

**HOMEOWNERS' ASSOCIATION RESERVE FUND**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen H. Urquhart**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides that during the period of administrative control, the declarant shall:
  - conduct a reserve analysis; and
  - create a reserve fund;
- ▶ addresses the purposes for which the declarant may use the money in the reserve fund; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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



- 28 [57-8a-102](#), as last amended by Laws of Utah 2013, Chapters 95 and 152
- 29 [57-8a-104](#), as last amended by Laws of Utah 2011, Chapter 137
- 30 [57-8a-211](#), as last amended by Laws of Utah 2013, Chapters 152 and 419
- 31 [57-8a-224](#), as enacted by Laws of Utah 2013, Chapter 152



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

34 Section 1. Section [57-8-3](#) is amended to read:

35 **57-8-3. Definitions.**

36 As used in this chapter:

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

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

40 (b) an amount that an association of unit owners assesses to a unit owner under

41 Subsection [57-8-43](#)(9)(g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 (6) "Common expenses" means:

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

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

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

70 (d) expenses declared common expenses by this chapter, or by the declaration or the  
71 bylaws.

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

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

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

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

85 (11) "Condominium unit" means a unit together with the undivided interest in the  
86 common areas and facilities appertaining to that unit. Any reference in this chapter to a  
87 condominium unit includes both a physical unit together with its appurtenant undivided interest  
88 in the common areas and facilities and a time period unit together with its appurtenant  
89 undivided interest, unless the reference is specifically limited to a time period unit.

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

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

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

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

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

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

111 (18) "Governing documents":

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

113 (i) exercise powers; or

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

116 (b) includes:

117 (i) articles of incorporation;

118 (ii) bylaws;

119 (iii) a plat;

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

121 (v) rules of the association of unit owners.  
122 (19) "Independent third party" means a person that:  
123 (a) is not related to the unit owner;  
124 (b) shares no pecuniary interests with the unit owner; and  
125 (c) purchases the unit in good faith and without the intent to defraud a current or future  
126 lienholder.

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

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

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

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

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

143 (25) "Par value" means a number of dollars or points assigned to each unit by the  
144 declaration. Substantially identical units shall be assigned the same par value, but units located  
145 at substantially different heights above the ground, or having substantially different views, or  
146 having substantially different amenities or other characteristics that might result in differences  
147 in market value, may be considered substantially identical within the meaning of this  
148 subsection. If par value is stated in terms of dollars, that statement may not be considered to  
149 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or  
150 fair market transaction at a different figure may affect the par value of any unit, or any  
151 undivided interest in the common areas and facilities, voting rights in the unit owners'

152 association, liability for common expenses, or right to common profits, assigned on the basis  
153 thereof.

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

156 [~~(26)~~] (27) "Person" means an individual, corporation, partnership, association, trustee,  
157 or other legal entity.

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

162 [~~(28)~~] (29) "Record," "recording," "recorded," and "recorder" have the meaning stated  
163 in Title 57, Chapter 3, Recording of Documents.

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

170 [~~(30)~~] (31) "Time period unit" means an annually recurring part or parts of a year  
171 specified in the declaration as a period for which a unit is separately owned and includes a  
172 timeshare estate as defined in Subsection 57-19-2(19).

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

179 [~~(32)~~] (33) "Unit number" means the number, letter, or combination of numbers and  
180 letters designating the unit in the declaration and in the record of survey map.

181 [~~(33)~~] (34) "Unit owner" means the person or persons owning a unit in fee simple and  
182 an undivided interest in the fee simple estate of the common areas and facilities in the

183 percentage specified and established in the declaration or, in the case of a leasehold  
184 condominium project, the person or persons whose leasehold interest or interests in the  
185 condominium unit extend for the entire balance of the unexpired term or terms.

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

187 **57-8-7.5. Reserve analysis -- Reserve fund.**

188 (1) As used in this section:

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

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

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

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

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

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

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

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

204 (4) A reserve fund analysis shall include:

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

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

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

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

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

216 (5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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

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

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

242 (iv) reasonable costs and attorney fees.

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



245 the association of unit owners.

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

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

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

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

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

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

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

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

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

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

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

268 (11) (a) For a condominium project whose initial declaration is recorded on or after  
269 May 12, 2015, during the period of administrative control, the declarant shall:

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

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

274 (iii) create a reserve fund by placing 30% of each assessment collected in a separate  
275 depository account.

276 (b) (i) Except as provided in Subsection (11)(b)(ii), during the period of administrative  
277 control, the declarant may not spend, borrow, loan, transfer, or otherwise use the funds in the  
278 account described in Subsection (11)(a)(iii).

279 (ii) During the period of administrative control, the declarant may use the funds in the  
280 account described in Subsection (11)(a)(iii) to conduct a reserve analysis.

