

1 HB410
2 165536-1
3 By Representative Davis
4 RFD: Commerce and Small Business
5 First Read: 02-APR-15

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8 SYNOPSIS: Under existing law, after the time has
9 passed for a purchaser to cancel a condominium
10 contract, certain deposits may be withdrawn for
11 construction purposes.

12 This bill would define certain terms
13 involved in a condominium contract.

14 This bill would require that the escrow
15 agent be located in state and that a declarant may
16 accept a letter of credit in lieu of a portion or
17 all of the deposit.

18 This bill would allow a declarant to
19 withdraw certain deposits to pay hard costs
20 associated with construction under certain
21 circumstances and would limit the withdrawal.

22 This bill would require that the contract
23 provide clear written notice that certain deposits
24 may be used for certain hard costs.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 35-8A-410, Code of Alabama 1975,
4 relating to the Alabama Uniform Condominium Act; to define
5 certain terms relating to escrow and building costs; to
6 specify conditions of escrow deposit and use; and to require
7 written notice in the contract that deposits may be used under
8 certain conditions.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 35-8A-410, Code of Alabama 1975,
11 is amended to read as follows:

12 "§35-8A-410.

13 "~~(a) Except as provided in subsection (b), any~~
14 ~~deposit made in connection with the purchase or reservation of~~
15 ~~a unit from a person required to deliver an offering statement~~
16 ~~pursuant to Section 35-8A-402(c) shall be placed in escrow and~~
17 ~~held either in this state or in the state where the unit is~~
18 ~~located in an account designated solely for that purpose by a~~
19 ~~licensed title insurance company, an attorney, a licensed real~~
20 ~~estate broker, or an institution whose accounts are insured by~~
21 ~~a governmental agency or instrumentality until (i) delivered~~
22 ~~to the declarant at closing; (ii) delivered to the declarant~~
23 ~~because of purchaser's default under a contract to purchase~~
24 ~~the unit; or (iii) refunded to the purchaser. Except as~~
25 ~~provided in subsection (b) and as otherwise provided herein,~~
26 ~~the funds representing the deposit shall be held in an~~
27 ~~interest bearing account and the interest shall belong to the~~

1 ~~party entitled to the principal deposit. Notwithstanding~~
2 ~~anything in this subsection to the contrary, funds deposited~~
3 ~~pursuant to a reservation agreement that provides the~~
4 ~~prospective buyer is not bound to purchase a unit and that the~~
5 ~~prospective buyer may choose to have the deposit returned to~~
6 ~~him or her, need not bear interest unless the reservation~~
7 ~~agreement specifically states that the deposit will bear~~
8 ~~interest.~~

9 As used in this section, except as otherwise
10 provided, the following terms shall have the following
11 meanings:

12 "(1) HARD COSTS. Any and all costs associated with
13 the actual building and construction of the condominium
14 project, including, but not limited to, site preparation,
15 building materials, shell features, interior enclosures,
16 fit-out costs, mechanical and electrical systems, and
17 fixtures. This term does not include financing costs,
18 compensation paid to architects, engineers, consultants, sales
19 persons, or attorneys, advertising or other marketing costs.

20 "(2) QUALIFIED PURCHASER. Shall mean (i) an
21 individual, a group of individuals, or an entity owned
22 directly or indirectly solely by individuals where each
23 individual shall have an income of more than two hundred
24 thousand dollars (\$200,000) for the calendar year immediately
25 preceding the date of the purchaser's signing of the purchase
26 contract, or a joint income with his or her spouse of three
27 hundred thousand dollars (\$300,000) for the calendar year

1 immediately preceding the date of the purchaser's signing of
2 the purchase contract, with a good faith reasonable
3 expectation to maintain the same level of income for the
4 current calendar year; or (ii) an individual, a group of
5 individuals, or an entity owned directly or indirectly solely
6 by individuals where each individual shall have a net worth,
7 either individually or jointly with his or her spouse,
8 exceeding one million dollars (\$1,000,000) on the date of the
9 purchaser's signing of the purchase contract. Any purchaser
10 providing a written statement to declarant attesting that
11 purchaser satisfies the qualifications of this subsection
12 shall be conclusively presumed to be a qualified purchaser
13 within the meaning of this section and any such statement may
14 be relied upon by declarant for purposes of this section.

