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IT'S THE BOTTOM OF THE 9TH...

We are heading into the bottom of the 9th inning, and the Legislature has brought in their clean-up hitters to deal with the remaining bills on their agenda. With the session ending on May 11, the two bodies are scrambling to finish up the session's work and take final action on all remaining bills. So, what does that mean in the Homeowner Association ballpark? I am so glad you asked.

What's left:

[HB 22-1387](#) – Reserve Fund Bill. This was a late entry to the game, coming in during the 8th inning. And, like all good pinch hitters, this one is a game-changer. It sailed through the House within a week unscathed and is moving through the Senate at a breakneck pace. This slugger has the following attributes to its game:

- Requires the Declarant to obtain a cursory (Level IV) reserve study to the Association prior to conveying any Units.
 - The Level IV reserve study can be merely used for budgeting purposes.
 - If build out of the community exceeds 5 years, the Declarant must update the Level IV study with a Level II or Level III study.
- At transition of the Association from Declarant Control to the Owners, the Declarant shall cause to be prepared and delivered to the Association a Level I (Full Reserve Study) Reserve Study.
 - At transition from Declarant Control, the Declarant must also deliver to the Association all reserve funds recommended by the Level 1 Reserve study. In short this means the Declarant must deliver a new community to the Owners with a fully funded reserve fund as recommended by the Level 1 Reserve Study.
 - This Level I Study must be dated within 60 days of transition from Declarant control
 - The cost of the Level I Reserve Study may not be charged to the Association.
- Commencing July 1, 2024, the Association must obtain at least every 30 years a Level I (a complete reserve study) for use by the Association.
- At least every 5 years, the Level 1 Reserve Study must be replaced/updated by a Level II or Level III reserve study.
- Moving forward, the Annual Budget prepared by the Association and presented to the Owners must include the following information:
 - The estimated revenue and operating expenses of the Association;
 - Information as to whether the budget has been prepared on a cash or tax basis of accounting;
 - The total reserve funds of the association as of the date of the preparation of the budget.
 - The estimated reserve funds of the association will require for major shared components in the current budgeted fiscal year based upon the most recent reserve study or reserve study update;

- A general explanation of how the estimated reserve funds are computed;
- The amount the association anticipates that it will need to collect in the current budgeted fiscal year to fund future estimated reserved funds pursuant to the most recent reserve study or update, and the estimated contribution to the reserve funds in the budget fiscal year; and
- Notification by the executive board to the Unit Owners of the method by which additional funding may be obtained if the executive board is not fully funding the reserve funds with common expense assessments.
- Additionally, it should be noted that Reserve Expenditures made in accordance with a reserve study or update or to address emergent life circumstances are not subject to veto by the Unit Owners.
- The funding plan employed by an association to require contributions to reserve funds may use any of the funding sources permitted by the declaration and this article 33.3 so long as funding results in “Adequate Reserve Fund.”
 - “Adequate Reserve Fund” is defined as “money, in excess of association operating expenses in any fiscal year, specifically dedicated for the maintenance, repair, or replacement of property that the Association must maintain, repair, or replace and that has reached the end of its estimated useful life, based upon the most recent reserve study, **without the need for borrowing or special assessments**”(emphasis added).
- Notwithstanding the provisions of this Article 33.3 or the Association’s governing documents, the Executive Board may amend the association’s annual budget or impose special assessments if necessary to fund government-imposed requirements or to address emergent life circumstances.
- In reliance upon a qualified professional investment advisor, an association may invest not more than 25% of the association’s reserve funds in conservative instruments, including equities and mutual funds, that are not insured by a federal agency. The executive board’s decision is still subject to the standards set forth in section 7-128-401 (in good faith as an ordinary reasonably prudent person).
- While the majority of the provisions above are not effective until July 1, 2024, we do not recommend waiting until that time to start funding reserve funds or obtaining reserve studies.

[HB 22-1137](#) The Collection, Covenant Enforcement, and Small Claims Court Bill.

While this is of course, not the official name, every great 8th inning hitter needs a nickname. This bill has the following attributes:

- Prior to taking any action on a delinquency the Association/manager shall alert the Unit Owner in relation to the delinquency.
 - Records of these contacts must be kept, including the type of communication and the date and time of the communication attempts.
- Allows for a Unit Owner to identify another person to serve as a designated contact for the Unit Owner.
 - Regardless of a designated contact, the Association must also contact the Owner as well as the designated contact.
 - The attempted contacts must be in English as well as any other language identified by the Owner as a preferred language.
 - The Unit Owner and the designated contact must receive the same correspondence and notices anytime communications are sent out.
 - While the bill allows for the notice to go the Owner in the preferred language, we would recommend just send all correspondence in both English and the preferred language.
- Delinquency notices shall be provided as follows:
 - Certified mail, return receipt requested to both the Owner as well as the designated contact in both English as well as the preferred language if provided.
 - Physically posted at the Unit Owner’s Unit.
 - In addition to the above, the Association shall also contact the Owner by one of the following means.
 - First Class Mail,
 - Text Message to a cellular number provided by the Owner, or
 - Email to an email address provided by the Owner.
- Only upon completion of the above, the Association may refer an account to a collection agency or attorney upon approval by a majority of the Board members, which vote may occur in an executive session.
- The Association shall not impose the late fees or fines on a daily basis.
- Interest on delinquent accounts is capped at 8% per annum.