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

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

284 **57-8a-102. Definitions.**

285 As used in this chapter:

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

287 (i) by the association;

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

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

290 (b) "Assessment" includes:

291 (i) a common expense; and

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

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

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

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

298 (A) real property taxes;

299 (B) insurance premiums;

300 (C) maintenance costs; or

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

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

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

306 (4) "Common areas" means property that the association:

- 307 (a) owns;
- 308 (b) maintains;
- 309 (c) repairs; or
- 310 (d) administers.
- 311 (5) "Common expense" means costs incurred by the association to exercise any of the
- 312 powers provided for in the association's governing documents.
- 313 (6) "Declarant":
- 314 (a) means the person who executes a declaration and submits it for recording in the
- 315 office of the recorder of the county in which the property described in the declaration is
- 316 located; and
- 317 (b) includes the person's successor and assign.
- 318 (7) (a) "Governing documents" means a written instrument by which the association
- 319 may:
- 320 (i) exercise powers; or
- 321 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the
- 322 association.
- 323 (b) "Governing documents" includes:
- 324 (i) articles of incorporation;
- 325 (ii) bylaws;
- 326 (iii) a plat;
- 327 (iv) a declaration of covenants, conditions, and restrictions; and
- 328 (v) rules of the association.
- 329 (8) "Independent third party" means a person that:
- 330 (a) is not related to the owner of the residential lot;
- 331 (b) shares no pecuniary interests with the owner of the residential lot; and
- 332 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 333 or future lienholder.
- 334 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 335 (a) for the nonpayment of an assessment; and
- 336 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 337 property; and

- 338 (ii) as provided in Part 3, Collection of Assessments.
- 339 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 340 (a) by a person or persons other than the owner; and
- 341 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 342 gratuity, or emolument.
- 343 (11) "Limited common areas" means common areas described in the declaration and
- 344 allocated for the exclusive use of one or more lot owners.
- 345 (12) "Lot" means:
- 346 (a) a lot, parcel, plot, or other division of land:
- 347 (i) designated for separate ownership or occupancy; and
- 348 (ii) (A) shown on a recorded subdivision plat; or
- 349 (B) the boundaries of which are described in a recorded governing document; or
- 350 (b) (i) a unit in a condominium association if the condominium association is a part of
- 351 a development; or
- 352 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 353 development.
- 354 (13) "Mixed-use project" means a project under this chapter that has both residential
- 355 and commercial lots in the project.
- 356 (14) "Nonjudicial foreclosure" means the sale of a lot:
- 357 (a) for the nonpayment of an assessment; and
- 358 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through
- 359 57-1-34; and
- 360 (ii) as provided in Part 3, Collection of Assessments.
- 361 (15) "Period of administrative control" means the period during which the person who
- 362 filed the association's governing documents or the person's successor in interest retains
- 363 authority to:
- 364 (a) appoint or remove members of the association's board of directors; or
- 365 (b) exercise power or authority assigned to the association under the association's
- 366 governing documents.
- 367 [~~15~~] (16) "Residential lot" means a lot, the use of which is limited by law, covenant,
- 368 or otherwise to primarily residential or recreational purposes.

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

370 **57-8a-104. Limitation on requirements for amending governing documents --**

371 **Limitation on contracts.**

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

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

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

378 [~~(2)~~] (1) (a) (i) Governing documents may not require that an amendment to the  
379 governing documents adopted after the period of administrative control be approved by more  
380 than 67% of the voting interests.

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

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

386 (i) lot boundaries; or

387 (ii) members' voting rights.

388 [~~(3)~~] (2) (a) A contract for services such as garbage collection, maintenance, lawn care,  
389 or snow removal executed on behalf of the association during a period of administrative control  
390 is binding beyond the period of administrative control unless terminated by the board of  
391 directors after the period of administrative control ends.

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

395 [~~(4)~~] (3) Voting interests under [~~Subsections (2) and (3)~~] Subsection (1) are calculated  
396 in the manner required by the governing documents.

397 [~~(5)~~] (4) Nothing in this section affects any other rights reserved by the person who  
398 filed the association's original governing documents or a successor in interest.

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

400 **57-8a-211. Reserve analysis -- Reserve fund.**

401 (1) As used in this section:

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

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

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

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

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

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

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

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

416 (4) A reserve fund analysis shall include:

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

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

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

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

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

428 (5) An association shall:

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

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

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

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

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

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

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

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

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

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

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

453 (iv) reasonable costs and attorney fees.

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

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

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

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

461 (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the

462 notice, by which the association shall remedy its noncompliance.

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

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

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

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

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

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

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

476 (11) (a) For an association whose initial declaration of covenants, conditions, and  
477 restrictions is recorded on or after May 12, 2015, during the period of administrative control,  
478 the declarant shall:

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

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

483 (iii) create a reserve fund by placing 30% of each assessment collected in a separate  
484 depository account.

485 (b) (i) Except as provided in Subsection (11)(b)(ii), during the period of administrative  
486 control, the declarant may not spend, borrow, loan, transfer, or otherwise use the funds in the  
487 account described in Subsection (11)(a)(iii).

488 (ii) During the period of administrative control, the declarant may use the funds in the  
489 account described in Subsection (11)(a)(iii) to conduct a reserve analysis.

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

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



493           **57-8a-224. Responsibility for the maintenance, repair, and replacement of**  
494 **common area and lots.**

495           (1) As used in this section:

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

498           (b) "Reasonable notice" means:

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

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

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

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

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

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

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

512           (b) for making an emergency repair.

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

515           (b) An association shall repair damage described in Subsection (4)(a) within a time that  
516 is reasonable under the circumstances.

517           (5) Subsections (2), (3), and (4) do not apply during the period of administrative  
518 control [as defined in Section [57-8a-104](#)].

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**Legislative Review Note**  
**as of 12-2-14 4:51 PM**

**Office of Legislative Research and General Counsel**