15 "(3) SUBSTANTIALLY COMPLETED. Means the issuance of
16 a certificate of occupancy for the improvements, or the
17 equivalent authorization issued by the governmental body
18 having jurisdiction, and, in a jurisdiction where no
19 certificate of occupancy or equivalent authorization is
20 issued, shall mean substantial completion of construction of
21 the improvements in accordance with the applicable plans and
22 specifications.

23 "(b) Notwithstanding subsection (a), if the time
24 period during which a purchaser may cancel an agreement to
25 purchase a unit pursuant to Section 35-8A-408 has expired
26 without the purchaser's having exercised the right to cancel
27 and construction of the project in which the unit is located

1 is not substantially completed, if the purchase contract
2 between the declarant and the purchaser so provides, and if
3 the declarant has acquired the land on which the condominium
4 will be built, the declarant may do either of the following:
5 (1) Withdraw deposited funds in excess of 10 percent of the
6 purchase price from the escrow account for use in the actual
7 construction and development of the condominium project
8 provided at least 10 percent of the purchase price remains on
9 deposit after any withdrawals, or (2) after the declarant has
10 caused a bond to be issued by a surety insurer licensed in
11 this state in favor of the purchaser, withdraw deposited funds
12 from the escrow account for use in the actual construction and
13 development of the condominium. The declarant may not withdraw
14 more than the face amount of the bond. The bond shall name the
15 purchaser as the beneficiary thereof and shall be payable to
16 the purchaser if the purchaser obtains a final judgment
17 against declarant requiring the declarant to return the
18 deposit to the purchaser pursuant to the purchase contract.
19 The declarant may satisfy this bond requirement by causing one
20 or more blanket bonds to be issued in favor of all purchasers
21 whose deposited funds may be used pursuant to this subsection.
22 In the event of a withdrawal pursuant to this subsection, the
23 withdrawn funds need not bear interest and the declarant shall
24 not owe the purchaser interest on any withdrawn funds if the
25 purchase contract provides that interest on withdrawn funds
26 will not accrue or be owed. However, no part of these funds
27 may be used for salaries, commissions, or expenses of

1 ~~salespersons or for advertising purposes. A purchase contract~~
2 ~~that permits use of deposits for these purposes shall include~~
3 ~~the following legend conspicuously printed or stamped in~~
4 ~~boldfaced type on the first page of the contract and~~
5 ~~immediately above the place for the signature of the~~
6 ~~purchaser: ANY DEPOSIT MAY BE USED FOR CONSTRUCTION PURPOSES~~
7 ~~BY DECLARANT. Additionally, an offering statement given to a~~
8 ~~prospective purchaser whose deposit may be used as provided in~~
9 ~~this subsection shall contain the same legend, which may be~~
10 ~~contained within the body of the offering statement. In~~
11 ~~determining whether more than 10 percent of the purchase price~~
12 ~~has been deposited, the face amount of any letter of credit~~
13 ~~accepted by declarant as part of the deposit shall be~~
14 ~~considered.~~

15 Except as provided in subsection (c), any deposit
16 made in connection with the purchase or reservation of a unit
17 from a person required to deliver an offering statement
18 pursuant to Section 35-8A-402(c) shall be placed in escrow and
19 held in this state by a licensed title insurance company, an
20 attorney, a licensed real estate broker, or an institution
21 whose accounts are insured by a governmental agency or
22 instrumentality until (i) delivered to the declarant at
23 closing; (ii) delivered to the declarant because of
24 purchaser's default under a contract to purchase the unit; or
25 (iii) refunded to the purchaser. Declarant shall be permitted
26 to accept a letter of credit in lieu of a portion or all of
27 the deposit. Notwithstanding the foregoing, the escrow agent

1 shall not be located outside of the state. Except as provided
2 in subsection (c) and as otherwise provided herein, the funds
3 representing the deposit shall be held in an interest bearing
4 account and the interest shall belong to the party entitled to
5 the principal deposit. Notwithstanding anything in this
6 subsection to the contrary, funds deposited pursuant to a
7 reservation agreement that provides the prospective purchaser
8 is not bound to purchase a unit and that the prospective
9 purchaser may choose to have the deposit returned to him or
10 her, need not bear interest unless the reservation agreement
11 specifically states that the deposit will bear interest.

