

1 **HOMEOWNER ASSOCIATION RESERVE ACCOUNT**

2 **AMENDMENTS**

3 2014 GENERAL SESSION

4 STATE OF UTAH

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

6 House Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions in Title 57, Chapter 8, Condominium Ownership Act, and
11 Title 57, Chapter 8a, Community Association Act, relating to reserve analysis and
12 reserve accounts.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ provides that, during the period of administrative control, a management committee
17 or a board:
- 18 • shall conduct a reserve analysis;
 - 19 • shall place 30% of each assessment collected in a separate account; and
 - 20 • may only use the funds placed in the separate account to conduct a reserve
21 analysis; and
- 22 ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 This bill provides an effective date.

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

30 **57-8-7.5 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

31 **57-8-7.5 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,

32 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

33 **57-8-16.5**, as enacted by Laws of Utah 1975, Chapter 173

34 **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

35 **57-8a-104**, as last amended by Laws of Utah 2011, Chapter 137

36 **57-8a-211 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

37 **57-8a-211 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,

38 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

39

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)(g)**.

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) "Commercial condominium project" means a condominium project that has no
55 residential units within the project.

56 (5) "Common areas and facilities" unless otherwise provided in the declaration or
57 lawful amendments to the declaration means:

58 (a) the land included within the condominium project, whether leasehold or in fee

59 simple;

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

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

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

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

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

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

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

72 (6) "Common expenses" means:

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

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

76 (c) expenses agreed upon as common expenses by the association of unit owners; and

77 (d) expenses declared common expenses by this chapter, or by the declaration or the
78 bylaws.

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

82 (8) "Condominium" means the ownership of a single unit in a multiunit project
83 together with an undivided interest in common in the common areas and facilities of the
84 property.

85 (9) "Condominium plat" means a plat or plats of survey of land and units prepared in
86 accordance with Section [57-8-13](#).

87 (10) "Condominium project" means a real estate condominium project; a plan or
88 project whereby two or more units, whether contained in existing or proposed apartments,
89 commercial or industrial buildings or structures, or otherwise, are separately offered or

90 proposed to be offered for sale. Condominium project also means the property when the
91 context so requires.

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

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

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

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

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

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

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

118 (18) "Governing documents":

119 (a) means a written instrument by which an association of unit owners may:

120 (i) exercise powers; or

121 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
122 association of unit owners; and

123 (b) includes:

124 (i) articles of incorporation;

125 (ii) bylaws;

126 (iii) a plat;

127 (iv) a declaration of covenants, conditions, and restrictions; and

128 (v) rules of the association of unit owners.

129 (19) "Independent third party" means a person that:

130 (a) is not related to the unit owner;

131 (b) shares no pecuniary interests with the unit owner; and

132 (c) purchases the unit in good faith and without the intent to defraud a current or future
133 lienholder.

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

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

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

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

148 (24) "Mixed-use condominium project" means a condominium project that has both
149 residential and commercial units in the condominium project.

150 (25) "Par value" means a number of dollars or points assigned to each unit by the
151 declaration. Substantially identical units shall be assigned the same par value, but units located

152 at substantially different heights above the ground, or having substantially different views, or
153 having substantially different amenities or other characteristics that might result in differences
154 in market value, may be considered substantially identical within the meaning of this
155 subsection. If par value is stated in terms of dollars, that statement may not be considered to
156 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
157 fair market transaction at a different figure may affect the par value of any unit, or any
158 undivided interest in the common areas and facilities, voting rights in the unit owners'
159 association, liability for common expenses, or right to common profits, assigned on the basis
160 thereof.

161 (26) "Period of administrative control" means the period of time described in
162 Subsection 57-8-16.5(5) during which the declarant has the power and responsibility to act in
163 place of the association of unit owners, the management committee, or an officer of either.

164 [~~(26)~~] (27) "Person" means an individual, corporation, partnership, association, trustee,
165 or other legal entity.

