

By: Representative Yancey

To: Banking and Financial
ServicesHOUSE BILL NO. 636
(As Passed the House)

1 AN ACT TO REGULATE MANAGING AGENTS OF HOMEOWNERS'
2 ASSOCIATIONS REGARDING THEIR DEPOSIT AND MANAGEMENT OF ASSOCIATION
3 FUNDS; TO PROVIDE CERTAIN DEFINITIONS FOR THE ACT; TO REQUIRE
4 TRANSFERS OF FUNDS ABOVE A CERTAIN AMOUNT TO BE AUTHORIZED BY
5 PRIOR WRITTEN BOARD APPROVAL; TO PROHIBIT THE MANAGING AGENT FROM
6 COMINGLING THE FUNDS OF THE ASSOCIATION WITH THE MANAGING AGENTS
7 OWN MONEY OR WITH THE MONEY OF OTHERS THAT THE MANAGING AGENT
8 RECEIVES OR ACCEPTS; TO PROVIDE THAT CURRENTLY COMINGLED FUNDS
9 SHALL BE SEPARATED BY A CERTAIN DATE; TO REQUIRE THE MANAGING
10 AGENT TO PROVIDE TO THE HOMEOWNERS' ASSOCIATION CERTAIN FINANCIAL
11 INFORMATION RELATING TO THE FUNDS OF THE ASSOCIATION BEFORE EVERY
12 REGULAR MEETING AND UPON REQUEST OF THE ASSOCIATION; TO PROVIDE
13 THE BOARD OF A HOMEOWNERS' ASSOCIATION TO CONDUCT CERTAIN PERIODIC
14 FINANCIAL REVIEWS; TO REQUIRE HOMEOWNERS' ASSOCIATIONS TO MAINTAIN
15 FIDELITY BOND COVERAGE FOR ITS DIRECTORS AND OFFICERS; TO PROVIDE
16 THAT IF THE ASSOCIATION USES A MANAGING AGENT OR MANAGEMENT
17 COMPANY, THE ASSOCIATION'S FIDELITY BOND COVERAGE SHALL
18 ADDITIONALLY INCLUDE DISHONEST ACTS BY THAT PERSON OR ENTITY AND
19 ITS EMPLOYEES; TO PROVIDE THAT THE BOND REQUIREMENT SHALL NOT
20 APPLY IF A MAJORITY OF THE MEMBERS OF THE ASSOCIATION VOTE NOT TO
21 HAVE IT; AND FOR RELATED PURPOSES.

22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

23 **SECTION 1.** (1) A managing agent who accepts or receives
24 funds belonging to homeowners' association shall deposit those
25 funds that are not placed into an escrow account with a bank or
26 savings association or into an account under the control of the
27 association, into a trust fund account maintained by the managing



agent in a bank or savings association in this state. All funds deposited by the managing agent in the trust fund account shall be kept in this state in a financial institution domiciled in the State of Mississippi and insured by the Federal Deposit Insurance Corporation, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(2) At the written request of the board of the homeowners' association, the funds the managing agent accepts or receives on behalf of the association may be deposited into a checking or interest-bearing account in a bank or savings association in this state, provided all of the following requirements are met:

(a) The account is in the name of the managing agent as trustee for the association or in the name of the association.

(b) All of the funds in the account are covered by insurance provided by the Federal Deposit Insurance Corporation.

(c) The funds in the account are kept separate, distinct, and apart from the funds belonging to the managing agent or to any other person for whom the managing agent holds funds in trust.

(d) The managing agent discloses to the board of the homeowners' association the nature of the account, how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and any notice requirements or penalties for withdrawal of funds from the account.



53 (e) No interest earned on funds in the account shall
54 inure directly or indirectly to the benefit of the managing agent
55 or the managing agent's employees.

56 (f) Transfers of greater than Ten Thousand Dollars
57 (\$10,000.00) of an association's total combined reserve and
58 operating account deposits shall not be authorized from the
59 account without prior written approval from the board of the
60 homeowners' association.

61 (3) The managing agent shall maintain a separate record of
62 the receipt and disposition of all funds described in this
63 section, including any interest earned on the funds.

64 (4) Before every regular meeting of the homeowners'
65 association and any other time upon request of the association,
66 the managing agent shall provide to the association all of the
67 information described in Section 2 of this act.

68 (5) The managing agent shall not commingle the funds of the
69 association with the managing agent's own money or with the money
70 of others that the managing agent receives or accepts. If the
71 managing agent has comingled funds on July 1, 2020, the managing
72 agent shall, no later than September 1, 2020, separate the
73 comingled funds into separate accounts.

74 (6) The prevailing party in an action to enforce this
75 section shall be entitled to recover reasonable legal fees and
76 court costs.



(7) As used in this act, "association" means a homeowners' association duly organized as a nonprofit corporation organized under the Mississippi Nonprofit Corporation Act, Section 79-11-101 et seq., and which is exempt from taxation under the federal Income Tax Code.

(8) As used in this act, "managing agent" is any person who, for compensation or in expectation of compensation, exercises control over the assets of a homeowners' association. A "managing agent" does not include a regulated financial institution operating within the normal course of its regulated business practice.

SECTION 2. Unless the governing documents of the homeowners' association impose more stringent standards, the board of a homeowners' association shall do all of the following at all regularly scheduled meetings:

(a) Review a current reconciliation of the association's operating accounts.

(b) Review a current reconciliation of the association's reserve accounts.

(c) Review the current year's actual operating revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.



(e) Review a receipts and disbursements statement for the association's operating and reserve accounts.

(f) Review the check register, monthly general ledger, and delinquent assessment receivable reports.

SECTION 3. The review requirements of Section 2 of this act may be met when every individual member of the board, or a subcommittee of the board consisting of the treasurer and at least one other board member, reviews the documents and statements described in Section 2 of this act independent of a board meeting, so long as the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

SECTION 4. Notwithstanding any other law to the contrary, transfers of greater than Ten Thousand Dollars (\$10,000.00) of a homeowners' association's total combined reserve and operating account deposits shall not be authorized from the association's reserve or operating accounts without prior written board approval. This section shall apply in addition to any other applicable requirements of this act.

SECTION 5. (1) Unless the governing documents of the homeowners' association require greater coverage amounts, the homeowners' association shall maintain fidelity bond coverage for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the association and total assessments for highest balance during the



126 previous year. The association's fidelity bond shall also include
127 computer fraud and funds transfer fraud, which is not required to
128 include cyber coverage. If the association uses a managing agent,
129 the association's fidelity bond coverage must additionally include
130 dishonest acts by that person or entity and its employees.

131 (2) Notwithstanding the provisions of subsection (1) of this
132 section, if a majority of the members of a homeowners' association
133 at a regular or special meeting of the association vote not to
134 maintain fidelity bond coverage for its directors, officers, or
135 employees, the provisions of subsection (1) shall not apply to the
136 association.

137 **SECTION 6.** This act shall take effect and be in force from
138 and after July 1, 2020.

