



28 bill relating to reserve funds;

29       ▶ requires an association or an association of unit owners to provide a 24-hour cure  
30 period for a violation of the association's or the association of unit owners'

31 governing documents that poses a threat to health, safety, or property;

32       ▶ provides that, under certain circumstances, an association or an association of unit  
33 owners may assess a fine for a repeat or continuing violation;

34       ▶ clarifies the procedures by which a lot owner or a unit owner may appeal an  
35 assessed fine;

36       ▶ provides procedures by which an association or an association of unit owners may  
37 collect an unpaid fine;

38       ▶ provides that the aggregate amount of fines assessed against a lot owner may not  
39 exceed \$500 in any one-month period;

40       ▶ repeals future effective provisions that relate to reserve accounts; and

41       ▶ makes technical and conforming changes.

42 **Money Appropriated in this Bill:**

43       None

44 **Other Special Clauses:**

45       None

46 **Utah Code Sections Affected:**

47 AMENDS:

48       **57-8-7.5 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

49       **57-8-37**, as enacted by Laws of Utah 2001, Chapter 317

50       **57-8-44**, as last amended by Laws of Utah 2013, Chapter 95

51       **57-8a-102**, as last amended by Laws of Utah 2013, Chapters 95 and 152

52       **57-8a-208**, as enacted by Laws of Utah 2006, Chapter 243

53       **57-8a-211 (Superseded 07/01/14)**, as last amended by Laws of Utah 2013, Chapter 419

54       **57-8a-301**, as last amended by Laws of Utah 2013, Chapter 95

55 REPEALS:

56       **57-8-7.5 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,  
57 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

58       **57-8a-211 (Effective 07/01/14)**, as last amended by Laws of Utah 2013, Chapters 152,

59 419 and last amended by Coordination Clause, Laws of Utah 2013, Chapter 152

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

62 Section 1. Section **57-8-7.5 (Superseded 07/01/14)** is amended to read:

63 **57-8-7.5 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

64 (1) As used in this section~~[(a) "Reserve"],~~ "reserve analysis" means an analysis to  
65 determine:

66 [(i)] (a) the need for a reserve fund to accumulate money to cover the cost of repairing,  
67 replacing, or restoring ~~[common areas and facilities]~~ structures, components, and systems that  
68 the association of unit owners is responsible to maintain and replace and that have a useful life  
69 of no fewer than three years [but less than 30 years, when the], but excluding any cost [cannot]  
70 that can reasonably be funded from the general budget or other funds of the association of unit  
71 owners; and

72 [(ii)] (b) the appropriate amount of any reserve fund.

73 ~~[(b) "Reserve fund line item" means a line item in the annual budget of an association~~  
74 ~~of unit owners that identifies the amount to be placed into a reserve fund.]~~

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

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

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

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

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

85 ~~[(4) A reserve analysis shall include:]~~

86 ~~[(a) a list of the components identified in the reserve analysis that will reasonably~~  
87 ~~require reserve funds;]~~

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

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

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

95 ~~[(e) a reserve funding plan that recommends how the association of unit owners may~~  
96 ~~fund the annual contribution described in Subsection (4)(d).]~~

97 ~~[(5) Each year, an association of unit owners shall provide:]~~

98 ~~[(a) a summary of the most recent reserve analysis, including any updates, to each unit~~  
99 ~~owner; and]~~

100 ~~[(b) a complete copy of the most recent reserve analysis, including any updates, to a~~  
101 ~~unit owner upon request.]~~

102 ~~[(6) (a) An association of unit owners shall include a reserve fund line item in its~~  
103 ~~annual budget.]~~

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

105 ~~[(i) the management committee, based on the reserve analysis and the amount that the~~  
106 ~~management committee determines is prudent under the circumstances; or]~~

107 ~~[(ii) the declaration, if the declaration requires an amount greater than the amount~~  
108 ~~determined under Subsection (6)(b)(i).]~~

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

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

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

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

123 ~~[(ii) \$500 or actual damages, whichever is greater;]~~

124 ~~[(iii) any other remedy provided by law; and]~~

125 ~~[(iv) reasonable costs and attorney fees.]~~

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

129 ~~[(c) A notice described in Subsection (7)(b) shall state:]~~

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

132 ~~[(ii) a demand that the association of unit owners come into compliance with the~~  
133 ~~requirements; and]~~

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

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

139 ~~[(8)]~~ (4) (a) A management committee may not use money in a reserve fund:

140 (i) for daily maintenance expenses, unless a majority of the members of the association  
141 of unit owners vote to approve the use of reserve fund money for that purpose; or

142 (ii) for any purpose other than the purpose for which the reserve fund was established.