166 [~~(27)~~] (28) "Property" means the land, whether leasehold or in fee simple, the building,
167 if any, all improvements and structures thereon, all easements, rights, and appurtenances
168 belonging thereto, and all articles of personal property intended for use in connection
169 therewith.

170 [~~(28)~~] (29) "Record," "recording," "recorded," and "recorder" have the meaning stated
171 in Title 57, Chapter 3, Recording of Documents.

172 [~~(29)~~] (30) "Size" means the number of cubic feet, or the number of square feet of
173 ground or floor space, within each unit as computed by reference to the record of survey map
174 and rounded off to a whole number. Certain spaces within the units including attic, basement,
175 or garage space may be omitted from the calculation or be partially discounted by the use of a
176 ratio, if the same basis of calculation is employed for all units in the condominium project and
177 if that basis is described in the declaration.

178 [~~(30)~~] (31) "Time period unit" means an annually recurring part or parts of a year
179 specified in the declaration as a period for which a unit is separately owned and includes a
180 timeshare estate as defined in Subsection 57-19-2(19).

181 [~~(31)~~] (32) "Unit" means either a separate physical part of the property intended for any
182 type of independent use, including one or more rooms or spaces located in one or more floors

183 or part or parts of floors in a building or a time period unit, as the context may require. A
184 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
185 proposed condominium unit under an expandable condominium project, not constructed, is a
186 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

187 ~~[(32)]~~ (33) "Unit number" means the number, letter, or combination of numbers and
188 letters designating the unit in the declaration and in the record of survey map.

189 ~~[(33)]~~ (34) "Unit owner" means the person or persons owning a unit in fee simple and
190 an undivided interest in the fee simple estate of the common areas and facilities in the
191 percentage specified and established in the declaration or, in the case of a leasehold
192 condominium project, the person or persons whose leasehold interest or interests in the
193 condominium unit extend for the entire balance of the unexpired term or terms.

194 Section 2. Section 57-8-7.5 (Superseded 07/01/14) is amended to read:

195 **57-8-7.5 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

196 (1) As used in this section:

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

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

202 (ii) the appropriate amount of any reserve fund.

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

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

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

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

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

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

214 reserve analysis.

215 (4) A reserve analysis shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

243 (d) If the unit owners veto a reserve fund line item under Subsection (6)(c) and a
244 reserve fund line item exists in a previously approved annual budget of the association of unit

245 owners that was not vetoed, the association of unit owners shall fund the reserve account in
246 accordance with that prior reserve fund line item.

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

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

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

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

254 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

268 (8) (a) A management committee may not use money in a reserve fund:

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

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

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

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

276 the declaration.

277 (9) Subsections (2)~~[(3), (4), and (6)]~~ and (5) through (8) do not apply to an association
278 of unit owners during the period of ~~[declarant management]~~ administrative control.

279 (10) (a) For a condominium project whose declaration is filed on or after May 13,
280 2014, during the period of administrative control, the declarant shall:

281 (i) cause a reserve analysis to be conducted, in accordance with Subsections (3) and
282 (4), before the period of administrative control ends;

283 (ii) provide a copy of the reserve analysis to the new management committee after the
284 period of administrative control ends; and

285 (iii) place 30% of each assessment collected in a separate depository account.

286 (b) (i) Except as provided in Subsection (10)(b)(ii), a management committee may not
287 spend, borrow, loan, transfer, or otherwise use the funds described in Subsection (10)(a)(iii).

288 (ii) A management committee may only use the funds described in Subsection
289 (10)(a)(iii) to conduct a reserve analysis.

290 ~~[(10)]~~ (11) ~~[This]~~ Except as otherwise provided in this section, this section applies to
291 each association of unit owners, regardless of when the association of unit owners was created.

292 Section 3. Section **57-8-7.5 (Effective 07/01/14)** is amended to read:

293 **57-8-7.5 (Effective 07/01/14). Reserve analysis -- Reserve fund.**

294 (1) As used in this section:

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

296 (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
297 replacing, or restoring common areas and facilities that have a useful life of three years or more
298 and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from
299 the general budget or other funds of the association of unit owners; and

300 (ii) the appropriate amount of any reserve fund.

