

New Jersey Enacts Legislation to Amend Capital Reserve Funding Requirements for Planned Real Estate Developments

Client Alert

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On August 21, 2025, legislation was signed into law by New Jersey Governor Phil Murphy that modifies the requirements for capital reserve studies, requirements for capital reserves, and disclosure requirements for planned real estate developments. S3992 amends and clarifies the requirements previously set forth in S2760, the Structural Integrity and Reserve Funding legislation signed into law in January of 2024. The following is a summary of those amendments and clarifications.

Clarification of the Term “Adequacy”

In order to clarify the previously undefined terms “adequate” and “adequacy,” S3992 defines “adequate” or “adequacy” as a sum of money held by an association that is sufficient to balance the association’s reserve fund. This sum must ensure that the association’s reserve fund is never projected to fall below zero dollars in the association’s 30-year capital reserve funding plan.

Reserve Studies Must Be Updated Every Five Years

Prior to the enactment of S3992, the law previously only required covered building owners to obtain a capital reserve study conducted by a licensed architect, engineer, or credentialed reserve specialist at a minimum of once every five years. The new law amends such language, changing the phrase “covered building owners” to “an association of a planned real estate development.” This provides associations with accurate and updated projections of their financial status.

Zero Dollar Balance Plan Inclusion

The law previously required that an association only obtain a 30-year funding plan. The amended law requires the inclusion of a zero-dollar plan with all capital reserve funding plans. This plan must show a 30-year funding plan that permits the reserve fund to reach zero dollars. There are no limitations on how often the plan hits the zero-

dollar mark, however it is not allowed to fall below it. There is no limit on the number of capital funding plans produced, such that additional plans can provide balances greater than zero.

Funding Options for Current Associations: Utilize Most Recent Study or Fund at 85%

Lawmakers recognized the challenges for associations to fund their capital reserve fund, with some associations well-funded and others inadequately funded. The amended law provides some relief for associations existing as of January 8, 2024. Such associations can either fund their capital reserve according to their most recent capital reserve study or are allowed to fund their capital reserve at 85% of the capital reserve recommended plan. If funded at 85% of the recommended plan, the association must provide notice to all unit owners of the residential development. This notice must be in 20-point bold font and must describe that the association's executive board is funding the capital reserve fund at 85% of what the association's 30-year plan recommended. The notice must also include the year in which the special assessment or loan is anticipated due to the reduced funding and the amount the board anticipates needing because of this reduction.

Buyer Disclosure Requirements

Previously, the law did not mandate notice requirements. Sellers in planned real estate developments did not have to provide disclosures related to capital reserve funding. Under the amended law, before a buyer completes the sale of a unit within the development, the seller must provide the buyer with the most recent notice to unit owners regarding the reduced capital reserve funding plan.

Five-Year Limit on 85% Funding

Previously, the law prohibited funding reserves at 85% of the study plan. Under S3992, associations are permitted to fund their capital reserve fund at 85% of the proposed plan. When doing so, however, the association is only permitted to fund it in this manner for five fiscal years, after which the association must transition to a plan that satisfies the zero-dollar requirement.

Removal of Special Assessment and Loan Language

Previously, the law provided that an association had authority to impose a special assessment or obtain a loan if a capital asset reached the end of its useful life sooner than projected in the reserve study. Under the amended law, that language has been removed.

The changes outlined in this Alert are intended to provide clarity to the existing law while also providing relief for associations that have been historically underfunded. Please contact the authors of this Alert with questions concerning capital reserve funding or to discuss your association's specific circumstances.

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