143 (b) A management committee shall maintain a reserve fund separate from other funds  
144 of the association of unit owners.

145 (c) This Subsection (4) may not be construed to limit a management committee from  
146 prudently investing money in a reserve fund, subject to any investment constraints imposed by  
147 the declaration.

148 (5) An association of unit owners shall:

149 (a) annually, at the annual meeting of unit owners or at a special meeting of unit  
150 owners:

151 (i) make available a copy of either the most recent reserve analysis or a summary of the

152 most recent reserve analysis to each unit owner who is present, in person at the meeting;  
153 (ii) provide an opportunity for unit owners to discuss reserve funds and the reserve  
154 analysis; and  
155 (iii) have a vote of the unit owners on whether to fund a reserve fund, and, if so, how to  
156 fund the reserve fund and in what amount;  
157 (b) prepare and keep minutes of each meeting held under Subsection (5)(a) and  
158 indicate in the minutes any decision that relates to funding a reserve fund; and  
159 (c) (i) provide a copy of either the reserve analysis or a summary of the reserve analysis  
160 and any update to the reserve analysis to each unit owner within 30 days after the day on which  
161 the reserve analysis or the update is complete; and  
162 (ii) provide a complete copy of the most recent reserve analysis and any update to the  
163 reserve analysis to a unit owner upon request.  
164 (6) An association of unit owners shall fund a reserve fund in the greater of:  
165 (a) the amount approved by the unit owners in a vote under Subsection (5)(a)(iii); or  
166 (b) the amount required in the association of unit owners' declaration.  
167 (7) (a) Subject to Subsection (7)(b), if an association of unit owners does not comply  
168 with the requirements described in Subsection (5) or (6) and fails to remedy the noncompliance  
169 within the time specified in Subsection (7)(c), a unit owner may file an action in state court for:  
170 (i) injunctive relief requiring the association of unit owners to comply with the  
171 requirements described in Subsection (5) or (6);  
172 (ii) \$500 or the unit owner's actual damages, whichever is greater;  
173 (iii) any other remedy provided by law; and  
174 (iv) reasonable costs and attorney fees.  
175 (b) No fewer than 90 days before the day on which a unit owner files an action under  
176 Subsection (7)(a), the unit owner shall deliver written notice described in Subsection (7)(c) to  
177 the association of unit owners.  
178 (c) A notice described in Subsection (7)(b) shall state:  
179 (i) the requirement in Subsection (5) or (6) with which the association of unit owners  
180 has failed to comply;  
181 (ii) a demand that the association of unit owners come into compliance with the  
182 requirement; and

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

186 (d) In an action filed under Subsection (7)(a), the court may summarily order an  
187 association to produce a copy of the summary of the reserve analysis or a copy of the complete  
188 reserve analysis on an expedited basis and at the association of unit owners' expense.

189 ~~[(9)]~~ (8) Subsections (2)[, (3), (4), and (6)] through (7) do not apply to an association  
190 of unit owners during the period of declarant management.

191 ~~[(10)]~~ (9) This section applies to each association of unit owners, regardless of when  
192 the association of unit owners was created.

193 Section 2. Section **57-8-37** is amended to read:

194 **57-8-37. Fines.**

195 (1) ~~[(a) If authorized in the declaration, bylaws, or association rules]~~ Unless otherwise  
196 limited in an association of unit owners' governing documents, the management committee [of  
197 a residential condominium project] may assess a fine against a unit owner [after the  
198 requirements of Subsection (2) have been met for a violation of the rules and regulations of the  
199 association of unit owners which have been promulgated in accordance with this chapter and  
200 the declaration and bylaws.] for a violation of the association of unit owners' governing  
201 documents in accordance with the provisions of this section.

