

1                   **HOMEOWNERS' ASSOCIATION RESERVE FUND**

2                                   2015 GENERAL SESSION

3                                   STATE OF UTAH

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

5                                   House Sponsor: Don L. Ipson

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends provisions of the Condominium Ownership Act and the Community  
10 Association Act relating to reserve funds.

11 **Highlighted Provisions:**

12                   This bill:

- 13                   ▶ defines terms;
- 14                   ▶ provides that a declarant shall make certain disclosures to a purchaser during the  
15 period of administrative control; and
- 16                   ▶ makes technical and conforming changes.

17 **Money Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 AMENDS:

23                   **57-8-3**, as last amended by Laws of Utah 2013, Chapters 95 and 152

24                   **57-8-7.5**, as last amended by Laws of Utah 2014, Chapter 189

25                   **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

26                   **57-8a-104**, as last amended by Laws of Utah 2011, Chapter 137

27                   **57-8a-211**, as last amended by Laws of Utah 2013, Chapters 152 and 419

28                   **57-8a-224**, as enacted by Laws of Utah 2013, Chapter 152

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

31 Section 1. Section **57-8-3** is amended to read:

32 **57-8-3. Definitions.**

33 As used in this chapter:

34 (1) "Assessment" means any charge imposed by the association, including:

35 (a) common expenses on or against a unit owner pursuant to the provisions of the  
36 declaration, bylaws, or this chapter; and

37 (b) an amount that an association of unit owners assesses to a unit owner under  
38 Subsection **57-8-43(9)(g)**.

39 (2) "Association of unit owners" means all of the unit owners:

40 (a) acting as a group in accordance with the declaration and bylaws; or

41 (b) organized as a legal entity in accordance with the declaration.

42 (3) "Building" means a building, containing units, and comprising a part of the  
43 property.

44 (4) "Commercial condominium project" means a condominium project that has no  
45 residential units within the project.

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

48 (a) the land included within the condominium project, whether leasehold or in fee  
49 simple;

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

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

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

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

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

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

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

62 (6) "Common expenses" means:

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

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

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

67 (d) expenses declared common expenses by this chapter, or by the declaration or the  
68 bylaws.

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

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

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

77 (10) "Condominium project" means a real estate condominium project; a plan or  
78 project whereby two or more units, whether contained in existing or proposed apartments,  
79 commercial or industrial buildings or structures, or otherwise, are separately offered or  
80 proposed to be offered for sale. Condominium project also means the property when the  
81 context so requires.

82 (11) "Condominium unit" means a unit together with the undivided interest in the  
83 common areas and facilities appertaining to that unit. Any reference in this chapter to a  
84 condominium unit includes both a physical unit together with its appurtenant undivided interest  
85 in the common areas and facilities and a time period unit together with its appurtenant

86 undivided interest, unless the reference is specifically limited to a time period unit.

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

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

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

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

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

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

108 (18) "Governing documents":

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

110 (i) exercise powers; or

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

113 (b) includes:

- 114 (i) articles of incorporation;
- 115 (ii) bylaws;
- 116 (iii) a plat;
- 117 (iv) a declaration of covenants, conditions, and restrictions; and
- 118 (v) rules of the association of unit owners.

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

- 120 (a) is not related to the unit owner;
- 121 (b) shares no pecuniary interests with the unit owner; and
- 122 (c) purchases the unit in good faith and without the intent to defraud a current or future
- 123 lienholder.

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

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

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

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

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

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

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

151 (26) "Period of administrative control" means the period of control described in  
152 Subsection 57-8-16.5(1).

153 [~~(26)~~] (27) "Person" means an individual, corporation, partnership, association, trustee,  
154 or other legal entity.

155 [~~(27)~~] (28) "Property" means the land, whether leasehold or in fee simple, the building,  
156 if any, all improvements and structures thereon, all easements, rights, and appurtenances  
157 belonging thereto, and all articles of personal property intended for use in connection  
158 therewith.

159 [~~(28)~~] (29) "Record," "recording," "recorded," and "recorder" have the meaning stated  
160 in Title 57, Chapter 3, Recording of Documents.

161 [~~(29)~~] (30) "Size" means the number of cubic feet, or the number of square feet of  
162 ground or floor space, within each unit as computed by reference to the record of survey map  
163 and rounded off to a whole number. Certain spaces within the units including attic, basement,  
164 or garage space may be omitted from the calculation or be partially discounted by the use of a  
165 ratio, if the same basis of calculation is employed for all units in the condominium project and  
166 if that basis is described in the declaration.

