

**COMMUNITY ASSOCIATION FUND AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lincoln Fillmore**

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

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**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

**57-8a-211**, as last amended by Laws of Utah 2018, Chapter 395



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

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

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

127 [~~(c)~~] (d) This Subsection (9) may not be construed to limit a management committee  
128 from prudently investing money in a reserve fund, subject to any investment constraints  
129 imposed by the declaration.

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

132 (11) For a condominium project whose initial declaration is recorded on or after May  
133 12, 2015, during the period of administrative control, for any property that the declarant sells to  
134 a third party, the declarant shall give the third party:

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

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

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

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

142 **57-8a-211. Reserve analysis -- Reserve fund.**

143 (1) As used in this section:

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

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

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

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

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

150 (i) the cost of repairing, replacing, or restoring common areas and facilities that have a  
151 useful life of three years or more and a remaining useful life of less than 30 years, if the cost

152 cannot reasonably be funded from the general budget or other funds of the association[-]; or

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

154 (A) the shortfall occurs while a state of emergency declared in accordance with Section  
155 53-2a-206 is in effect;

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

158 (C) at the time the money is spent, more than 10% of lot owners in the association are  
159 delinquent in the payment of assessments as a result of events giving rise to the state of  
160 emergency described in Subsection (1)(c)(ii)(A).

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

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

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

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

167 (4) A reserve fund analysis shall include:

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

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

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

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

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

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

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

182 (5) An association shall:

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

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

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

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

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

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

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

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

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

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

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

207 (iv) reasonable costs and attorney fees.

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

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

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

214 (ii) a demand that the association come into compliance with the requirements; and  
215 (iii) a date, no fewer than 90 days after the day on which the lot owner delivers the  
216 notice, by which the association shall remedy its noncompliance.

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

220 (9) (a) ~~[Unless a majority of association members vote to approve the use of reserve~~  
221 ~~fund money for that purpose, a] A board may not use money in a reserve fund~~[-(i) for daily~~  
222 ~~maintenance expenses, or (ii)]~~ for any purpose other than the purpose for which the reserve  
223 fund was established, unless a majority of association members vote to approve the use of  
224 reserve fund money for that purpose.~~

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

227 (i) a majority of association members vote to approve the use of reserve fund money  
228 for daily maintenance expenses; or

229 (ii) there exists in the general budget a shortfall that the board may use reserve funds to  
230 cover.

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

232 ~~[(c)]~~ (d) This Subsection (9) may not be construed to limit a board from prudently  
233 investing money in a reserve fund, subject to any investment constraints imposed by the  
234 governing documents.

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

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

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

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

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