HOMEOWNER ASSOCIATION RESERVE ACCOUNT

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley G. Last

LONG TITLE

General Description:
This bill makes amendments to the reserve account requirements described in Title 57, Chapter 8, Condominium Ownership Act, and Title 57, Chapter 8a, Community Association Act.

Highlighted Provisions:
This bill:
- defines terms;
- specifies the required contents of a reserve analysis;
- requires an association or an association of unit owners to provide each year:
  - a summary of the most recent reserve analysis to its members; and
  - a complete copy of the most recent reserve analysis, upon request;
- requires an association or an association of unit owners to include a reserve fund line item in its annual budget;
- requires the management committee of an association or an association of unit owners to determine the amount of the reserve fund line item;
- provides procedures for the members of an association or an association of unit owners to veto the management committee's reserve fund line item;
- provides enforcement procedures; and
- makes technical changes.

Money Appropriated in this Bill:
None
Be it enacted by the Legislature of the state of Utah:

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

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

(1) As used in this section, "reserve analysis" means an analysis to determine:

(a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of no fewer than three years or more but less than 30 years, when the cost cannot reasonably be funded from the general budget or other funds of the association of unit owners; and

(b) the appropriate amount of any reserve fund.

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

(a) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every six years; and

(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and

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

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

(4) A reserve analysis shall include:
(a) a list of the components identified in the reserve analysis that will reasonably
require reserve funds;
(b) a statement of the probable remaining useful life, as of the date of the reserve
analysis, of each component identified in the reserve analysis;
(c) an estimate of the cost to repair, replace, or restore each component identified in the
reserve analysis;
(d) an estimate of the total annual contribution to a reserve fund necessary to meet the
cost to repair, replace, or restore each component identified in the reserve analysis during the
component's useful life and at the end of the component's useful life; and
(e) a reserve funding plan that recommends how the association of unit owners may
fund the annual contribution described in Subsection (4)(d).

(5) Each year, an association of unit owners shall provide:
(a) a summary of the most recent reserve analysis, including any updates, to each unit
owner; and
(b) a complete copy of the most recent reserve analysis, including any updates, to a unit
owner upon request.

(6) (a) An association of unit owners shall include a reserve fund line item in its annual
budget.
(b) The amount of the reserve fund line item shall be determined by:
(i) the management committee, based on the reserve analysis and the amount that the
management committee determines is prudent under the circumstances; or
(ii) the declaration, if the declaration requires an amount greater than the amount
determined under Subsection (6)(b)(i).
(c) Within 45 days after the day on which an association of unit owners adopts its
annual budget, the unit owners may veto the reserve fund line item by a 51% vote of the
unit owners.
allocated voting interests in the association of unit owners at a special meeting called by the
unit owners for the purpose of voting whether to veto a reserve fund line item.

(d) If the unit owners veto a reserve fund line item under Subsection (6)(c) and a
reserve fund line item exists in a previously approved annual budget of the association of unit
owners that was not vetoed, the association of unit owners shall fund the reserve account in
accordance with that prior reserve fund line item.

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

(b) No fewer than 90 days before the day on which a unit owner files a complaint under
Subsection (7)(a), the unit owner shall deliver written notice described in Subsection (7)(c) to
the association of unit owners.

(c) A notice described in Subsection (7)(b) shall state:

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

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

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

(d) In a case filed under Subsection (7)(a), a court may order an association of unit
owners to produce the summary of the reserve analysis or the complete reserve analysis on an
expedited basis and at the association of unit owners’ expense.

[(4)] (8) (a) A management committee may not use money in a reserve fund:
(i) for daily maintenance expenses, unless a majority of the members of the association of unit owners vote to approve the use of reserve fund money for that purpose; or
(ii) for any purpose other than the purpose for which the reserve fund was established.
(b) A management committee shall maintain a reserve fund separate from other funds of the association of unit owners.
(c) This Subsection (4) may not be construed to limit a management committee from prudently investing money in a reserve fund, subject to any investment constraints imposed by the declaration.

[(5) (9) Subsections (2), (3), (4), and (6) do not apply to an association of unit owners during the period of declarant management.
(6) An association of unit owners shall:
(a) annually, at the annual meeting of unit owners or at a special meeting of unit owners:

[(i) present the reserve study; and]
[(ii) provide an opportunity for unit owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount; and]
[(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and indicate in the minutes any decision relating to funding a reserve fund.]

[(7) (10) This section applies to each association of unit owners, regardless of when the association of unit owners was created.

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

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

(1) As used in this section, "reserve analysis" means an analysis to determine:

[(a) (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, [and] or restoring common areas that have a useful life of no fewer than three years [or more] but less than 30 years, [but excluding any] when the cost [that can] cannot reasonably be funded from the association's general budget or from other association funds; and]
(b) "Reserve fund line item" means a line item in the annual budget of an association that identifies the amount to be placed into a reserve fund.

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

(a) (i) subject to Subsection (2)(a)(ii), cause a reserve analysis to be conducted no less frequently than every six years; and

(ii) if no reserve analysis has been conducted since March 1, 2008, cause a reserve analysis to be conducted before July 1, 2012; and

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

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

(4) A reserve analysis shall include:

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

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

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

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

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

(5) Each year, an association shall provide:

(a) a summary of the most recent reserve analysis, including any updates, to each lot owner; and

(b) a complete copy of the most recent reserve analysis, including any updates, to a lot owner.
(6) (a) An association shall include a reserve fund line item in its annual budget.

(b) The amount of the reserve fund line item shall be determined by:

(i) the board, based on the reserve analysis and the amount that the board determines is prudent under the circumstances; or

(ii) the governing documents, if the governing documents require an amount greater than the amount determined under Subsection (6)(b)(i).

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

(d) If the lot owners veto a reserve fund line item under Subsection (6)(c) and a reserve fund line item exists in a previously approved annual budget of the association that was not vetoed, the association shall fund the reserve account in accordance with that prior reserve fund line item.

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

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

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

(iii) any other remedy provided by law; and

(iv) reasonable costs and attorney fees.

(b) No fewer than 90 days before the day on which a lot owner files a complaint under Subsection (7)(a), the lot owner shall deliver written notice described in Subsection (7)(c) to the association.

(c) A notice described in Subsection (7)(b) shall state:

(i) the requirement in Subsection (5) or (6) with which the association has failed to
comply:

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

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

(d) In a case filed under Subsection (7)(a), a court may summarily order an association
to produce the summary of the reserve analysis or the complete reserve analysis on an
expedited basis and at the association's expense.

[(4) (8) (a) A board may not use money in a reserve fund:
(i) for daily maintenance expenses, unless a majority of association members vote to
approve the use of reserve fund money for that purpose; or
(ii) for any purpose other than the purpose for which the reserve fund was established.
(b) A board shall maintain a reserve fund separate from other association funds.
(c) This Subsection (4) may not be construed to limit a board from prudently investing
money in a reserve fund, subject to any investment constraints imposed by the governing
documents.
[(5) (9) Subsections (2), (3), (4), and (6) do not apply to an association during the
period of administrative control.
[(6) An association shall:
(a) annually, at the annual meeting of lot owners or at a special meeting of lot
owners:
[(i) present the reserve study; and]
[(ii) provide an opportunity for lot owners to discuss reserves and to vote on whether to
fund a reserve fund and, if so, how to fund it and in what amount; and]
[(b) prepare and keep minutes of each meeting held under Subsection (6)(a) and
indicate in the minutes any decision relating to funding a reserve fund;]
[(7) (10) This section applies to each association, regardless of when the association
was created.}