

Senate Amendments to House Bill No. 953

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

25 SECTION 1. (1) A managing agent who accepts or receives
26 funds belonging to a homeowners association shall deposit those
27 funds that are not placed into an escrow account with a bank or
28 savings association or into an account under the control of the
29 association, into a trust fund account maintained by the managing
30 agent in a bank or savings association. All funds deposited by
31 the managing agent in the trust fund account shall be kept in a
32 financial institution and insured by the Federal Deposit Insurance
33 Corporation, and shall be maintained there until disbursed in
34 accordance with written instructions from the association entitled
35 to the funds.

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

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

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

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

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

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

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

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

65 (4) Before every regular meeting of the homeowners
66 association and any other time upon request of the association,

67 the managing agent shall provide to the association all of the
68 information described in Section 2 of this act.

69 (5) The managing agent shall not commingle the funds of the
70 association with the managing agent's own money or with the money
71 of others that the managing agent receives or accepts. If the
72 managing agent has commingled funds on July 1, 2021, the managing
73 agent shall, no later than September 1, 2021, separate the
74 commingled funds into separate accounts.

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

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

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

89 **SECTION 2.** (1) Unless the governing documents of the
90 homeowners association impose more stringent standards, the board
91 of a homeowners association shall do all of the following at all
92 regularly scheduled meetings:

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

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

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

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

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

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

106 (2) Unless prohibited by the governing documents of the
107 homeowners association, the board may hold any special or
108 regularly scheduled meeting, or any special or regularly scheduled
109 member meeting, by electronic transmission or other means of
110 remote communication, or by a combination thereof.

111 (3) For purposes of this section, "remote communication"
112 means communication via electronic communication, conference
113 telephone, videoconference, the internet, or such other means by
114 which persons not physically present in the same location may
115 communicate with each other on a substantially concurrent basis.

116 **SECTION 3.** The review requirements of Section 2 of this act
117 may be met when every individual member of the board, or a
118 subcommittee of the board consisting of the treasurer and at least

119 one (1) other board member, reviews the documents and statements
120 described in Section 2 of this act independent of a board meeting,
121 so long as the review is ratified at the board meeting subsequent
122 to the review and that ratification is reflected in the minutes of
123 that meeting.

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

131 **SECTION 5.** (1) Unless the governing documents of the
132 homeowners association require greater coverage amounts, the
133 homeowners association shall maintain fidelity bond coverage for
134 its directors, officers, and employees in an amount that is equal
135 to or more than the combined amount of the reserves of the
136 association and total assessments for the highest balance during
137 the previous year. The association's fidelity bond shall also
138 include computer fraud and funds transfer fraud, which is not
139 required to include cyber coverage. If the association uses a
140 managing agent, the association's fidelity bond coverage must
141 additionally include dishonest acts by that person or entity and
142 its employees.

143 (2) Notwithstanding the provisions of subsection (1) of this
144 section, if a majority of the members of a homeowners association

145 at a regular or special meeting of the association vote not to
146 maintain fidelity bond coverage for its directors, officers, or
147 employees, the provisions of subsection (1) shall not apply to the
148 association.

149 **SECTION 6.** This act shall take effect and be in force from
150 and after July 1, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO REGULATE MANAGING AGENTS OF HOMEOWNERS ASSOCIATIONS
2 REGARDING THEIR DEPOSIT AND MANAGEMENT OF ASSOCIATION FUNDS; TO
3 PROVIDE CERTAIN DEFINITIONS FOR THE ACT; TO REQUIRE TRANSFERS OF
4 FUNDS ABOVE A CERTAIN AMOUNT TO BE AUTHORIZED BY PRIOR WRITTEN
5 BOARD APPROVAL; TO PROHIBIT THE MANAGING AGENT FROM COMMINGLING
6 THE FUNDS OF THE ASSOCIATION WITH THE MANAGING AGENTS OWN MONEY OR
7 WITH THE MONEY OF OTHERS THAT THE MANAGING AGENT RECEIVES OR
8 ACCEPTS; TO PROVIDE THAT CURRENTLY COMMINGLED FUNDS SHALL BE
9 SEPARATED BY A CERTAIN DATE; TO REQUIRE THE MANAGING AGENT TO
10 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 AUTHORIZE SPECIAL OR REGULARLY SCHEDULED
15 MEETINGS TO BE HELD BY ELECTRONIC TRANSMISSION OR BY OTHER MEANS
16 OF REMOTE COMMUNICATION; TO REQUIRE HOMEOWNERS ASSOCIATIONS TO
17 MAINTAIN FIDELITY BOND COVERAGE FOR ITS DIRECTORS AND OFFICERS; TO
18 PROVIDE THAT IF THE ASSOCIATION USES A MANAGING AGENT OR
19 MANAGEMENT COMPANY, THE ASSOCIATION'S FIDELITY BOND COVERAGE SHALL
20 ADDITIONALLY INCLUDE DISHONEST ACTS BY THAT PERSON OR ENTITY AND
21 ITS EMPLOYEES; TO PROVIDE THAT THE BOND REQUIREMENT SHALL NOT
22 APPLY IF A MAJORITY OF THE MEMBERS OF THE ASSOCIATION VOTE NOT TO
23 HAVE IT; AND FOR RELATED PURPOSES.

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Eugene S. Clarke
Secretary of the Senate