

Senator Lincoln Fillmore proposes the following substitute bill:

COMMUNITY ASSOCIATION FUND AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: Jordan D. Teuscher

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



26 [57-8a-211](#), as last amended by Laws of Utah 2018, Chapter 395

27

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

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

30 **57-8-7.5. Reserve analysis -- Reserve fund.**

31 (1) As used in this section:

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

33 (i) the need for a reserve fund to accumulate reserve funds; and

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

35 (b) "Reserve fund line item" means the line item in an association of unit owners'

36 annual budget that identifies the amount to be placed into a reserve fund.

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

38 (i) the cost of repairing, replacing, or restoring common areas and facilities that have a

39 useful life of three years or more and a remaining useful life of less than 30 years, if the cost

40 cannot reasonably be funded from the general budget or other funds of the association of unit

41 owners[-]; or

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

43 (A) the shortfall occurs while a state of emergency declared in accordance with Section

44 53-2a-206 is in effect;

45 (B) the geographic area for which the state of emergency described in Subsection

46 (1)(c)(ii)(A) is declared extends to the entire state; and

47 (C) at the time the money is spent, more than 10% of unit owners ~~Œ~~→ **that are not**

47a **members of the management committee** ←Œ in the association are

48 delinquent in the payment of assessments as a result of events giving rise to the state of

49 emergency described in Subsection (1)(c)(ii)(A).

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

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

52 (b) review and, if necessary, update a previously conducted reserve analysis no less

53 frequently than every three years.

54 (3) The management committee may conduct a reserve analysis itself or may engage a

55 reliable person or organization, as determined by the management committee, to conduct the

56 reserve analysis.

57 (4) A reserve fund analysis shall include:

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

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

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

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

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

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

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

72 (5) An association of unit owners shall:

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

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

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

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

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

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

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

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

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

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

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

99 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

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

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

125 (ii) Members of the association of unit owners may prohibit the use of reserve fund
 126 money for daily maintenance expenses under the circumstances described in Subsection
 127 (9)(b)(i)(B) by a 51% vote of the allocated voting interest in the association of unit owners at a
 128 special meeting ~~Ŝ~~ → :

128a **(A) for which each unit owner receives at least 48 hours notice; and**

128b **(B)** ~~←Ŝ~~ the unit owners call for the purpose of voting whether to prohibit the use of
 129 reserve fund money for daily maintenance expenses under the circumstances described in
 130 Subsection (9)(b)(i)(B).

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

133 ~~[(e)]~~ (d) This Subsection (9) may not be construed to:

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

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

137 (iii) permit the use of money in a reserve fund for a legal action described in Section
 138 [57-8-58](#).

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

141 (11) For a condominium project whose initial declaration is recorded on or after May
 142 12, 2015, during the period of administrative control, for any property that the declarant sells to
 143 a third party, the declarant shall give the third party:

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

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

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

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

151 **57-8a-211. Reserve analysis -- Reserve fund.**

152 (1) As used in this section:

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

154 (i) the need for a reserve fund to accumulate reserve funds; and

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

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

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

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

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

163 (A) the shortfall occurs while a state of emergency declared in accordance with Section
164 53-2a-206 is in effect;

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

167 (C) at the time the money is spent, more than 10% of lot owners ~~Œ~~ **that are not board**

167a **members** ~~Œ~~ in the association are

168 delinquent in the payment of assessments as a result of events giving rise to the state of

169 emergency described in Subsection (1)(c)(ii)(A).

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

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

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

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

176 (4) A reserve fund analysis shall include:

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

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

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

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

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

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

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

191 (5) An association shall:

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

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

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

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

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

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

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

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

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

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

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

216 (iv) reasonable costs and attorney fees.

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

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

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

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

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

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

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

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

236 (A) a majority of association members vote to approve the use of reserve fund money
 237 for daily maintenance expenses; or

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

240 (ii) Association members may prohibit the use of reserve fund money for daily
 241 maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B) by a 51%
 242 vote of the allocated voting interest in the association at a special meeting $\hat{S} \rightarrow$:

242a (A) for which each lot owner receives at least 48 hours notice; and

242b (B) $\leftarrow \hat{S}$ the lot owners call

243 for the purpose of voting whether to prohibit the use of reserve fund money for daily
244 maintenance expenses under the circumstances described in Subsection (9)(b)(i)(B).

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

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

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

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

250 (iii) permit the use of money in a reserve fund for a legal action described in Section
251 57-8a-229.

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

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

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

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

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