

Senator Stephen H. Urquhart proposes the following substitute bill:

HOMEOWNERS' ASSOCIATION RESERVE FUND

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Don L. Ipson

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 a declarant shall make certain disclosures to a purchaser during the period of administrative control; 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

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

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~~].