

NEW WASHINGTON RESERVE STUDIES & DISCLOSURES LAW

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A new condominium association reserve studies and mandatory disclosures law is effective June 12, 2008.

The Law and Its Effective Date

On March 21, 2008, Washington State Governor Christine Gregoire (D) signed into law [Senate Bill 6215](#) (Chapter 115, 2008 Laws), 2007 – 2008 legislation concerning reserve accounts and studies for condominium associations. **The new law takes effect on June 12, 2008**, and requires condominium associations to update reserve studies annually and make mandatory disclosures to purchasers.

What Happens on Saturday, June 12, 2008?

The new law affects reserve study professionals, declarants, associations, sellers, purchasers, and the agents that serve them. It is intended to create, through disclosure, greater transparency about the true cost of ownership in a condominium.

It does not mandate that associations create reserve accounts or raise association dues.

If you are a declarant, association, or community manager, the law's effect starting June 12, 2008, is expected to be modest. Starting on that date, each Public Offering Statement or Resale Certificate should include a copy of the association's reserve study for the current fiscal year that meets all of the requirements of the new law (see, especially, Section 2), or the following disclaimer:

This association does not have a current reserve study. The lack of a current reserve study poses certain risks to you, the purchaser. Insufficient reserves may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a common element.

- A reserve study professional is advised to examine SB 6215 carefully since it will have the most immediate impact on your work and work product. It introduces defined terms that may be new to you, or that may be defined differently from how you used them in the past. Defined terms include, for example, “Effective Age,” “Fully Funded Balance,” “Remaining useful life,” “Replacement Cost,” etc.
- If you are a declarant, other than providing a copy of the most current reserve study or the disclaimer in a public offering statement, there is nothing additional to do.
- If you are an association, you or your agent should contact a reserve study professional in the next several months to determine the cost of preparing or updating a reserve study during your next budget preparation cycle. Once the cost is ascertained, you will have to determine whether preparing or updating a reserve study creates an unreasonable hardship for your association. An unreasonable hardship exists, according to the new law, if the cost of preparing or updating a reserve study would exceed 10 percent of the association’s annual budget. Other cases of unreasonable hardship will be fact-specific.

The Short Effective Date Is Not a Reason to Panic

An association does not need to have a current reserve study prepared by June 12, 2008 as the law does not require a current reserve study to be completed by the effective date.

If someone suggests your association needs to hire a reserve study professional every year, unless the scope and complexity of your association’s common facilities and components make not hiring one unreasonable, that seems excessive. If you are being pressured to sign on the dotted line to obtain a current reserve study this budget year on behalf of an association, do not --- act reasonably, and do your due diligence. You have time.

The new law does not apply to a homeowner’s association, other than a condominium association. However, it may provide homeowner associations with a roadmap and safe harbor of sorts for determining the long-term costs of major maintenance, repair, or replacement of common area components.

How This Legislation Became Law

A peek behind the scenes into SB 6215’s legislative process would reveal a collaborative effort from many people. It was first and foremost a volunteer effort of the members of the Legislative Action Committee of WSCAI, and each of the members contributed. Some of the key players in the legislation’s development and passage include:

- The bill’s prime sponsor was Senator Rodney Tom (D-Medina).

- John Coe (The Coe Law Group) identified legislation from other states and prepared an initial draft for circulation, and commented on subsequent drafts.
- Jim Talaga (Association Reserves, Inc.) and Ken Harer (Condominium Law Group) provided technical assistance on terminology and concepts.
- Pete Middlebrooks (Law Office of James C. Middlebrooks) took a good idea and showed the rest of us how to draft a bill. To the extent that there is clarity and consistency in the new law, the credit goes to Pete.
- Jeffrey Rodgers, a director on the CAI Board, and other homeowners contributed their time to review the bill and travel to Olympia to testify on its behalf.
- Kathryn Hedrick (Final Passage), WSCAI's lobbyist, brought all the resources together to help turn a ragtag cacophony into a symphony.
- The Leahy.ps law firm --- and my family --- did not see me for several weeks due to the time spent on SB 6215.

End Notes

The above summary and guidance is intended to be a general description of the law, and to give homeowners and associations a practical introduction to what to expect. It is not intended to be legal advice. For a legal opinion or interpretation of this new law, please consult your attorney. Additionally, you may need to discuss specific reserves guidance with your reserve specialist.

Brian P. Mclean is an attorney and shareholder at Leahy.ps. He serves as a board member of the CAI Washington Chapter, and as Chair of the Chapter's Legislative Action Committee.



Gov. Chris Gregoire signs SB 6215. 20080321-0852 WASENATE lc

"Photo courtesy of the Washington State Senate."

*Picture: seated: Washington State Governor Christine Gregoire
WSCAI Members standing (from left to right) Jim Talaga, Kathryn Hedrick WSCAI's
lobbyist), Brian McLean, and John Coe*