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

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

304 (a) cause a reserve analysis to be conducted no less frequently than every six years; and

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

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

310 (4) A reserve fund analysis shall include:

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

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

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

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

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

322 (5) An association of unit owners shall:

323 (a) annually provide unit owners a summary of the most recent reserve analysis or
324 update; and

325 (b) provide a copy of the complete reserve analysis or update to a unit owner who
326 requests a copy.

327 (6) In formulating its budget each year, an association of unit owners shall include a
328 reserve fund line item in:

329 (a) an amount the management committee determines, based on the reserve analysis, to
330 be prudent; or

331 (b) an amount required by the declaration, if the declaration requires an amount higher
332 than the amount determined under Subsection (6)(a).

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

337 (b) If the unit owners veto a reserve fund line item under Subsection (7)(a) and a

338 reserve fund line item exists in a previously approved annual budget of the association of unit
339 owners that was not vetoed, the association of unit owners shall fund the reserve account in
340 accordance with that prior reserve fund line item.

341 (8) (a) Subject to Subsection (8)(b), if an association of unit owners does not comply
342 with the requirements of Subsection (5), (6), or (7) and fails to remedy the noncompliance
343 within the time specified in Subsection (8)(c), a unit owner may file an action in state court for:

344 (i) injunctive relief requiring the association of unit owners to comply with the
345 requirements of Subsection (5), (6), or (7);

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

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

348 (iv) reasonable costs and attorney fees.

349 (b) No fewer than 90 days before the day on which a unit owner files a complaint under
350 Subsection (8)(a), the unit owner shall deliver written notice described in Subsection (8)(c) to
351 the association of unit owners.

352 (c) A notice under Subsection (8)(b) shall state:

353 (i) the requirement in Subsection (5), (6), or (7) with which the association of unit
354 owners has failed to comply;

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

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

359 (d) In a case filed under Subsection (8)(a), a court may order an association of unit
360 owners to produce the summary of the reserve analysis or the complete reserve analysis on an
361 expedited basis and at the association of unit owners' expense.

362 (9) (a) A management committee may not use money in a reserve fund:

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

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

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

368 (c) This Subsection (9) may not be construed to limit a management committee from

369 prudently investing money in a reserve fund, subject to any investment constraints imposed by
370 the declaration.

371 (10) Subsections (2) and (5) through (9) do not apply to an association of unit owners
372 during the period of [~~declarant control described in Subsection 57-8-16.5(1)~~] administrative
373 control.

374 (11) (a) For a condominium project whose declaration is filed on or after May 13,
375 2014, during the period of administrative control, the declarant shall:

376 (i) cause a reserve analysis to be conducted, in accordance with Subsections (3) and
377 (4), before the period of administrative control ends;

378 (ii) promptly provide a copy of the reserve analysis to the new management committee
379 after the period of administrative control ends; and

380 (iii) place 30% of each assessment collected in a separate depository account.

381 (b) (i) Except as provided in Subsection (11)(b)(ii), a management committee may not
382 spend, borrow, loan, transfer, or otherwise use the funds described in Subsection (11)(a)(iii).

383 (ii) A management committee may only use the funds described in Subsection
384 (11)(a)(iii) to conduct a reserve analysis.

385 ~~[(H)]~~ (12) ~~[This]~~ Except as otherwise provided in this section, this section applies to
386 each association of unit owners, regardless of when the association of unit owners was created.

387 Section 4. Section **57-8-16.5** is amended to read:

388 **57-8-16.5. Appointment and removal of committee members and association**
389 **officers -- Renewal or ratification of contracts -- Failure to establish association or**
390 **committee.**

391 (1) The declaration may authorize the declarant, ~~[or]~~ a managing agent₂ or ~~[some other]~~
392 another person ~~[or persons selected or to be]~~ selected by the declarant~~;~~ to:

393 (a) appoint ~~[and]~~ or remove some or all of the members of the management committee
394 ~~[or]~~;

395 (b) appoint or remove some or all of the officers of the ~~[unit owners' association,]~~
396 association of unit owners; or ~~[to]~~

397 (c) exercise the powers and responsibilities otherwise assigned by the declaration ~~[and]~~
398 or by this act to the ~~[unit owners' association]~~ association of unit owners, [its] the association of
399 unit owners' officers, or the management committee.