167 [~~(30)~~] (31) "Time period unit" means an annually recurring part or parts of a year  
168 specified in the declaration as a period for which a unit is separately owned and includes a  
169 timeshare estate as defined in Subsection 57-19-2(19).

170           ~~[(31)]~~ (32) "Unit" means either a separate physical part of the property intended for any  
171 type of independent use, including one or more rooms or spaces located in one or more floors  
172 or part or parts of floors in a building or a time period unit, as the context may require. A  
173 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A  
174 proposed condominium unit under an expandable condominium project, not constructed, is a  
175 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

176           ~~[(32)]~~ (33) "Unit number" means the number, letter, or combination of numbers and  
177 letters designating the unit in the declaration and in the record of survey map.

178           ~~[(33)]~~ (34) "Unit owner" means the person or persons owning a unit in fee simple and  
179 an undivided interest in the fee simple estate of the common areas and facilities in the  
180 percentage specified and established in the declaration or, in the case of a leasehold  
181 condominium project, the person or persons whose leasehold interest or interests in the  
182 condominium unit extend for the entire balance of the unexpired term or terms.

183           Section 2. Section 57-8-7.5 is amended to read:

184           **57-8-7.5. Reserve analysis -- Reserve fund.**

185           (1) As used in this section:

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

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

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

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

194           (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring  
195 common areas and facilities that have a useful life of three years or more and a remaining  
196 useful life of less than 30 years, if the cost cannot reasonably be funded from the general  
197 budget or other funds of the association of unit owners.

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

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

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

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

205 (4) A reserve fund analysis shall include:

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

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

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

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

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

217 (5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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

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

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

243 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

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

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

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

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

268 (11) For a condominium project whose initial declaration is recorded on or after May  
269 12, 2015, during the period of administrative control, for any property that the declarant sells to  
270 a third party, the declarant shall give the third party:

271 (a) a copy of the association of unit owners' governing documents; and

272 (b) a copy of the association of unit owners' most recent financial statement that  
273 includes any reserve funds held by the association of unit owners or by a subsidiary of the  
274 association of unit owners.

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

277 Section 3. Section **57-8a-102** is amended to read:

278 **57-8a-102. Definitions.**

279 As used in this chapter:

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

281 (i) by the association;

- 282 (ii) on or against a lot or a lot owner; and
- 283 (iii) pursuant to a governing document recorded with the county recorder.
- 284 (b) "Assessment" includes:
- 285 (i) a common expense; and
- 286 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).
- 287 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or
- 288 other legal entity, any member of which:
- 289 (i) is an owner of a residential lot located within the jurisdiction of the association, as
- 290 described in the governing documents; and
- 291 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:
- 292 (A) real property taxes;
- 293 (B) insurance premiums;
- 294 (C) maintenance costs; or
- 295 (D) for improvement of real property not owned by the member.
- 296 (b) "Association" or "homeowner association" does not include an association created
- 297 under Title 57, Chapter 8, Condominium Ownership Act.
- 298 (3) "Board of directors" or "board" means the entity, regardless of name, with primary
- 299 authority to manage the affairs of the association.
- 300 (4) "Common areas" means property that the association:
- 301 (a) owns;
- 302 (b) maintains;
- 303 (c) repairs; or
- 304 (d) administers.
- 305 (5) "Common expense" means costs incurred by the association to exercise any of the
- 306 powers provided for in the association's governing documents.
- 307 (6) "Declarant":
- 308 (a) means the person who executes a declaration and submits it for recording in the
- 309 office of the recorder of the county in which the property described in the declaration is

310 located; and

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

312 (7) (a) "Governing documents" means a written instrument by which the association

313 may:

314 (i) exercise powers; or

315 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the

316 association.

317 (b) "Governing documents" includes:

318 (i) articles of incorporation;

319 (ii) bylaws;

320 (iii) a plat;

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

322 (v) rules of the association.

323 (8) "Independent third party" means a person that:

324 (a) is not related to the owner of the residential lot;

325 (b) shares no pecuniary interests with the owner of the residential lot; and

326 (c) purchases the residential lot in good faith and without the intent to defraud a current

327 or future lienholder.