202 ~~[(b) The management committee of a nonresidential condominium project may not~~  
203 ~~assess a fine against a unit owner.]~~

204 (2) (a) Before assessing a fine under Subsection (1), the management committee shall  
205 give ~~[notice to the unit owner of the violation and inform the owner that a fine will be imposed~~  
206 ~~if the violation is not cured within the time provided in the declaration, bylaws, or association~~  
207 ~~rules, which shall be at least 48 hours.]~~ the unit owner a written warning that:

208 (i) describes the violation;

209 (ii) states the provision of the association of unit owners' governing documents that the  
210 unit owner's conduct violates; and

211 (iii) states that the management committee may assess a fine against the unit owner in  
212 accordance with Subsection (2)(c), including the time by which the unit owner must cure the  
213 violation.

214 (b) If, in accordance with Subsection (2)(c)(iii), a management committee gives a unit  
215 owner 24 hours to cure a violation, in addition to the notice requirements described in  
216 Subsection (2)(a), the management committee shall post a copy of the written warning on the  
217 front door, if any, of the unit owner's unit.

218 (c) A management committee may assess a fine against a unit owner if:

219 (i) within one year after the day on which the management committee gives the unit  
220 owner a written warning described in Subsection (2)(a), the unit owner commits another  
221 violation that is similar to the violation described in the written warning;

222 (ii) the unit owner does not cure the violation within the time period that is:

223 (A) stated in the written warning described in Subsection (2)(a); and

224 (B) not less than 48 hours after the day on which the management committee gives the  
225 unit owner the written warning; or

226 (iii) (A) the management committee or the management committee's agent determines  
227 that the violation poses an immediate threat to health, safety, or property; and

228 (B) the unit owner does not cure the violation within 24 hours after the day on which  
229 the management committee gives the unit owner the written warning described in Subsection  
230 (2)(a).

231 (d) If permitted under the association of unit owners' governing documents, after the  
232 management committee assesses a fine against a unit owner under this section, the  
233 management committee may, without further warning under this Subsection (2), assess an  
234 additional fine against the unit owner each time the unit owner:

235 (i) commits a similar violation within one year after the day on which the management  
236 committee assesses the initial fine; or

237 (ii) allows a violation to continue for at least 10 days after the day on which the  
238 management committee assessed the initial fine.

239 (e) The aggregate amount of fines assessed against a unit owner under this section may  
240 not exceed \$500 in any one calendar month.

241 (3) [(a)] A fine assessed under Subsection (1) shall:

242 [(i)] (a) be made only for a violation of a rule [or regulation which is specifically listed  
243 in the declaration, bylaws, or association rules as an offense which is subject to a fine],  
244 covenant, condition, or restriction that is in the association of unit owners' governing



245 documents;

246 ~~[(ii)]~~ (b) be in the amount [~~specifically~~] provided for in the [~~declaration, bylaws, or~~  
247 ~~association rules for that specific type of violation, not to exceed \$500~~] association of unit  
248 owners' governing documents; and

249 ~~[(iii)]~~ (c) accrue interest and late fees as provided in the [~~declaration, bylaws, or~~  
250 ~~association rules~~] association of unit owners' governing documents.

251 ~~[(b) Cumulative fines for a continuing violation may not exceed \$500 per month.]~~

252 (4) (a) A unit owner who is assessed a fine under Subsection (1) may request an  
253 informal hearing before the management committee to [~~protest or~~] dispute the fine within 30  
254 days [~~from the date~~] after the day on which the unit owner receives notice that the fine is  
255 assessed.

256 (b) [~~The~~] A management committee shall conduct a hearing [~~shall be conducted~~] under  
257 Subsection (4)(a) in accordance with:

258 (i) the standards provided in the [~~declaration, bylaws, or association rules.~~] association  
259 of unit owners' governing documents; or

260 (ii) if the association of unit owners' governing documents do not provide standards for  
261 a hearing described in Subsection (4)(a), the standards established by the management  
262 committee in accordance with Subsection (4)(c).