400 (2) ~~[No]~~ An amendment to the declaration ~~[not consented to by]~~ that increases the
 401 scope of an authorization described in Subsection (1) is valid only if all unit owners [shall
 402 increase the scope of this authorization, and no such authorization shall be valid after the first
 403 to occur of the following:] consent to the amendment.

404 (3) An authorization described in Subsection (1) is only valid until one of the following
 405 occurs:

406 (a) ~~[expiration of]~~ the time limit set by the declaration expires, which shall not exceed
 407 six years in the case of an expandable condominium, four years in the case of a condominium
 408 project containing any convertible land, or three years in the case of any other condominium
 409 project; or

410 (b) (i) ~~[after]~~ the number of units to which three-fourths of the undivided interest in the
 411 common areas and facilities appertain have been conveyed~~[-or after];~~

412 (ii) all additional land has been added to the project; and

413 (iii) all convertible land has been converted~~[-, whichever last occurs].~~

414 ~~[(2)]~~ (4) If entered into during the period of control ~~[contemplated by]~~ described in
 415 Subsection (1), [no] a management contract, a lease of recreational areas or facilities, or any
 416 other contract or lease designed to benefit the declarant which was executed by or on behalf of
 417 the [unit owners'] association of unit owners or the unit owners as a group [shall be] is not
 418 binding after [such] the period of control described in Subsection (1) ends, unless [then] the
 419 contract is renewed or ratified by the [consent of unit owners of units to which a] majority of
 420 [the votes in the unit owners' association appertains] unit owners.

421 ~~[(3)]~~ (5) If ~~[the unit owners']~~ an association of unit owners or a management committee
 422 is not in existence or does not have officers at the time [of the creation of] a condominium
 423 project is created, the declarant shall, until there is an association of unit owners with officers
 424 or a management committee with [these] officers, have the power and responsibility to act in
 425 all instances where this act or the declaration requires action by the [unit owners'] association
 426 of unit owners, the management committee, or [any of the officers of them] an officer of either.

427 ~~[(4)]~~ (6) This section shall be strictly construed to protect the rights of the unit owners.

428 Section 5. Section **57-8a-102** is amended to read:

429 **57-8a-102. Definitions.**

430 As used in this chapter:

- 431 (1) (a) "Assessment" means a charge imposed or levied:
- 432 (i) by the association;
- 433 (ii) on or against a lot or a lot owner; and
- 434 (iii) pursuant to a governing document recorded with the county recorder.
- 435 (b) "Assessment" includes:
- 436 (i) a common expense; and
- 437 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
- 438 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
- 439 other legal entity, any member of which:
- 440 (i) is an owner of a residential lot located within the jurisdiction of the association, as
- 441 described in the governing documents; and
- 442 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
- 443 (A) real property taxes;
- 444 (B) insurance premiums;
- 445 (C) maintenance costs; or
- 446 (D) for improvement of real property not owned by the member.
- 447 (b) "Association" or "homeowner association" does not include an association created
- 448 under Title 57, Chapter 8, Condominium Ownership Act.
- 449 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 450 authority to manage the affairs of the association.
- 451 (4) "Common areas" means property that the association:
- 452 (a) owns;
- 453 (b) maintains;
- 454 (c) repairs; or
- 455 (d) administers.
- 456 (5) "Common expense" means costs incurred by the association to exercise any of the
- 457 powers provided for in the association's governing documents.
- 458 (6) "Declarant":
- 459 (a) means the person who executes a declaration and submits it for recording in the
- 460 office of the recorder of the county in which the property described in the declaration is
- 461 located; and