- When enforcing covenants, the Association is required to adopt a policy regarding covenant enforcement. The policy shall provide.
 - If a violation reasonably relates to public health or safety, the Association shall provide the Unit Owner written notice in English and in any language that the Unit Owner has indicated a preference for correspondence and notices.
 - The Owner shall have 72 hours after receiving the notice to cure the violation.
 - If the violation is not cured within 72 hours, the Association may fine the Owner no more frequently than every other day and may take legal action against the Unit Owner for the violation.
 - If the violation does not impact the public health or safety, the Association shall follow the following procedure:
 - The Association shall provide written notice by certified mail, return receipt requested in English and the language identified by the Owner as a preferred language. The notice shall state the violate and what must occur to cure the violation.
 - The Owner shall have a 30 day period to cure the violation.
 - If upon expiration of the first 30 day period, after conducting an inspection and determining the violation remains uncured, the Association may fine the Owner which fine may not exceed \$500.
 - The Association, however may not take any legal action until the Association has offered an additional 30 day period to cure the violation.
 - If the Owner cures the violation within either 30 day period and sends visual evidence of such cure, the violation is deemed cured as of the date the Owner sent the visual evidence.
 - If the Owner does not include visual evidence, the Association shall as soon as practicable, inspect the property to determine if the violation is cured.
 - If the Owner does not send information concerning the violation, within 7 days after the expiration of the cure period, the Association shall inspect the property to determine if the violation has been cured.
 - Once the violation is cured, the Association shall notify the Owner of such fact in English, confirming that they will not be fined further regarding that violation and notifying the Owner of any outstanding fine balance owed.
- In relation to general delinquencies and fines. The Association shall provide by US Mail and email if the Association has an email address for the Owner, an itemized list of all assessments, fines, fees and charges that the Unit Owner owes to the Association for any Owner that has any outstanding balances.
 - Must be sent to the Owner and a Designated Representative.
 - Sent in English or in the second language for which the Unit Owner has indicated a preference for correspondence (Note the "or"). However, we highly recommend this be done in both languages.
- Any notice for a covenant violation must include the nature of the alleged violation, the action or actions required to cure the alleged violation, and a timeline for the fair and impartial fact-finding process required to be taken.
- The policy must also identify the interval upon which fines may be levied, which may not exceed a total of \$500 per violation.
- Notice for Delinquencies shall be sent in English and in any language identified by the Owner by Certified Mail Return Receipt Requested.
 - The notice must specify if the delinquency concerns unpaid assessments, unpaid fines, fees, charges, or both.
 - The Notice must state that the unpaid assessment may lead to foreclosure of the home.
 - Include a description of the steps the Association must take before the Association may take legal action against the Unit Owner, including a description of the Association's cure process (for violations).
 - A description of what legal action the Association may take against the Unit Owner, including a description of the types of matters that the Association OR the Unit Owner may take to small claims court.
- An Association cannot take legal action to foreclose on a Unit unless it has complied with the above, and
 - Has provided to the Unit Owner an opportunity to enter into a repayment plan pursuant to Section 38-33.3-3163(2) that authorizes the Unit Owner to pay the debt in monthly installments over 18 months.
 - The payment plan shall allow the Owner to:
 - Determine the amount of the payment so long as it is at least \$25.00
 - Within 30 days after the Association has provided a written offer to enter into the payment plan, the Owner

- either declined the prepayment plan; or
- After accepting the payment plan, failed to pay at least three of the monthly installments within 15 days of the due date.
- The Association may not assess a fee or other charge to recover costs incurred for providing the Unit Owner a statement of the total amount that the Unit Owner owes.
- The Association may not foreclose a lien for only fines or attorney fees/costs incurred in addressing the underlying covenant violation.
- The Association may use small claims court to enforce covenants or collect assessments.
- Each collection referral, including foreclosure must be voted on by the board, which may occur in an executive session.
- Attorney Fees shall not be recoverable for anything prior to complying with the above.
- Includes a mandate that funds be applied in a certain manner to principal first, then to late fees, fines, and attorney fees.
- The Bill also allows provides for a cause of action for any Owner that lost a home to a foreclosure if the above procedures were not strictly complied with.

As always, please do not hesitate to contact an Altitude attorney at hoalaw@altitude.law or (303) 432-9999. And stay tuned to our [Legislative Tracker](#) for more updates on 2022 Legislation.

POSTED

Tuesday, May 10th, 2022

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By [David Firmin](#)



2 RESPONSES TO “IT’S THE BOTTOM OF THE 9TH...”

Donna Reynolds says:

[May 10, 2022 at 8:11 pm](#)

These bills are designed for the Eastern Slope and the Denver metro area.
Not one of these bills will be beneficial to any HOA on the Western Slope.
Who writes this nonsense? As always, the politicians gear everything toward Denver and no consideration is taken as to how this will affect humans on the Western Slope.
Sloppy politics at it's best.

[zoritoler imol](#) says:

[May 23, 2022 at 8:29 pm](#)

I am usually to running a blog and i really respect your content. The article has actually peaks my interest. I am going to bookmark your web site and maintain checking for brand new information.

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