263 (c) The standards described in Subsection (4)(b)(ii) shall provide the unit owner an  
264 opportunity to present the unit owner's position, in person, to the management committee.

265 (d) [~~No~~] If a unit owner timely requests a hearing under Subsection (4)(a), no interest  
266 or late fees may accrue until after the management committee conducts the hearing [~~has been~~  
267 ~~conducted~~] and issues a final decision [~~has been rendered~~].

268 (5) A unit owner may appeal a fine [~~issued~~] assessed under Subsection (1) by initiating  
269 a civil action within 180 days after the day on which:

270 (a) [~~a hearing has been held and a final decision has been rendered by~~] the management  
271 committee issues a final decision after a hearing under Subsection (4); or

272 (b) if the unit owner does not timely request a hearing under Subsection (4), the time to  
273 request [~~an informal~~] a hearing under Subsection (4) [~~has expired without the unit owner~~  
274 ~~making such a request~~] expires.

275 [~~(6) A fine assessed under Subsection (1) which remains unpaid after the time for~~

276 appeal under Subsection (5) has expired becomes a lien against the unit owner's interest in the  
277 property in accordance with the same standards as a lien for the nonpayment of common  
278 expenses under Section ~~57-8-20~~.]

279 (6) An association of unit owners may collect an unpaid fine as an unpaid assessment  
280 in accordance with the provisions of this chapter.

281 (7) A management committee may delegate the management committee's rights and  
282 responsibilities under this section to a managing agent.

283 (8) This section applies to an association of unit owners regardless of when the  
284 association of unit owners is created.

285 Section 3. Section ~~57-8-44~~ is amended to read:

286 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**  
287 **collection.**

288 (1) (a) Except as provided in Section ~~57-8-13.1~~, an association of unit owners has a  
289 lien on a unit for:

290 (i) an assessment;

291 (ii) except as provided in the declaration, fees, charges, and costs associated with  
292 collecting an unpaid assessment, including:

293 (A) court costs and reasonable attorney fees;

294 (B) late charges;

295 (C) interest; and

296 (D) any other amount that the association of unit owners is entitled to recover under the  
297 declaration, this chapter, or an administrative or judicial decision; and

298 (iii) a fine that the association of unit owners imposes against ~~[the owner of the unit.]~~ a  
299 unit owner in accordance with Section ~~57-8-37~~, if:

300 (A) the time for appeal described in Subsection ~~57-8-37(5)~~ has expired and the unit  
301 owner did not file an appeal; or

302 (B) the unit owner timely filed an appeal under Subsection ~~57-8-37(5)~~ and the district  
303 court issued a final order upholding a fine imposed under Subsection ~~57-8-37(1)~~.

304 (b) The recording of a declaration constitutes record notice and perfection of a lien  
305 described in Subsection (1)(a).

306 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)

307 is for the full amount of the assessment from the time the first installment is due, unless the  
308 association of unit owners otherwise provides in a notice of assessment.

309 (3) An unpaid assessment or fine accrues interest at the rate provided:

310 (a) in Subsection 15-1-1(2); or

311 (b) in the governing documents, if the governing documents provide for a different  
312 interest rate.

313 (4) A lien under this section has priority over each other lien and encumbrance on a  
314 unit except:

315 (a) a lien or encumbrance recorded before the declaration is recorded;

316 (b) a first or second security interest on the unit secured by a mortgage or deed of trust  
317 that is recorded before a recorded notice of lien by or on behalf of the association of unit  
318 owners; or

319 (c) a lien for real estate taxes or other governmental assessments or charges against the  
320 unit.

321 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah  
322 Exemptions Act.

323 (6) Unless the declaration provides otherwise, if two or more associations of unit  
324 owners have liens for assessments on the same unit, the liens have equal priority, regardless of  
325 when the liens are created.

326 Section 4. Section 57-8a-102 is amended to read:

327 **57-8a-102. Definitions.**

328 As used in this chapter:

329 (1) (a) "Assessment" means a charge imposed or levied:

330 (i) by the association;

331 (ii) on or against a lot or a lot owner; and

332 (iii) pursuant to a governing document recorded with the county recorder.

