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Re: House Bill 2823 – Investments of Planned Communities and Condominium Associations

Dear Chair Holvey and Members of the Committee on Consumer Protection and Government Efficiency:

On behalf of the Department of Consumer and Business Services (DCBS), I would like to offer some general comments on the proposal for changes to allowable investments for planned communities and condominiums. DCBS does not directly regulate investment activities of homeowner associations, but we believe that the proposed statutory changes would allow these entities to invest in more volatile investments and could result in increased complaints to DCBS concerning brokerage activities. We offer the following comments to assist the Committee in its deliberation on this proposal.

Under current Oregon law, members of homeowners' associations and planned communities share the cost of items like property maintenance and management. Funds paid for such purposes must be deposited in an account that has deposit insurance from the Federal Deposit Insurance Corporation (FDIC). Persons serving on homeowner association boards or representing such boards have certain fiduciary responsibilities related to fees and charges. This is reinforced by the statutory requirement that such associations only invest fees and other funds in relatively conservative investment vehicles backed by the full faith and credit of the U.S. government.

Our goal with this letter is to inform the committee of the differences in insurance offered by the Securities Investor Protection Corporation (SIPC) and the Federal Deposit Insurance Corporation (FDIC).

The proposal infers that SIPC insurance is comparable to deposit insurance provided by the FDIC for banks. Unfortunately, equating SPIC to FDIC is not accurate. SIPC coverage is limited to certain securities that are held for specific purposes. SIPC itself warns investors that the corporation "does not offer to investors the same blanket protection that the Federal Deposit Insurance Corporation provides to bank depositors."[1] SIPC states on its website that "Congress specifically considered creating a Federal Broker-Dealer Insurance Corporation, but lawmakers wisely concluded that such a designation would be both misleading and out of step in the risk-based investment marketplace that is so different from the world of banking."[2]

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[1] http://www.sipc.com/How/Brochure.aspx
[2] http://www.sipc.com/Who/NotFDIC.aspx

Basically, the FDIC guarantees the principal when a consumer deposits it in a bank. SIPC, at best, guarantees that the shares an investor purchases will be restored if lost. SIPC does not protect the value of the investment.

SIPC only takes action when a brokerage firm is closed due to bankruptcy or other financial difficulties and customer assets are missing. The FDIC can reimburse a consumer for the amount in their account (up to $250,000 per person, per institution) if a bank fails and it is not assumed by another bank. SIPC can return purchased stocks to a consumer through an intervention in a court proceeding: SIPC frequently attempts recovery through protective orders filed with a court that is hearing a related matter (such as a bankruptcy proceeding). Although cases with no fraud and organized records take only a couple months, claims to recover cash, stock, or other securities from a SIPC member often take several years to resolve. A protracted proceeding could leave a homeowner association without adequate funds to provide maintenance or other management activities.

In summary, while none of the proposed changes affect DCBS regulation of the securities industry, it is likely that changes to holding investments for homeowner associations will subject these funds to greater risks and potential losses of principal. We appreciate the opportunity to comment and are available for further discussions on this proposal.

Sincerely,

David C. Tatman
Administrator
Division of Finance and Corporate Securities
Department of Consumer and Business Services