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AB-1101 Common interest developments: funds: insurance. (2021-2022)

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Assembly Bill No. 1101

CHAPTER 270

An act to amend Sections 5380, 5502, and 5806 of the Civil Code, relating to common interest developments.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1101, Irwin. Common interest developments: funds: insurance.

Existing law, the Davis-Stirling Common Interest Development Act, regulates common interest developments and requires a managing agent, at the written request of the board of directors of the association, to deposit funds the managing agent receives on behalf of the association into a bank, savings association, or credit union in the state if specified requirements are met, including, among other things, that the funds are covered by insurance provided by the federal government.

This bill would require the bank, savings association, or credit union to be insured by the Federal Deposit Insurance Corporation, National Credit Union Administration Insurance Fund, or a guaranty corporation, as specified, and would make conforming changes. The bill would also impose certain limits on the use of funds deposited on behalf of an association, including prohibiting funds from being invested in stocks or high-risk investment options.

Existing law prohibits transfers of greater than \$10,000 or 5% of an association's total combined reserve and operating account deposits, whichever is lower, without written approval from the board.

This bill would instead prohibit transfers of funds out of the association's reserve or operating accounts unless the amount of the transfer is the lesser of five thousand dollars \$5,000 or 5% of the estimated income in the annual operating budget, for associations with 50 or less separate interests, or the lesser of \$10,000 or 5% of the estimated income in the annual operating budget, for associations with 51 or more separate interests without prior written approval from the board.

Existing law prohibits the managing agent from commingling the funds of the association with the managing agent's own money or with the money of others that the managing agent receives or accepts, unless specified requirements are met.

This bill would remove the specified requirements and, without qualification, prohibit the managing agent from commingling the funds of the association with the managing agent's own money or with the money of others that the managing agent receives or accepts.

Existing law requires the association to maintain fidelity bond coverage for its directors, officers, and employees, and requires the fidelity bond coverage to also include computer fraud and funds transfer fraud and, if the association uses a managing agent or management company, coverage for dishonest acts by that person or entity and its employees.

This bill would specifically require the association to maintain crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, for the association and the association's managing agent or management company and would

require the protection against computer and funds transfer fraud to be in an equal amount. The bill would specify that self-insurance does not meet the requirements of these provisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5380 of the Civil Code is amended to read:

5380. (a) A managing agent of a common interest development who accepts or receives funds belonging to the association shall deposit those funds that are not placed into an escrow account with a bank, savings association, or credit union or into an account under the control of the association, into a trust fund account maintained by the managing agent in a bank, savings association, or credit union 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, as defined in Section 31041 of the Financial Code, which is insured by the federal government, or is a guaranty corporation subject to Section 14858 of the Financial Code, and shall be maintained there until disbursed in accordance with written instructions from the association entitled to the funds.

(b) At the written request of the board, the funds the managing agent accepts or receives on behalf of the association shall be deposited into an account in a bank, savings association, or credit union in this state that is insured by the Federal Deposit Insurance Corporation, National Credit Union Administration Insurance Fund, or a guaranty corporation subject to Section 14858 of the Financial Code, provided all of the following requirements are met:

- (1) The account is in the name of the managing agent as trustee for the association or in the name of the association.
- (2) All of the funds in the account are covered by insurance provided by an agency of the federal government or a guaranty corporation subject to Section 14858 of the Financial Code. Those funds may only be deposited in accounts that protect the principal. In no event may those funds be invested in stocks or high-risk investment options.
- (3) 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.
- (4) The managing agent discloses to the board 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.
- (5) No interest earned on funds in the account shall inure directly or indirectly to the benefit of the managing agent or the managing agent's employees.
- (6) Transfers of funds out of the association's reserve or operating accounts shall not be authorized without prior written approval from the board of the association unless the amount of the transfer is less than the following:
 - (A) The lesser of five thousand dollars (\$5,000) or 5 percent of the estimated income in the annual operating budget, for associations with 50 or less separate interests.
 - (B) The lesser of ten thousand dollars (\$10,000) or 5 percent of estimated income in the annual operating budget, for associations with 51 or more separate interests.

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

(d) The managing agent shall not commingle the funds of the association with the managing agent's own money or with the money of others that the managing agent receives or accepts.

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

(f) As used in this section, "completed payment" means funds received that clearly identify the account to which the funds are to be credited.

SEC. 2. Section 5502 of the Civil Code is amended to read:

5502. (a) Notwithstanding any other law, transfers shall not be authorized from the association's reserve or operating accounts without prior written approval from the board of the association unless the amount of the transfer is less than the following:

- (1) The lesser of five thousand dollars (\$5,000) or 5 percent of the estimated income in the annual operating budget, for associations with 50 or less separate interests.

(2) The lesser of ten thousand dollars (\$10,000) or 5 percent of the estimated income in the annual operating budget, for associations with 51 or more separate interests.

(b) This section applies in addition to any other applicable requirements of this part.

SEC. 3. Section 5806 of the Civil Code is amended to read:

5806. Unless the governing documents require greater coverage amounts, the association shall maintain crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, 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 three months. The coverage maintained by the association shall also include protection in an equal amount against computer fraud and funds transfer fraud. If the association uses a managing agent or management company, the association's crime insurance, employee dishonesty coverage, fidelity bond coverage, or their equivalent, shall additionally include coverage for, or otherwise be endorsed to provide coverage for, dishonest acts by that person or entity and its employees. Self-insurance does not meet the requirements of this section.