

By: Representatives Yancey, Stamps

To: Banking and Financial Services

HOUSE BILL NO. 933

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 BOARD APPROVAL; TO PROHIBIT THE MANAGING AGENT FROM
6 COMMINGLING 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 COMMINGLED FUNDS
9 SHALL BE SEPARATED BY A CERTAIN DATE; TO REQUIRE THE MANAGING
10 AGENT TO PROVIDE CERTAIN FINANCIAL INFORMATION RELATING TO THE
11 FUNDS OF THE ASSOCIATION AT ALL REGULARLY SCHEDULED MEETINGS; TO
12 AUTHORIZE SPECIAL OR REGULARLY SCHEDULED MEETINGS TO BE HELD BY
13 ELECTRONIC TRANSMISSION OR BY OTHER MEANS OF REMOTE COMMUNICATION;
14 TO REQUIRE HOMEOWNERS' ASSOCIATIONS TO MAINTAIN FIDELITY BOND OR
15 COMPARABLE INSURANCE COVERAGE FOR ITS DIRECTORS AND OFFICERS; TO
16 PROVIDE THAT THE BOND REQUIREMENT SHALL NOT APPLY IF A MAJORITY OF
17 THE BOARD OF A HOMEOWNERS ASSOCIATION VOTE NOT TO HAVE IT; TO
18 PROVIDE THAT THE MANAGING AGENT IS SOLELY RESPONSIBLE FOR ENSURING
19 COMPLIANCE WITH THE PROVISIONS OF THIS ACT; TO PROVIDE THAT ANY
20 BANK OR SAVINGS ASSOCIATION WITH WHOM A TRUST FUND ACCOUNT IS
21 OPENED SHALL BE HELD HARMLESS FROM ANY LIABILITIES, COSTS,
22 EXPENSES, OR FEES INCURRED BY SUCH BANK OR SAVINGS ASSOCIATION AS
23 A RESULT OF ANY ACTION BROUGHT PURSUANT TO THIS ACT; AND FOR
24 RELATED PURPOSES.

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

26 **SECTION 1.** (1) A managing agent who accepts or receives
27 funds belonging to a homeowners association shall deposit those
28 funds that are not placed into an escrow account with a bank or
29 savings association or into an account under the control of the



30 association, into a trust fund account maintained by the managing
31 agent in a bank or savings association. All funds deposited by
32 the managing agent in the trust fund account shall be kept in a
33 financial institution and insured by the Federal Deposit Insurance
34 Corporation, and shall be maintained there until disbursed in
35 accordance with written instructions from the association entitled
36 to the funds.

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

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

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

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

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



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

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

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

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

70 (5) The managing agent shall not commingle the funds of the
71 association with the managing agent's own money or with the money
72 of others that the managing agent receives or accepts. If the
73 managing agent has commingled funds on July 1, 2022, the managing
74 agent shall, no later than September 1, 2022, separate the
75 commingled funds into separate accounts.

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



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

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

90 **SECTION 2.** (1) Unless the governing documents of the
91 homeowners association impose more stringent standards, at all
92 regularly scheduled meetings, the board of a homeowners
93 association shall review the latest account statements prepared by
94 the financial institutions where the association has its operating
95 and reserve accounts.

96 (2) Unless prohibited by the governing documents of the
97 homeowners association, the board may hold any special or
98 regularly scheduled meeting, or any special or regularly scheduled
99 member meeting, by electronic transmission or other means of
100 remote communication, or by a combination thereof.

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



104 one (1) other board member, reviews the documents and statements
105 described in Section 2 of this act independent of a board meeting,
106 so long as the review is ratified at the board meeting subsequent
107 to the review and that ratification is reflected in the minutes of
108 that meeting.

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

116 **SECTION 5.** (1) Unless the governing documents of the
117 homeowners association require greater coverage amounts, the
118 homeowners association shall maintain fidelity bond or comparable
119 insurance coverage for its directors, officers, and employees in
120 an amount that is equal to or more than the combined amount of the
121 reserves of the association and total assessments for the highest
122 balance during the previous year. The association's coverage
123 shall also include computer fraud and funds transfer fraud, which
124 is not required to include cyber coverage.

125 (2) Notwithstanding the provisions of subsection (1) of this
126 section, if a majority of the board of a homeowners association,
127 at a regular or special meeting of the association, vote not to
128 maintain fidelity bond or comparable insurance coverage for its



129 directors, officers, or employees, the provisions of subsection
130 (1) shall not apply to the association.

131 **SECTION 6.** (1) The managing agent shall be solely
132 responsible for ensuring compliance with the provisions of this
133 act, including those governing the establishment and handling of
134 funds placed into a trust fund account with a bank or savings
135 association as provided for herein.

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

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

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