- 462 (b) includes the person's successor and assign.
- 463 (7) (a) "Governing documents" means a written instrument by which the association
- 464 may:
- 465 (i) exercise powers; or
- 466 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 467 association.
- 468 (b) "Governing documents" includes:
- 469 (i) articles of incorporation;
- 470 (ii) bylaws;
- 471 (iii) a plat;
- 472 (iv) a declaration of covenants, conditions, and restrictions; and
- 473 (v) rules of the association.
- 474 (8) "Independent third party" means a person that:
- 475 (a) is not related to the owner of the residential lot;
- 476 (b) shares no pecuniary interests with the owner of the residential lot; and
- 477 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 478 or future lienholder.
- 479 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 480 (a) for the nonpayment of an assessment; and
- 481 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 482 property; and
- 483 (ii) as provided in Part 3, Collection of Assessments.
- 484 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 485 (a) by a person or persons other than the owner; and
- 486 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 487 gratuity, or emolument.
- 488 (11) "Limited common areas" means common areas described in the declaration and
- 489 allocated for the exclusive use of one or more lot owners.
- 490 (12) "Lot" means:
- 491 (a) a lot, parcel, plot, or other division of land:
- 492 (i) designated for separate ownership or occupancy; and

- 493 (ii) (A) shown on a recorded subdivision plat; or
 494 (B) the boundaries of which are described in a recorded governing document; or
 495 (b) (i) a unit in a condominium association if the condominium association is a part of
 496 a development; or
 497 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
 498 development.

499 (13) "Mixed-use project" means a project under this chapter that has both residential
 500 and commercial lots in the project.

501 (14) "Nonjudicial foreclosure" means the sale of a lot:

502 (a) for the nonpayment of an assessment; and

503 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
 504 57-1-34; and

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

506 (15) "Period of administrative control" means the period during which the person who
 507 filed the association's governing documents or the person's successor in interest retains
 508 authority to:

509 (a) appoint or remove members of the association's board of directors; or

510 (b) exercise power or authority assigned to the association under the association's
 511 governing documents.

512 ~~[(15)]~~ (16) "Residential lot" means a lot, the use of which is limited by law, covenant,
 513 or otherwise to primarily residential or recreational purposes.

514 Section 6. Section 57-8a-104 is amended to read:

515 **57-8a-104. Limitation on requirements for amending governing documents --**
 516 **Limitation on contracts.**

517 ~~[(1) As used in this section, "period of administrative control" means the period during~~
 518 ~~which the person who filed the association's governing documents or a successor in interest~~
 519 ~~retains authority to:]~~

520 ~~[(a) appoint or remove members of the association's board of directors; or]~~

521 ~~[(b) exercise power or authority assigned to the association under its governing~~
 522 ~~documents:]~~

523 ~~[(2)]~~ (1) (a) (i) Governing documents may not require that an amendment to the

524 governing documents adopted after the period of administrative control be approved by more
525 than 67% of the voting interests.

526 (ii) The vote required to adopt an amendment to governing documents may not be
527 greater than 67% of the voting interests, notwithstanding a provision of the governing
528 documents requiring a greater percentage and regardless of whether the governing documents
529 were adopted before, on, or after May 10, 2011.

530 (b) Subsection ~~[(2)]~~ (1)(a) does not apply to an amendment affecting only:

531 (i) lot boundaries; or

532 (ii) members' voting rights.

533 ~~[(3)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,
534 or snow removal executed on behalf of the association during a period of administrative control
535 is binding beyond the period of administrative control unless terminated by the board of
536 directors after the period of administrative control ends.

537 (b) Subsection ~~[(3)]~~ (2)(a) does not apply to golf course and amenity management,
538 utilities, cable services, and other similar services that require an investment of infrastructure
539 or capital.

540 ~~[(4)]~~ (3) Voting interests under Subsections ~~[(2)]~~ (1) and ~~[(3)]~~ (2) are calculated in the
541 manner required by the governing documents.

542 ~~[(5)]~~ (4) Nothing in this section affects any other rights reserved by the person who
543 filed the association's original governing documents or a successor in interest.

544 Section 7. Section **57-8a-211 (Superseded 07/01/14)** is amended to read:

545 **57-8a-211 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

546 (1) As used in this section:

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

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

552 (ii) the appropriate amount of any reserve fund.