333 (b) "Assessment" includes:

334 (i) a common expense; and

335 (ii) an amount assessed against a lot owner under Subsection 57-8a-405(7).

336 (2) (a) Except as provided in Subsection (2)(b), "association" means a corporation or  
337 other legal entity, any member of which:

338 (i) is an owner of a residential lot located within the jurisdiction of the association, as  
339 described in the governing documents; and

340 (ii) by virtue of membership or ownership of a residential lot is obligated to pay:

341 (A) real property taxes;

342 (B) insurance premiums;

343 (C) maintenance costs; or

344 (D) for improvement of real property not owned by the member.

345 (b) "Association" or "homeowner association" does not include an association created  
346 under Title 57, Chapter 8, Condominium Ownership Act.

347 (3) "Board of directors" or "board" means the entity, regardless of name, with primary  
348 authority to manage the affairs of the association.

349 (4) "Common areas," unless otherwise provided in the declaration, means property that  
350 the association:

351 (a) owns;

352 (b) maintains;

353 (c) repairs; or

354 (d) administers.

355 (5) "Common expense" means costs incurred by the association to exercise any of the  
356 powers provided for in the association's governing documents.

357 (6) "Declarant":

358 (a) means the person who executes a declaration and submits it for recording in the  
359 office of the recorder of the county in which the property described in the declaration is  
360 located; and

361 (b) includes the person's successor and assign.

362 (7) (a) "Governing documents" means a written instrument by which the association  
363 may:

364 (i) exercise powers; or

365 (ii) manage, maintain, or otherwise affect the property under the jurisdiction of the  
366 association.

367 (b) "Governing documents" includes:

368 (i) articles of incorporation;

- 369 (ii) bylaws;
- 370 (iii) a plat;
- 371 (iv) a declaration of covenants, conditions, and restrictions; and
- 372 (v) rules of the association.
- 373 (8) "Independent third party" means a person that:
- 374 (a) is not related to the owner of the residential lot;
- 375 (b) shares no pecuniary interests with the owner of the residential lot; and
- 376 (c) purchases the residential lot in good faith and without the intent to defraud a current
- 377 or future lienholder.
- 378 (9) "Judicial foreclosure" means a foreclosure of a lot:
- 379 (a) for the nonpayment of an assessment; and
- 380 (b) (i) in the manner provided by law for the foreclosure of a mortgage on real
- 381 property; and
- 382 (ii) as provided in Part 3, Collection of Assessments.
- 383 (10) "Lease" or "leasing" means regular, exclusive occupancy of a lot:
- 384 (a) by a person or persons other than the owner; and
- 385 (b) for which the owner receives a consideration or benefit, including a fee, service,
- 386 gratuity, or emolument.
- 387 (11) "Limited common areas" means common areas described in the declaration and
- 388 allocated for the exclusive use of one or more lot owners.
- 389 (12) "Lot" means:
- 390 (a) a lot, parcel, plot, or other division of land:
- 391 (i) designated for separate ownership or occupancy; and
- 392 (ii) (A) shown on a recorded subdivision plat; or
- 393 (B) the boundaries of which are described in a recorded governing document; or
- 394 (b) (i) a unit in a condominium association if the condominium association is a part of
- 395 a development; or
- 396 (ii) a unit in a real estate cooperative if the real estate cooperative is part of a
- 397 development.
- 398 (13) "Mixed-use project" means a project under this chapter that has both residential
- 399 and commercial lots in the project.

400 (14) "Nonjudicial foreclosure" means the sale of a lot:  
401 (a) for the nonpayment of an assessment; and  
402 (b) (i) in the same manner as the sale of trust property under Sections 57-1-19 through  
403 57-1-34; and  
404 (ii) as provided in Part 3, Collection of Assessments.

405 (15) "Residential lot" means a lot, the use of which is limited by law, covenant, or  
406 otherwise to primarily residential or recreational purposes.

407 Section 5. Section 57-8a-208 is amended to read:

408 **57-8a-208. Fines.**

409 (1) Unless otherwise [~~provided~~] limited in the association's governing documents, the  
410 board of [~~a homeowner~~] an association may assess a fine against a lot owner for a violation of  
411 the association's governing documents [~~after the requirements of Subsection (2) are met~~] in  
412 accordance with the provisions of this section.