12 "(c) Notwithstanding subsection (b), the declarant
13 shall be permitted to: (i) withdraw deposited funds in excess
14 of 10 percent of the purchase price from the escrow account
15 for use in paying the hard costs incurred in the actual
16 building and construction of the condominium project provided
17 that at least 10 percent of the purchase price remains on
18 deposit after any such withdrawals; or (ii) after the
19 declarant has caused a bond to be issued by a surety insurer
20 licensed in this state in favor of the purchaser for the full
21 amount of the escrow deposit to be withdrawn, withdraw
22 deposited funds from the escrow account up to the maximum
23 amount in the escrow account for use in paying the hard costs
24 incurred in the actual building and construction of the
25 condominium project, upon satisfaction of each of the
26 following conditions:

1 "(1) The time period during which a purchaser may
2 cancel an agreement to purchase a unit pursuant to Section
3 35-8A-408 has expired without the purchaser having properly
4 and timely exercised the right to cancel and construction of
5 the project in which the unit is located is not substantially
6 completed.

7 "(2) If the purchase contract between the declarant
8 and the purchaser authorizes the declarant to withdraw
9 deposited funds pursuant to this subsection.

10 "(3) The declarant has acquired an interest in the
11 land on which the condominium project will be built.
12 Notwithstanding the preceding, the existence of a mortgage on
13 the declarant's interest in the land shall not preclude the
14 declarant's satisfaction of this condition.

15 "(4) The purchaser is a qualified purchaser.

16 "(d) If declarant elects to post the aforesaid bond
17 pursuant to item (c)(ii), the declarant may not withdraw more
18 than the face amount of the bond, the bond shall name the
19 purchaser as the beneficiary thereof and shall be payable to
20 the purchaser if the purchaser obtains a final judgment
21 against declarant requiring the declarant to return the
22 deposit to the purchaser pursuant to the purchase contract,
23 and the declarant may satisfy this bond requirement by causing
24 one or more blanket bonds to be issued in favor of all
25 purchasers whose deposited funds may be used pursuant to this
26 subsection. In the event of a withdrawal pursuant to this
27 subsection, the withdrawn funds need not bear interest and the

1 declarant shall not owe the purchaser interest on any
2 withdrawn funds if the purchase contract provides that
3 interest on withdrawn funds will not accrue or be owed to the
4 purchaser.

5 "(e) A purchase contract that permits use of
6 deposits in accordance with items (c)(i) and (c)(ii) shall
7 include the following legend conspicuously printed or stamped
8 in boldfaced type on the first page of the contract and
9 immediately above the place for the signature of the
10 purchaser: DEPOSITS MAY BE USED BY DECLARANT FOR HARD COSTS
11 INCURRED IN THE ACTUAL BUILDING AND CONSTRUCTION OF THE
12 CONDOMINIUM PROJECT PURSUANT TO SECTION 35-8A-410, CODE OF
13 ALABAMA 1975. Additionally, an offering statement given to a
14 prospective purchaser whose deposit may be used as provided in
15 this subsection shall contain the same legend, which may be
16 contained within the body of the offering statement. The funds
17 deposited into escrow pursuant to subsection (b) and
18 subsection (c) may be held in one or more escrow accounts by
19 the escrow agent. If only one escrow account is used, then the
20 escrow agent must maintain separate accounting records for
21 each purchaser and the amounts separately covered under
22 subsections (b) and (c). For the purposes of item (c)(i), in
23 determining whether more than 10 percent of the purchase price
24 has been deposited, the face amount of any letter of credit
25 accepted by declarant as part of the deposit shall be
26 considered."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.