

SB0075S01 compared with SB0075

~~deleted text~~ shows text that was in SB0075 but was deleted in SB0075S01.

inserted text shows text that was not in SB0075 but was inserted into SB0075S01.

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Senator Lincoln Fillmore proposes the following substitute bill:

COMMUNITY ASSOCIATION FUND AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Condominium Ownership Act and the Community Association Act regarding reserve funds.

Highlighted Provisions:

This bill:

- ▶ amends the definition of reserve funds to permit the use of reserve funds to cover a budget shortfall during a declared emergency under certain conditions;
- ▶ amends the contents of a reserve fund analysis;
- ▶ permits the use of reserve funds to pay for daily maintenance expenses without a majority member vote under certain conditions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

57-8-7.5, as last amended by Laws of Utah 2018, Chapter 395

57-8a-211, as last amended by Laws of Utah 2018, Chapter 395

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

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

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

(1) As used in this section:

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

- (i) the need for a reserve fund to accumulate reserve funds; and
- (ii) the appropriate amount of any reserve fund.

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

(c) "Reserve funds" means money to cover:

(i) the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the association of unit owners[-]; or

(ii) a shortfall in the general budget, if:

(A) the shortfall occurs while a state of emergency declared in accordance with Section 53-2a-206 is in effect;

(B) the geographic area for which the state of emergency described in Subsection (1)(c)(ii)(A) is declared extends to the entire state; and

(C) at the time the money is spent, more than 10% of unit owners in the association are delinquent in the payment of assessments as a result of events giving rise to the state of emergency described in Subsection (1)(c)(ii)(A).

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

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

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

(4) A reserve fund analysis shall include:

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

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

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

(d) an estimate of the total annual contribution to a reserve fund necessary:

(i) to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and

(ii) to prepare for a shortfall in the general budget that the association or management committee may use reserve funds to cover; and

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

(5) An association of unit owners shall:

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

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

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

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

(b) an amount required by the declaration, if the declaration requires an amount higher

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than the amount determined under Subsection (6)(a).

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

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

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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(9) (a) [~~Unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose, a~~] A management committee may not use money in a reserve fund~~[(i) for daily maintenance expenses; or (ii)]~~ for any purpose other than the purpose for which the reserve fund was established, unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose.

(b) (i) A management committee may not use money in a reserve fund for daily maintenance expenses, unless:

(~~ii~~)A a majority of the members of the association of unit owners vote to approve the use of reserve fund money for daily maintenance expenses; or

(~~iii~~)B there exists in the general budget a shortfall that the management committee may use reserve funds to cover.

(ii) Members of the association of unit owners may prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B) by a 51% vote of the allocated voting interest in the association of unit owners at a special meeting the unit owners call for the purpose of voting whether to prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B).

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

~~(c)~~ (d) This Subsection (9) may not be construed to:

(i) limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration~~[-];~~

(ii) excuse an association from the requirements described in Section 57-8-58; or

(iii) permit the use of money in a reserve fund for a legal action described in Section 57-8-58.

(10) Subsections (2) through (9) do not apply to an association of unit owners during the period of administrative control.

(11) For a condominium project whose initial declaration is recorded on or after May 12, 2015, during the period of administrative control, for any property that the declarant sells to a third party, the declarant shall give the third party:

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- (a) a copy of the association of unit owners' governing documents; and
- (b) a copy of the association of unit owners' most recent financial statement that includes any reserve funds held by the association of unit owners or by a subsidiary of the association of unit owners.

(12) Except as otherwise provided in this section, this section applies to each association of unit owners, regardless of when the association of unit owners was created.

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

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

- (1) As used in this section:
 - (a) "Reserve analysis" means an analysis to determine:
 - (i) the need for a reserve fund to accumulate reserve funds; and
 - (ii) the appropriate amount of any reserve fund.
 - (b) "Reserve fund line item" means the line item in an association's annual budget that identifies the amount to be placed into a reserve fund.
 - (c) "Reserve funds" means money to cover:
 - (i) the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the association[-]; or
 - (ii) a shortfall in the general budget, if:
 - (A) the shortfall occurs while a state of emergency declared in accordance with Section 53-2a-206 is in effect;
 - (B) the geographic area for which the state of emergency described in Subsection (1)(c)(ii)(A) is declared extends to the entire state; and
 - (C) at the time the money is spent, more than 10% of lot owners in the association are delinquent in the payment of assessments as a result of events giving rise to the state of emergency described in Subsection (1)(c)(ii)(A).
- (2) Except as otherwise provided in the governing documents, a board shall:
 - (a) cause a reserve analysis to be conducted no less frequently than every six years; and
 - (b) review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.
- (3) The board may conduct a reserve analysis itself or may engage a reliable person or

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organization, as determined by the board, to conduct the reserve analysis.

(4) A reserve fund analysis shall include:

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

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

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

(d) an estimate of the total annual contribution to a reserve fund necessary:

(i) to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and

(ii) to prepare for a shortfall in the general budget that the association or board may use reserve funds to cover; and

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

(5) An association shall:

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

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

(6) In formulating the association's budget each year, an association shall include a reserve fund line item in:

(a) an amount the board determines, based on the reserve analysis, to be prudent; or

(b) an amount required by the governing documents, if the governing documents require an amount higher than the amount determined under Subsection (6)(a).

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

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

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

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

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

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

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

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

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

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

(9) (a) [~~Unless a majority of association members vote to approve the use of reserve fund money for that purpose, a~~ A board may not use money in a reserve fund[: (i) for daily maintenance expenses; or (ii)] for any purpose other than the purpose for which the reserve fund was established, unless a majority of association members vote to approve the use of reserve fund money for that purpose.

(b) (i) A board may not use money in a reserve fund for daily maintenance expenses, unless:

(ii) A majority of association members vote to approve the use of reserve fund

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money for daily maintenance expenses; or

(~~iii~~) (B) there exists in the general budget a shortfall that the board may use reserve funds to cover.

(ii) Association members may prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B) by a 51% vote of the allocated voting interest in the association at a special meeting the lot owners call for the purpose of voting whether to prohibit the use of reserve fund money for daily maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B).

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

~~(c)~~ (d) This Subsection (9) may not be construed to:

(i) limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents~~[-]~~;

(ii) excuse an association from the requirements described in Section 57-8a-229; or

(iii) permit the use of money in a reserve fund for a legal action described in Section 57-8a-229.

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

(11) For a project whose initial declaration of covenants, conditions, and restrictions is recorded on or after May 12, 2015, during the period of administrative control, for any property that the declarant sells to a third party, the declarant shall give the third party:

(a) a copy of the association's governing documents; and

(b) a copy of the association's most recent financial statement that includes any reserve funds held by the association or by a subsidiary of the association.

(12) Except as otherwise provided in this section, this section applies to each association, regardless of when the association was created.