413 (2) (a) Before assessing a fine under Subsection (1), the board shall[:] give the lot  
414 owner a written warning that:

415 [~~(a) notify the lot owner of the violation; and~~]

416 [~~(b) inform the owner that a fine will be imposed if the violation is not remedied within~~  
417 ~~the time provided in the association's governing documents, which shall be at least 48 hours.]~~

418 (i) describes the violation;

419 (ii) states the provision of the association's governing documents that the lot owner's  
420 conduct violates; and

421 (iii) states that the board may assess a fine against the lot owner in accordance with  
422 Subsection (2)(c), including the time by which the unit owner must cure the violation.

423 (b) If, in accordance with Subsection (2)(c)(iii), a board gives a lot owner 24 hours to  
424 cure a violation, in addition to the notice requirements described in Subsection (2)(a), the board  
425 shall post a copy of the written warning on the front door of any dwelling on the lot owner's lot.

426 (c) A board may assess a fine against a lot owner if:

427 (i) within one year after the day on which the board gives the lot owner a written  
428 warning described in Subsection (2)(a), the lot owner commits another violation that is similar  
429 to the violation described in the written warning;

430 (ii) the lot owner does not cure the violation within the time period that is:

431 (A) stated in the written warning described in Subsection (2)(a); and  
 432 (B) not less than 48 hours after the day on which the board gives the lot owner the  
 433 written warning; or  
 434 (iii) (A) the board or the board's agent determines that the violation poses an immediate  
 435 threat to health, safety, or property; and  
 436 (B) the lot owner does not cure the violation within 24 hours after the day on which the  
 437 board gives the lot owner the written warning described in Subsection (2)(a).  
 438 (d) If permitted under the association's governing documents, after the board assesses a  
 439 fine against a lot owner under this section, the board may, without further warning under this  
 440 Subsection (2), assess an additional fine against the lot owner each time the lot owner:  
 441 (i) commits a similar violation within one year after the day on which the board  
 442 assesses the initial fine; or  
 443 (ii) allows a violation to continue for at least 10 days after the day on which the board  
 444 assessed the initial fine.  
 445 (e) The aggregate amount of fines assessed against a unit owner under this section may  
 446 not exceed \$500 in any one calendar month.  
 447 (3) ~~(a)~~ A fine assessed under Subsection (1) shall:  
 448 ~~(i)~~ (a) be made only for a violation of a rule, covenant, condition, or restriction that is  
 449 ~~[specifically listed]~~ in the association's governing documents;  
 450 ~~(ii)~~ (b) be in the amount ~~[specifically]~~ provided for in the association's governing  
 451 documents ~~[for that specific type of violation or in an amount commensurate with the nature of~~  
 452 ~~the violation]~~; and  
 453 ~~(iii)~~ (c) accrue interest and late fees as provided in the association's governing  
 454 documents.  
 455 ~~(b) Unpaid fines may be collected as an unpaid assessment as set forth in the~~  
 456 ~~association's governing documents or in this chapter.]~~  
 457 (4) (a) A lot owner who is assessed a fine under Subsection (1) may request an  
 458 informal hearing before the board to ~~[protest or]~~ dispute the fine within ~~[14]~~ 30 days ~~[from the~~  
 459 ~~date]~~ after the day on which the lot owner receives notice that the fine is assessed.  
 460 (b) ~~[A]~~ A board shall conduct a hearing ~~[requested]~~ under Subsection (4)(a) ~~[shall be~~  
 461 ~~conducted]~~ in accordance with:

462 (i) the standards provided in the association's governing documents[-]; or  
 463 (ii) if the association's governing documents do not provide standards for a hearing  
 464 described in Subsection (4)(a), the standards established by the board in accordance with  
 465 Subsection (4)(c).

466 (c) The standards described in Subsection (4)(b)(ii) shall provide the lot owner an  
 467 opportunity to present the lot owner's position, in person, to the board.

468 ~~[(c)]~~ ~~(d)~~ ~~[No]~~ If a lot owner timely requests an informal hearing under Subsection  
 469 (4)(a), no interest or late fees may accrue until after the board conducts the hearing [has been  
 470 conducted] and issues a final decision [has been rendered].

471 (5) A lot owner may appeal a fine issued under Subsection (1) by initiating a civil  
 472 action:

473 (a) if the lot owner timely requests an informal hearing under Subsection (4), within  
 474 180 days after the day on which a final decision from the informal hearing is issued; or

475 (b) if the lot owner does not timely request an informal hearing under Subsection (4),  
 476 within 180 days after the day on which the time to request an informal hearing expires.

477 (6) An association may collect an unpaid fine as an unpaid assessment in accordance  
 478 with the provisions of this chapter.

479 (7) A board may delegate the board's rights and responsibilities under this section to a  
 480 managing agent.

481 (8) This section applies to an association regardless of when the association is created.

482 Section 6. Section **57-8a-211 (Superseded 07/01/14)** is amended to read:

483 **57-8a-211 (Superseded 07/01/14). Reserve analysis -- Reserve fund.**

484 (1) As used in this section~~[(a) "Reserve"],~~ "reserve analysis" means an analysis to  
 485 determine:

486 (i) (a) the need for a reserve fund to accumulate money to cover the cost of repairing,  
 487 replacing, or restoring [common areas] structures, components, and systems that the  
 488 association is responsible to maintain and replace and that have a useful life of no fewer than  
 489 three years [but less than 30 years, when the], but excluding any cost [cannot] that can  
 490 reasonably be funded from the association's general budget or from other association funds;  
 491 and

492 ~~[(i)]~~ (b) the appropriate amount of any reserve fund.



493 ~~[(b) "Reserve fund line item" means a line item in the annual budget of an association~~  
494 ~~that identifies the amount to be placed into a reserve fund.]~~

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

496 (a) ~~[(i) subject to Subsection (2)(a)(ii);]~~ cause a reserve analysis to be conducted no  
497 less frequently than every six years; and

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

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

502 (3) ~~[The]~~ A board may conduct a reserve analysis itself or may engage a reliable person  
503 or organization, as determined by the board, to conduct the reserve analysis.

504 ~~[(4) A reserve analysis shall include:]~~

505 ~~[(a) a list of the components identified in the reserve analysis that will reasonably~~  
506 ~~require reserve funds;]~~

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

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

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

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

516 ~~[(5) Each year, an association shall provide:]~~

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

519 ~~[(b) a complete copy of the most recent reserve analysis, including any updates, to a lot~~  
520 ~~owner upon request.]~~

521 ~~[(6) (a) An association shall include a reserve fund line item in its annual budget.]~~

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

523 ~~[(i) the board, based on the reserve analysis and the amount that the board determines~~

524 is prudent under the circumstances; or]

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

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

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

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

538 [~~(i) injunctive relief requiring the association to comply with the requirements of~~  
539 ~~Subsection (5) or (6);]~~

540 [~~(ii) \$500 or the lot owner's actual damages, whichever is greater;]~~

541 [~~(iii) any other remedy provided by law; and]~~

542 [~~(iv) reasonable costs and attorney fees.]~~

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

546 [~~(c) A notice described in Subsection (7)(b) shall state:]~~

547 [~~(i) the requirement in Subsection (5) or (6) with which the association has failed to~~  
548 ~~comply;]~~

549 [~~(ii) a demand that the association of unit owners come into compliance with the~~  
550 ~~requirements; and]~~

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

553 [~~(d) In a case filed under Subsection (7)(a), a court may summarily order an association~~  
554 ~~to produce the summary of the reserve analysis or the complete reserve analysis on an~~

555 ~~expedited basis and at the association's expense.]~~

556 ~~[(8)]~~ (4) (a) A board may not use money in a reserve fund:

557 (i) for daily maintenance expenses, unless a majority of association members vote to  
558 approve the use of reserve fund money for that purpose; or

559 (ii) for any purpose other than the purpose for which the reserve fund was established.

560 (b) A board shall maintain a reserve fund separate from other association funds.

561 (c) This Subsection (4) may not be construed to limit a board from prudently investing  
562 money in a reserve fund, subject to any investment constraints imposed by the governing  
563 documents.

564 (5) An association shall:

565 (a) annually, at the annual meeting of lot owners or at a special meeting of lot owners:

566 (i) make available a copy of either the most recent reserve analysis or a summary of the  
567 most recent reserve analysis to each lot owner who is present, in person, at the meeting;

568 (ii) provide an opportunity for lot owners to discuss reserve funds and the reserve  
569 analysis; and

570 (iii) have a vote of the lot owners on whether to fund a reserve fund and, if so, how to  
571 fund the reserve fund and in what amount;

572 (b) prepare and keep minutes of each meeting held under Subsection (5)(a) and  
573 indicate in the minutes any decision that relates to funding a reserve fund; and

574 (c) (i) provide either a copy of the reserve analysis or a summary of the reserve analysis  
575 and any update to the reserve analysis to each lot owner within 30 days after the day on which  
576 the reserve analysis or the update is complete; and

577 (ii) provide a complete copy of the most recent reserve analysis and any update to the  
578 reserve analysis to a lot owner upon request.

579 (6) An association shall fund a reserve fund in the greater of:

580 (a) the amount approved by the lot owners in a vote under Subsection (5)(a)(iii); or

581 (b) the amount required in the association's governing documents.

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

585 (i) injunctive relief requiring the association to comply with the requirements described

586 in Subsection (5) or (6);

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

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

589 (iv) reasonable costs and attorney fees.

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

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

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

596 (ii) a demand that the association come into compliance with the requirement; and

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

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

602 ~~[(9)]~~ (8) Subsections (2)~~[(3), (4), and (6)]~~ through (7) do not apply to an association  
603 during the period of administrative control.

604 ~~[(10)]~~ (9) This section applies to each association, regardless of when the association  
605 was created.

606 Section 7. Section **57-8a-301** is amended to read:

607 **57-8a-301. Lien in favor of association for assessments and costs of collection.**

608 (1) (a) Except as provided in Section **57-8a-105**, an association has a lien on a lot for:

609 (i) an assessment;

610 (ii) except as provided in the declaration, fees, charges, and costs associated with  
611 collecting an unpaid assessment, including:

612 (A) court costs and reasonable attorney fees;

613 (B) late charges;

614 (C) interest; and

615 (D) any other amount that the association is entitled to recover under the declaration,  
616 this chapter, or an administrative or judicial decision; and

617 (iii) a fine that the association imposes against ~~[the owner of the lot.]~~ a lot owner in  
618 accordance with Section 57-8a-208, if:

619 (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot  
620 owner did not file an appeal; or

621 (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and the district  
622 court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).

623 (b) The recording of a declaration constitutes record notice and perfection of a lien  
624 described in Subsection (1)(a).

625 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)  
626 is for the full amount of the assessment from the time the first installment is due, unless the  
627 association otherwise provides in a notice of assessment.

628 (3) An unpaid assessment or fine accrues interest at the rate provided:

629 (a) in Subsection 15-1-1(2); or

630 (b) in the declaration, if the declaration provides for a different interest rate.

631 (4) A lien under this section has priority over each other lien and encumbrance on a lot  
632 except:

633 (a) a lien or encumbrance recorded before the declaration is recorded;

634 (b) a first or second security interest on the lot secured by a mortgage or trust deed that  
635 is recorded before a recorded notice of lien by or on behalf of the association; or

636 (c) a lien for real estate taxes or other governmental assessments or charges against the  
637 lot.

638 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah  
639 Exemptions Act.

640 (6) Unless the declaration provides otherwise, if two or more associations have liens  
641 for assessments on the same lot, the liens have equal priority, regardless of when the liens are  
642 created.

643 **Section 8. Repealer.**

644 This bill repeals:

645 Section 57-8-7.5 (Effective 07/01/14), Reserve analysis -- Reserve fund.

646 Section 57-8a-211 (Effective 07/01/14), Reserve analysis -- Reserve fund.

**Legislative Review Note**  
**as of 2-28-14 12:06 PM**

**Office of Legislative Research and General Counsel**