328 (9) "Judicial foreclosure" means a foreclosure of a lot:

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

330 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real

331 property; and

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

333 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:

334 (a) by a person or persons other than the owner; and

335 (b) for which the owner receives a consideration or benefit, including a fee, service,

336 gratuity, or emolument.

337 (11) "Limited common areas" means common areas described in the declaration and

338 allocated for the exclusive use of one or more lot owners.

339 (12) "Lot" means:

340 (a) a lot, parcel, plot, or other division of land:

341 (i) designated for separate ownership or occupancy; and

342 (ii) (A) shown on a recorded subdivision plat; or

343 (B) the boundaries of which are described in a recorded governing document; or

344 (b) (i) a unit in a condominium association if the condominium association is a part of  
345 a development; or

346 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a  
347 development.

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

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

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

352 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through  
353 57-1-34; and

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

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

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

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

361 [~~15~~] (16) "Residential lot" means a lot, the use of which is limited by law, covenant,  
362 or otherwise to primarily residential or recreational purposes.

363 Section 4. Section 57-8a-104 is amended to read:

364 **57-8a-104. Limitation on requirements for amending governing documents --**  
365 **Limitation on contracts.**

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

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

370           ~~[(b) exercise power or authority assigned to the association under its governing~~  
371 ~~documents.]~~

372           ~~[(2)]~~ (1) (a) (i) Governing documents may not require that an amendment to the  
373 governing documents adopted after the period of administrative control be approved by more  
374 than 67% of the voting interests.

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

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

380           (i) lot boundaries; or

381           (ii) members' voting rights.

382           ~~[(3)]~~ (2) (a) A contract for services such as garbage collection, maintenance, lawn care,  
383 or snow removal executed on behalf of the association during a period of administrative control  
384 is binding beyond the period of administrative control unless terminated by the board of  
385 directors after the period of administrative control ends.

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

389           ~~[(4)]~~ (3) Voting interests under ~~[Subsections (2) and (3)]~~ Subsection (1) are calculated  
390 in the manner required by the governing documents.

391           ~~[(5)]~~ (4) Nothing in this section affects any other rights reserved by the person who  
392 filed the association's original governing documents or a successor in interest.

393           Section 5. Section **57-8a-211** is amended to read:

394 **57-8a-211. Reserve analysis -- Reserve fund.**

395 (1) As used in this section:

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

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

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

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

404 (c) "Reserve funds" means money to cover the cost of repairing, replacing, or restoring  
405 common areas and facilities that have a useful life of three years or more and a remaining  
406 useful life of less than 30 years, if the cost cannot reasonably be funded from the general  
407 budget or other funds of the association.

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

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

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

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

414 (4) A reserve fund analysis shall include:

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

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

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

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

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

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

426 (5) An association shall:

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

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

431 (6) In formulating its budget each year, an association shall include a reserve fund line  
432 item in:

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

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

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

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

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

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

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

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

451 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

482            Section 6. Section **57-8a-224** is amended to read:

483            **57-8a-224. Responsibility for the maintenance, repair, and replacement of**  
484 **common area and lots.**

485            (1) As used in this section:

486            (a) "Emergency repair" means a repair that, if not made in a timely manner, will likely  
487 result in immediate and substantial damage to a common area or to another lot.

488            (b) "Reasonable notice" means:

489            (i) written notice that is hand delivered to the lot at least 24 hours before the proposed  
490 entry; or

491            (ii) in the case of an emergency repair, notice that is reasonable under the  
492 circumstances.

493            (2) Except as otherwise provided in the declaration or Part 4, Insurance:

494            (a) an association is responsible for the maintenance, repair, and replacement of  
495 common areas; and

496            (b) a lot owner is responsible for the maintenance, repair, and replacement of the lot  
497 owner's lot.

498            (3) After reasonable notice to the occupant of the lot being entered, the board may  
499 access a lot:

500            (a) from time to time during reasonable hours, as necessary for the maintenance, repair,  
501 or replacement of any of the common areas; or

502            (b) for making an emergency repair.

503            (4) (a) An association is liable to repair damage it causes to the common areas or to a  
504 lot the association uses to access the common areas.

505            (b) An association shall repair damage described in Subsection (4)(a) within a time that

506 is reasonable under the circumstances.

507 (5) Subsections (2), (3), and (4) do not apply during the period of administrative

508 control [~~as defined in Section 57-8a-104~~].