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AB-2912 Association finances. (2017-2018)

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Assembly Bill No. 2912

CHAPTER 396

An act to amend Sections 5380 and 5500 of, and to add Sections 5501, 5502, and 5806 to, the Civil Code, relating to common interest developments.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2912, Irwin. Association finances.

(1) Existing law, the Davis-Sterling Common Interest Development Act, limits the personal liability of a volunteer officer or director of an association of a common interest development in excess of the coverage of specified insurance if certain conditions are met.

This bill would require the association to maintain fidelity bond coverage, as specified.

(2) The act requires a managing agent of a common interest development who accepts or receives funds belonging to the association to, upon written request by the board, deposit those funds into an interest-bearing account in a bank, savings association, or credit union in this state, provided certain requirements are met.

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

(3) The act requires, unless the governing documents impose more stringent requirements, the association board to review various financial documents and statements on at least a quarterly basis.

This bill would require those reviews on a monthly basis. The bill would also require monthly reviews of the check register, monthly general ledger, and delinquent assessment receivable reports and would authorize these requirements to be met when every member of the board, or a subcommittee of the board including the treasurer and at least one other board member, reviews these documents and statements independent of a board meeting if the review is ratified at the board meeting subsequent to the review and that ratification is reflected in the minutes of that meeting.

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

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

SECTION 1. It is the intent of the Legislature, in enacting this act, to take important initial steps to protect the owners in a common interest development from fraudulent activity by those entrusted with the management of the association's finances, recognizing that still further action may be necessary to achieve that goal.

SEC. 2. 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, 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 interest-bearing account in a bank, savings association, or credit union in this state, 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.

(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 except that the funds of various associations may be commingled as permitted pursuant to subdivision (d).

(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 greater than ten thousand dollars (\$10,000) or 5 percent of an association's total combined reserve and operating account deposits, whichever is lower, shall not be authorized from the account without prior written approval from the board of the association.

(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, unless all of the following requirements are met:

(1) The managing agent commingled the funds of various associations on or before February 26, 1990, and has obtained a written agreement with the board of each association that the managing agent will maintain a fidelity and surety bond in an amount that provides adequate protection to the associations as agreed upon by the managing agent and the board of each association.

(2) The managing agent discloses in the written agreement whether the managing agent is deriving benefits from the commingled account or the bank, credit union, or savings institution where the moneys will be on deposit.

(3) The written agreement provided pursuant to this subdivision includes, but is not limited to, the name and address of the bonding companies, the amount of the bonds, and the expiration dates of the bonds.

(4) If there are any changes in the bond coverage or the companies providing the coverage, the managing agent discloses that fact to the board of each affected association as soon as practical, but in no event more than 10 days after the change.

(5) The bonds assure the protection of the association and provide the association at least 10 days' notice prior to cancellation.

(6) Completed payments on the behalf of the association are deposited within 24 hours or the next business day and do not remain commingled for more than 10 calendar days.

(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. 3. Section 5500 of the Civil Code is amended to read:

5500. Unless the governing documents impose more stringent standards, the board shall do all of the following:

- (a) Review, on a monthly basis, a current reconciliation of the association's operating accounts.
- (b) Review, on a monthly basis, a current reconciliation of the association's reserve accounts.
- (c) Review, on a monthly basis, the current year's actual operating revenues and expenses compared to the current year's budget.
- (d) Review, on a monthly basis, the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.
- (e) Review, on a monthly basis, an income and expense statement for the association's operating and reserve accounts.
- (f) Review, on a monthly basis, the check register, monthly general ledger, and delinquent assessment receivable reports.

SEC. 4. Section 5501 is added to the Civil Code, to read:

5501. The review requirements of Section 5500 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 5500 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.

SEC. 5. Section 5502 is added to the Civil Code, to read:

5502. Notwithstanding any other law, transfers of greater than ten thousand dollars (\$10,000) or 5 percent of an association's total combine reserve and operating account deposits, whichever is lower, 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 part.

SEC. 6. Section 5806 is added to the Civil Code, to read:

5806. Unless the governing documents require greater coverage amounts, the 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 three months. The association's fidelity bond shall also include computer fraud and funds transfer fraud. If the association uses a managing agent or management company, the association's fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees.