

RESERVE LAW CHANGES

AN INTERESTING EVOLUTION



BY BRUCE C. JENKINS
RS, CCAL
ATTORNEY
VIAL FOTHERINGHAM

I have heard it said the legislation is like making sausage. That analogy rings true with the wrangling it took to pass S.B. 90, Condominium and Community Association Act Amendments, particularly the section on reserves. However, in the end – just like sausage – a good and sizzling product was produced. In particular, there were objections from the development industry, even though the reserve requirements are not applicable to a developer during the control period, and a competing bill from a southern Utah community association organization.

First, a brief summary of the important changes to the reserve law (this summary is not comprehensive and is not a substitute for reading S.B. 90, as amended, in its entirety):

- In addition to obtaining a reserve analysis, an Association must now fund reserves.
- A reserve analysis must include:
 - A list of components
 - A statement of useful life
 - Estimate of costs
 - Estimate of total annual contribution to reserves
 - A recommended funding plan
- A reserve analysis need not be prepared by a reserve professional, but should be reliable.
- Reserve funds must be kept in a separate fund from other Association funds.
- The Association must annually provide lot owners a summary of the most recent reserve analysis or update and a complete copy upon request.
- The amount to be funded in reserves is to be presented to the members by the Board/Committee as a line item in the Annual Budget.
- Members of the Association may veto the reserve line item at a special meeting within forty-five (45) days of the adoption of the Budget.
- If an Association does not comply with requirements for obtaining a reserve analysis and voting on a funding plan, then a member may give the Association a 90-day notice to cure and if the Association fails to cure, the owner may file suit for damages, attorney fees and other relief allowed by law.

The competing Bill, S.B. 64, was introduced by Senator Urquhart and proposed unreasonable penalties for Associations not obtaining a reserve analysis or funding reserves. In sum, if a reserve analysis was not obtained and were not reserves funded, then the Association would be precluded from levying special assessments. The problem with this is illustrated by this simple hypothetical example. An aging Association fails to obtain a reserve study. The roofs are in need of immediate repair and water is leaking into some of the units. The Association calls a meeting and passes a special assessment by the requisite vote. The contractor is engaged to begin work, however, one of the Association members raises the issue that special assessments cannot be passed because there is no reserve analysis and reserve funding plan. The member sues the Association and seeks an injunction to stop work. The work is halted. The roofs continue to leak. It takes 3-4 months for a reserve analysis to be ordered, completed and voted upon by the members. All the while the roofs continue to leak unabated. Obviously, the penalty was just too harsh.

The LAC vigorously opposed this S.B. 64 and reached out personally to Senator Urquhart and the organization sponsoring the Bill. Eventually, it was agreed that the LAC would rewrite the enforcement and penalty provisions to make them more acceptable. In particular, to give the Association an opportunity to cure the problem before a suit could be initiated.

Working with the development industry was a mixed bag. Initially they opposed all amendments to reserves, including a description the minimum requirements to be included in a reserve analysis. However, after lengthy discussion they supported the Board including an amount to be funded for reserves as a line item in the Annual Budget, with the line item being subject to veto within forty-five (45) days of adoption by a majority vote of the members of the Association. Though at the eleventh hour, they stuffed in an amendment delaying the effective date to July 1, 2014.

Overall, S.B. 90 brought clarity to reserves and should provide for greater financial strength of Associations in this state.