on which
576 the reserve analysis or the update is complete; and

577 (ii) provide a complete copy of the most recent reserve analysis and any update to the
578 reserve analysis to a lot owner upon request.

579 (6) An association shall fund a reserve fund in the greater of:

580 (a) the amount approved by the lot owners in a vote under Subsection (5)(a)(iii); or

581 (b) the amount required in the association's governing documents.

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

585 (i) injunctive relief requiring the association to comply with the requirements described

586 in Subsection (5) or (6);

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

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

589 (iv) reasonable costs and attorney fees.

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

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

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

596 (ii) a demand that the association come into compliance with the requirement; and

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

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

602 ~~[(9)]~~ (8) Subsections (2)[, (3), (4), and (6)] through (7) do not apply to an association
603 during the period of administrative control.

604 ~~[(10)]~~ (9) This section applies to each association, regardless of when the association
605 was created.

606 Section 7. Section **57-8a-301** is amended to read:

607 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

608 (1) (a) Except as provided in Section **57-8a-105**, an association has a lien on a lot for:

609 (i) an assessment;

610 (ii) except as provided in the declaration, fees, charges, and costs associated with
611 collecting an unpaid assessment, including:

612 (A) court costs and reasonable attorney fees;

613 (B) late charges;

614 (C) interest; and

615 (D) any other amount that the association is entitled to recover under the declaration,
616 this chapter, or an administrative or judicial decision; and

617 (iii) a fine that the association imposes against ~~[the owner of the lot.]~~ a lot owner in
 618 accordance with Section 57-8a-208, if:

619 (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot
 620 owner did not file an appeal; or

621 (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district
 622 court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).

623 (b) The recording of a declaration constitutes record notice and perfection of a lien
 624 described in Subsection (1)(a).

625 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
 626 is for the full amount of the assessment from the time the first installment is due, unless the
 627 association otherwise provides in a notice of assessment.

628 (3) An unpaid assessment or fine accrues interest at the rate provided:

629 (a) in Subsection 15-1-1(2); or

630 (b) in the declaration, if the declaration provides for a different interest rate.

631 (4) A lien under this section has priority over each other lien and encumbrance on a lot
 632 except:

633 (a) a lien or encumbrance recorded before the declaration is recorded;

634 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
 635 is recorded before a recorded notice of lien by or on behalf of the association; or

636 (c) a lien for real estate taxes or other governmental assessments or charges against the
 637 lot.

638 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
 639 Exemptions Act.

640 (6) Unless the declaration provides otherwise, if two or more associations have liens
 641 for assessments on the same lot, the liens have equal priority, regardless of when the liens are
 642 created.

643 **Section 8. Repealer.**

644 This bill repeals:

645 Section 57-8-7.5 (Effective 07/01/14), Reserve analysis -- Reserve fund.

646 Section 57-8a-211 (Effective 07/01/14), Reserve analysis -- Reserve fund.

Legislative Review Note
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