

1st Sub. S.B. 90

CONDOMINIUM AND COMMUNITY ASSOCIATION AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 3

MARCH 13, 2013 2:48 PM

Representative **Gage Froerer** proposes the following amendments:

1. Page 2, Line 37:

37 ~~{None}~~ **This bill coordinates with S.B. 64, Homeowner Association Reserve Account Amendments, by providing substantive and technical amendments.**

2. Page 3, Lines 68 through 69:

68 57-8a-502, Utah Code Annotated 1953

69 57-8a-601, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

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

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

3. Page 41, Line 1262:

1262 property.

= **Section 32. Coordinating S.B. 90 with S.B. 64 -- Substantive and technical amendments.**

If this S.B. 90 and S.B. 64, Homeowner Association Reserve Account Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication:

(1) modify Section 57-8-7.5 to read:

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

(1) As used in this section ~~{, "reserve"}~~ **:**

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

~~{(a)}~~ **(i)** the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, ~~{and}~~ **or** restoring common areas and facilities that have a useful life of three years or more ~~{, but excluding any cost that can}~~ **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; and

~~{(b)}~~ **(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.**

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

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

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

~~be conducted before July 1, 2012; 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 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

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

(7)(a) Within 45 days after the day on which an association of unit owners adopts its 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.

~~{(4)}~~ (9) (a) A management committee may not use money in a reserve fund:

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

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

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

(c) This Subsection ~~{(4)}~~ (9) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

~~{(5)}~~ (10) Subsections (2) ~~{(3), (4), and (6)}~~ through (9) do not apply to an association of unit owners during the period of declarant ~~{management}~~ control described in Subsection 57-8-16.5(1) .

~~{(6) An association of unit owners shall: }~~

~~{(a) annually, at the annual meeting of unit owners or at a special meeting of unit owners: }~~

~~{(i) present the reserve study; and }~~

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

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

~~{(7)}~~ (11) This section applies to each association of unit owners, regardless of when the association of unit owners was created. " ; and

(2) modify Section 57-8a-211 to read:

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

(1) As used in this section ~~{, "reserve"}~~ ∴

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

~~{(a)}~~ (i) the need for a reserve fund to accumulate money to cover the cost of repairing,

replacing, ~~{and}~~ or restoring common areas that have a useful life of three years or more ~~{,but excluding any cost that can}~~ and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the association's general budget or from other association funds; and

~~{(b)}~~ (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.

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

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

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

(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 its 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 requires an amount higher than the amount determined under Subsection (6)(a).

(7)(a) Within 45 days after the day on which an association adopts its 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 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.

~~{(4)}~~ (9) (a) A board may not use money in a reserve fund:

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

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

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

(c) This Subsection ~~{(4)}~~ (9) may not be construed to limit a board from prudently investing money in a reserve fund, subject to any investment constraints imposed by the governing documents.

~~{(5)}~~ (10) Subsections (2) ~~{(3), (4), and (6)}~~ through (9) do not apply to an association during the period of administrative control.

~~{(6) An association shall: }~~

~~{(a) annually, at the annual meeting of lot owners or at a special meeting of lot owners: }~~

~~{(i) present the reserve study; and }~~

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

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

~~{(7)}~~ (11) This section applies to each association, regardless of when the association was created. "