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

- 555 (2) Except as otherwise provided in the governing documents, a board shall:
556 (a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less
557 frequently than every six years; and
558 (ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve
559 analysis to be conducted before July 1, 2012; and
560 (b) review and, if necessary, update a previously conducted reserve analysis no less
561 frequently than every three years.
562 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
563 organization, as determined by the board, to conduct the reserve analysis.
564 (4) A reserve analysis shall include:
565 (a) a list of the components identified in the reserve analysis that will reasonably
566 require reserve funds;
567 (b) a statement of the probable remaining useful life, as of the date of the reserve
568 analysis, of each component identified in the reserve analysis;
569 (c) an estimate of the cost to repair, replace, or restore each component identified in the
570 reserve analysis;
571 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
572 cost to repair, replace, or restore each component identified in the reserve analysis during the
573 component's useful life and at the end of the component's useful life; and
574 (e) a reserve funding plan that recommends how the association may fund the annual
575 contribution described in Subsection (4)(d).
576 (5) Each year, an association shall provide:
577 (a) a summary of the most recent reserve analysis, including any updates, to each lot
578 owner; and
579 (b) a complete copy of the most recent reserve analysis, including any updates, to a lot
580 owner upon request.
581 (6) (a) An association shall include a reserve fund line item in its annual budget.
582 (b) The amount of the reserve fund line item shall be determined by:
583 (i) the board, based on the reserve analysis and the amount that the board determines is
584 prudent under the circumstances; or
585 (ii) the governing documents, if the governing documents require an amount greater

586 than the amount determined under Subsection (6)(b)(i).

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

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

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

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

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

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

602 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

616 (8) (a) A board may not use money in a reserve fund:

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

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

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

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

624 (9) Subsections (2)[, (3), (4), and (6)] and (5) through (8) do not apply to an association
625 during the period of administrative control.

626 (10) (a) For an association that files the association's first governing document on or
627 after May 13, 2014, during the period of administrative control, the person who filed the
628 association's governing documents or the person's successor in interest shall:

629 (i) cause a reserve analysis to be conducted, in accordance with Subsections (3) and
630 (4), before the period of administrative control ends;

631 (ii) provide a copy of the reserve analysis to the new board after the period of
632 administrative control ends; and

633 (iii) place 30% of each assessment collected in a separate depository account.

634 (b) (i) Except as provided in Subsection (10)(b)(ii), a board may not spend, borrow,
635 loan, transfer, or otherwise use the funds described in Subsection (10)(a)(iii).

636 (ii) A board may only use the funds described in Subsection (10)(a)(iii) to conduct a
637 reserve analysis.

638 ~~[(10)]~~ (11) ~~[This]~~ Except at otherwise provided in this section, this section applies to
639 each association, regardless of when the association was created.

640 Section 8. Section **57-8a-211 (Effective 07/01/14)** is amended to read:

641 **57-8a-211 (Effective 07/01/14). Reserve analysis -- Reserve fund.**

642 (1) As used in this section:

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

644 (i) the need for a reserve fund to accumulate money to cover the cost of repairing,
645 replacing, or restoring common areas that have a useful life of three years or more and a
646 remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the
647 association's general budget or from other association funds; and

