

By: Representative Yancey

To: Banking and Financial Services

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 933

1 AN ACT TO AMEND SECTION 79-11-751, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT BOARD APPROVAL FOR TRANSFERS OF FUNDS GREATER THAN
3 \$10,000.00 IS NOT REQUIRED TO BE IN WRITTEN FORM; TO AMEND SECTION
4 79-11-753, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AT ALL
5 REGULARLY SCHEDULED MEETINGS, THE BOARD OF A HOMEOWNERS
6 ASSOCIATION IS ONLY REQUIRED TO REVIEW THE LATEST ACCOUNT
7 STATEMENTS PREPARED BY THE FINANCIAL INSTITUTIONS WHERE THE
8 ASSOCIATION HAS ITS OPERATING AND RESERVE ACCOUNTS; TO REMOVE THE
9 DEFINITION FOR REMOTE COMMUNICATION; TO AMEND SECTION 79-11-757,
10 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT BOARD APPROVAL FOR
11 TRANSFERS OF FUNDS GREATER THAN \$10,000.00 IS NOT REQUIRED TO BE
12 IN WRITTEN FORM; TO AMEND SECTION 79-11-759, MISSISSIPPI CODE OF
13 1972, TO PROVIDE THAT HOMEOWNERS ASSOCIATIONS MAY MAINTAIN
14 COMPARABLE INSURANCE COVERAGE FOR ITS DIRECTORS AND OFFICERS AS AN
15 ALTERNATIVE TO FIDELITY BOND COVERAGE; TO PROVIDE THAT THE
16 MANAGING AGENT IS SOLELY RESPONSIBLE FOR ENSURING COMPLIANCE WITH
17 THE PROVISIONS OF THIS ACT; TO PROVIDE THAT ANY BANK OR SAVINGS
18 ASSOCIATION WITH WHOM A TRUST FUND ACCOUNT IS OPENED SHALL BE HELD
19 HARMLESS FROM ANY LIABILITIES, COSTS, EXPENSES, OR FEES INCURRED
20 BY SUCH BANK OR SAVINGS ASSOCIATION AS A RESULT OF ANY ACTION
21 BROUGHT UNDER THIS ACT; TO BRING FORWARD SECTION 79-11-755,
22 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND
23 FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 79-11-751, Mississippi Code of 1972, is
26 amended as follows:

27 79-11-751. (1) A managing agent who accepts or receives
28 funds belonging to a homeowners association shall deposit those



29 funds that are not placed into an escrow account with a bank or
30 savings association or into an account under the control of the
31 association, into a trust fund account maintained by the managing
32 agent in a bank or savings association. All funds deposited by
33 the managing agent in the trust fund account shall be kept in a
34 financial institution and insured by the Federal Deposit Insurance
35 Corporation, and shall be maintained there until disbursed in
36 accordance with written instructions from the association entitled
37 to the funds.

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

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

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

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

51 (d) The managing agent discloses to the board of the
52 homeowners association the nature of the account, how interest
53 will be calculated and paid, whether service charges will be paid



54 to the depository and by whom, and any notice requirements or
55 penalties for withdrawal of funds from the account.

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

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

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

67 (4) Before every regular meeting of the homeowners
68 association and any other time upon request of the association,
69 the managing agent shall provide to the association all of the
70 information described in Section 79-11-753.

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



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

80 (7) As used in Sections 79-11-751 through 79-11-759,
81 "association" means a homeowners association duly organized as a
82 nonprofit corporation organized under the Mississippi Nonprofit
83 Corporation Act, Section 79-11-101 et seq., and which is exempt
84 from taxation under the federal Income Tax Code.

85 (8) As used in Sections 79-11-751 through 79-11-759,
86 "managing agent" is any person who, for compensation or in
87 expectation of compensation, exercises control over the assets of
88 a homeowners association. A "managing agent" does not include a
89 regulated financial institution operating within the normal course
90 of its regulated business practice.

91 **SECTION 2.** Section 79-11-753, Mississippi Code of 1972, is
92 amended as follows:

93 79-11-753. (1) Unless the governing documents of the
94 homeowners association impose more stringent standards at all
95 regularly scheduled meetings, the board of a homeowners
96 association shall * * * review the latest account statements
97 prepared by the financial institutions where the association has
98 its operating and reserve accounts.

99 * * *

100 (2) Unless prohibited by the governing documents of the
101 homeowners association, the board may hold any special or



102 regularly scheduled meeting, or any special or regularly scheduled
103 member meeting, by electronic transmission or other means of
104 remote communication, or by a combination thereof.

105 * * *

106 **SECTION 3.** Section 79-11-757, Mississippi Code of 1972, is
107 amended as follows:

108 79-11-757. Notwithstanding any other law to the contrary,
109 transfers of greater than Ten Thousand Dollars (\$10,000.00) of a
110 homeowners association's total combined reserve and operating
111 account deposits shall not be authorized from the association's
112 reserve or operating accounts without prior * * * board approval.
113 This section shall apply in addition to any other applicable
114 requirements of Sections 79-11-751 through 79-11-759.

115 **SECTION 4.** Section 79-11-759, Mississippi Code of 1972, is
116 amended as follows:

117 79-11-759. (1) Unless the governing documents of the
118 homeowners association require greater coverage amounts, the
119 homeowners association shall maintain fidelity bond or comparable
120 insurance coverage for its directors, officers, and employees in
121 an amount that is equal to or more than the combined amount of the
122 reserves of the association and total assessments for the highest
123 balance during the previous year. The association's * * *
124 coverage shall also include computer fraud and funds transfer
125 fraud, which is not required to include cyber coverage. If the
126 association uses a managing agent, the association's fidelity bond



127 or comparable insurance coverage must additionally include
128 dishonest acts by that person or entity and its employees.

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

135 **SECTION 5.** (1) The managing agent shall be solely
136 responsible for ensuring compliance with the provisions of this
137 act, including those governing the establishment and handling of
138 funds placed into a trust fund account with a bank or savings
139 association as provided for herein.

140 (2) Nothing in this act shall be construed to create any
141 additional requirements or liability for any bank or savings
142 association with whom a trust fund account is opened, or any
143 affiliates, officers, directors, employees or agents of such bank
144 or savings association.

145 (3) Any bank or savings association with whom a trust fund
146 account is opened, and any affiliates, officers, directors,
147 employees, or agents of such bank or savings association, shall be
148 held harmless on a trust fund account opened in accordance with
149 this act from any liabilities, costs, expenses, or fees, including
150 attorney's fees, incurred by such bank or savings association as a
151 result of any action brought pursuant to this act.



152 **SECTION 6.** Section 79-11-755, Mississippi Code of 1972, is
153 brought forward as follows:

154 79-11-755. The review requirements of Section 79-11-753 may
155 be met when every individual member of the board, or a
156 subcommittee of the board consisting of the treasurer and at least
157 one (1) other board member, reviews the documents and statements
158 described in Section 79-11-753 independent of a board meeting, so
159 long as the review is ratified at the board meeting subsequent to
160 the review and that ratification is reflected in the minutes of
161 that meeting.

162 **SECTION 7.** This act shall take effect and be in force from
163 and after July 1, 2022.

