

House Bill 1309 Additions to Homeowner Association RCW
Effective January 1, 2012

Note: [blue writing is important additions](#)
[Red writing is very important additions](#)

RCW 64.38.010 Definitions. (*Effective January 1, 2012.*)

For purposes of this chapter:

- (1) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW [64.38.020](#).
- (2) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW [64.38.065](#).
- (6) "Contribution rate" means, in a reserve study as described in RCW [64.34.380](#), the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.
- (7) "Effective age" means the difference between the estimated useful life and remaining useful life.
- (8) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW [64.38.065](#), in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.
- (9) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.
- (11) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter [64.32](#) or [64.34](#) RCW.
- (12) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.
- (13) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.
- (14) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.
- (15) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.
- (16) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.
- (17) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW [64.34.380](#) and [64.34.382](#).
- (19) "Significant assets" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.
- (20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

RCW 64.38.025 Board of directors — Standard of care — Restrictions — Budget — Removal from board. (*Effective January 1, 2012.*)

(4) As part of the summary of the budget provided to all owners, the [board of directors shall disclose to the owners](#):

(a) The current amount of [regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based](#);

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, [whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years](#);

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) [The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study](#);

(f) [The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years](#); and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

RCW 64.38.065 Reserve account and study. (*Effective January 1, 2012.*)

(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, [an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and this chapter](#). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, [the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional](#).

(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized.

RCW 64.38.070 Reserve study — Requirements. (*Effective January 1, 2012.*)

(1) A reserve study as described in RCW [64.38.065](#) is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and [estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component](#);

(b) The date of the study, and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The [association's reserve account balance](#);

(e) The [percentage of the fully funded balance that the reserve account is funded](#);

(f) [Special assessments already implemented or planned](#);

(g) [Interest and inflation assumptions](#);

(h) [Current reserve account contribution rates for a full funding plan and baseline funding plan](#);

(i) [A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional](#);

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, 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 reserve component."

RCW 64.38.075 Reserve account — Withdrawals. (*Effective January 1, 2012.*)

[An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.](#)

RCW 64.38.080 Reserve study — Demand for preparation and inclusion in budget. (*Effective January 1, 2012.*)

(1) When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter.

RCW 64.38.085 Reserve account and study — Liability. (*Effective January 1, 2012.*)

Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter.

RCW 64.38.090 Reserve study — Exemptions. (*Effective January 1, 2012.*)

An association is not required to follow the reserve study requirements under RCW [64.38.025](#) and RCW [64.38.065](#) through [64.38.085](#) if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association.