- 648 (ii) the appropriate amount of any reserve fund.
- 649 (b) "Reserve fund line item" means the line item in an association's annual budget that
650 identifies the amount to be placed into a reserve fund.
- 651 (2) Except as otherwise provided in the governing documents, a board shall:
 - 652 (a) cause a reserve analysis to be conducted no less frequently than every six years; and
 - 653 (b) review and, if necessary, update a previously conducted reserve analysis no less
654 frequently than every three years.
- 655 (3) The board may conduct a reserve analysis itself or may engage a reliable person or
656 organization, as determined by the board, to conduct the reserve analysis.
- 657 (4) A reserve fund analysis shall include:
 - 658 (a) a list of the components identified in the reserve analysis that will reasonably
659 require reserve funds;
 - 660 (b) a statement of the probable remaining useful life, as of the date of the reserve
661 analysis, of each component identified in the reserve analysis;
 - 662 (c) an estimate of the cost to repair, replace, or restore each component identified in the
663 reserve analysis;
 - 664 (d) an estimate of the total annual contribution to a reserve fund necessary to meet the
665 cost to repair, replace, or restore each component identified in the reserve analysis during the
666 component's useful life and at the end of the component's useful life; and
 - 667 (e) a reserve funding plan that recommends how the association may fund the annual
668 contribution described in Subsection (4)(d).
- 669 (5) An association shall:
 - 670 (a) annually provide lot owners a summary of the most recent reserve analysis or
671 update; and
 - 672 (b) provide a copy of the complete reserve analysis or update to a lot owner who
673 requests a copy.
- 674 (6) In formulating its budget each year, an association shall include a reserve fund line
675 item in:
 - 676 (a) an amount the board determines, based on the reserve analysis, to be prudent; or
 - 677 (b) an amount required by the governing documents, if the governing documents
678 require an amount higher than the amount determined under Subsection (6)(a).

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

683 (b) If the lot owners veto a reserve fund line item under Subsection (7)(a) and a reserve
684 fund line item exists in a previously approved annual budget of the association that was not
685 vetoed, the association shall fund the reserve account in accordance with that prior reserve fund
686 line item.

687 (8) (a) Subject to Subsection (8)(b), if an association does not comply with the
688 requirements described in Subsection (5), (6), or (7) and fails to remedy the noncompliance
689 within the time specified in Subsection (8)(c), a lot owner may file an action in state court for:

690 (i) injunctive relief requiring the association to comply with the requirements of
691 Subsection (5), (6), or (7);

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

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

694 (iv) reasonable costs and attorney fees.

695 (b) No fewer than 90 days before the day on which a lot owner files a complaint under
696 Subsection (8)(a), the lot owner shall deliver written notice described in Subsection (8)(c) to
697 the association.

698 (c) A notice under Subsection (8)(b) shall state:

699 (i) the requirement in Subsection (5), (6), or (7) with which the association has failed to
700 comply;

701 (ii) a demand that the association come into compliance with the requirements; and

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

704 (d) In a case filed under Subsection (8)(a), a court may order an association to produce
705 the summary of the reserve analysis or the complete reserve analysis on an expedited basis and
706 at the association's expense.

707 (9) (a) A board may not use money in a reserve fund:

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

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

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

712 (c) This Subsection (9) may not be construed to limit a board from prudently investing
713 money in a reserve fund, subject to any investment constraints imposed by the governing
714 documents.

715 (10) Subsections (2) and (5) through (9) do not apply to an association during the
716 period of administrative control.

717 (11) (a) For an association that files the association's first governing document on or
718 after May 13, 2014, during the period of administrative control, the person who filed the
719 association's governing documents or the person's successor in interest shall:

720 (i) cause a reserve analysis to be conducted, in accordance with Subsections (3) and
721 (4), before the period of administrative control ends;

722 (ii) provide a copy of the reserve analysis to the new board after the period of
723 administrative control ends; and

724 (iii) place 30% of each assessment collected in a separate depository account.

725 (b) (i) Except as provided in Subsection (11)(b)(ii), a board may not spend, borrow,
726 loan, transfer, or otherwise use the funds described in Subsection (11)(a)(iii).

727 (ii) A board may only use the funds described in Subsection (11)(a)(iii) to conduct a
728 reserve analysis.

729 ~~[(H)]~~ (12) ~~[This]~~ Except as otherwise provided in this section, this section applies to
730 each association, regardless of when the association was created.

731 Section 9. **Effective date.**

732 (1) Except as provided in Subsection (2), this bill takes effect on May 13, 2014.

733 (2) The actions affecting the following sections take effect on July 1, 2014:

734 (a) Section [57-8-7.5](#) (Effective 07/01/14); and

735 (b) Section [57-8a-211](#) (Effective 07/01/14).

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