

By: Representative Guice

To: Ways and Means

HOUSE BILL NO. 1053

1 AN ACT TO CREATE NEW SECTION 89-9-39, MISSISSIPPI CODE OF
2 1972, TO REQUIRE CONDOMINIUM DEVELOPERS TO PAY CERTAIN AMOUNTS
3 PAID BY BUYER INTO AN ESCROW ACCOUNT; TO PROVIDE CERTAIN REMEDIES
4 FOR THE TERMINATION OR DEFAULT OF THE DEVELOPMENT CONTRACT; TO
5 PROVIDE PENALTIES FOR FAILURE TO COMPLY WITH THE REQUIREMENTS OF
6 THIS SECTION; TO REQUIRE THE DEVELOPER TO ESTABLISH THE ESCROW
7 ACCOUNT WITH A CERTAIN APPROVED ESCROW AGENT; TO CREATE NEW
8 SECTION 89-9-41, MISSISSIPPI CODE OF 1972, TO REQUIRE DEVELOPERS
9 TO PROVIDE WARRANTIES TO EXTEND FOR A CERTAIN PERIOD TO PURCHASERS
10 UPON COMPLETION OF THE BUILDING CONTAINING THE CONDOMINIUM UNIT;
11 AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** The following shall be codified as Section
14 89-9-39, Mississippi Code of 1972:

15 89-9-39. (1) If a developer contracts to sell a condominium
16 parcel and the construction, furnishing, and landscaping of the
17 property submitted or proposed to be submitted to condominium
18 ownership has not been substantially completed in accordance with
19 the plans and specifications and representations made by the
20 developer, the developer shall pay into an escrow account all
21 payments up to ten percent (10%) of the sale price received by the
22 developer from the buyer towards the sale price. The escrow agent
23 shall give to the purchaser a receipt for the deposit, upon
24 request. Default determinations and refund of deposits shall be
25 governed by the escrow release provision of this subsection.
26 Funds shall be released from escrow as follows:

27 (a) If a buyer properly terminates the contract under
28 its terms, the funds shall be paid to the buyer together with any
29 interest earned.

30 (b) If the buyer defaults in the performance of his or
31 her obligations under the contract of purchase and sale, the funds
32 shall be paid to the developer together with any interest earned.

33 (c) If the contract does not provide for the payment of
34 any interest earned on the escrowed funds, interest shall be paid
35 to the developer at the closing of the transaction.

36 (d) If the funds of a buyer have not been previously
37 disbursed in accordance with the provisions of this subsection,
38 they may be disbursed to the developer by the escrow agent at the
39 closing of the transaction, unless before the disbursement the
40 escrow agent receives from the buyer written notice of a dispute
41 between the buyer and developer.

42 (2) All payments that are in excess of the ten percent (10%)
43 of the sale price described in subsection (1) and that have been
44 received before completion of construction by the developer from
45 the buyer on a contract for purchase of a condominium parcel shall
46 be held in a special escrow account established as provided in
47 subsection (1) and controlled by an escrow agent and may not be
48 used by the developer before closing the transaction, except as
49 provided in subsection (3) or except for refund to the buyer. If
50 the money remains in this special account for more than three (3)
51 months and earns interest, the interest shall be paid as provided
52 in subsection (1).

53 (3) If the contract for sale of the condominium unit so
54 provides, the developer may withdraw escrow funds in excess of ten
55 percent (10%) of the purchase price from the special account
56 required by subsection (2) when the construction of improvements
57 has begun. He or she may use the funds in the actual construction
58 and development of the condominium property in which the unit to
59 be sold is located. However, no part of these funds may be used
60 for salaries, commissions, or expenses of salespersons or for
61 advertising purposes. A contract that permits use of the advance
62 payments for these purposes shall include the following legend

63 conspicuously printed or stamped in boldfaced type on the first
64 page of the contract and immediately above the place for the
65 signature of the buyer: "ANY PAYMENT IN EXCESS OF TEN PERCENT
66 (10%) OF THE PURCHASE PRICE MADE TO THE DEVELOPER BEFORE CLOSING
67 UNDER THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE
68 DEVELOPER."

69 (4) The term "completion of construction" means issuance of
70 a certificate of occupancy for the entire building or improvement,
71 or the equivalent authorization issued by the governmental body
72 having jurisdiction, and, in a jurisdiction where no certificate
73 of occupancy or equivalent authorization is issued, it means
74 substantial completion of construction, finishing, and equipping
75 of the building or improvements according to the plans and
76 specifications.

77 (5) The failure to comply with the provisions of this
78 section renders the contract voidable by the buyer, and, if
79 voided, all sums deposited or advanced under the contract shall be
80 refunded with interest at the highest rate then being paid on
81 savings accounts, excluding certificates of deposit, by savings
82 and loan associations or banks in the area in which the
83 condominium property is located.

84 (6) If a developer enters into a reservation agreement, the
85 developer shall pay into an escrow account all reservation deposit
86 payments. Reservation deposits shall be payable to the escrow
87 agent, who shall give to the prospective purchaser a receipt for
88 the deposit, acknowledging that the deposit is being held under
89 the requirements of this subsection. The funds may be placed in
90 either interest-bearing or noninterest-bearing accounts, provided
91 that the funds shall at all reasonable times be available for
92 withdrawal in full by the escrow agent. The developer shall
93 maintain separate records for each condominium or proposed
94 condominium for which deposits are being accepted. Upon written
95 request to the escrow agent by the prospective purchaser or

96 developer, the funds shall be immediately and without
97 qualification refunded in full to the prospective purchaser. Upon
98 that refund, any interest shall be paid to the prospective
99 purchaser, unless otherwise provided in the reservation agreement.
100 A reservation deposit shall not be released directly to the
101 developer except as a down payment on the purchase price
102 simultaneously with or after the execution of a contract. Upon
103 the execution of a purchase agreement for a unit, any funds paid
104 by the purchaser as a deposit to reserve the unit under a
105 reservation agreement, and any interest thereon, shall cease to be
106 subject to the provisions of this subsection and shall instead be
107 subject to the provisions of subsections (1) through (5).

108 (7) Any developer who willfully fails to comply with the
109 provisions of this section concerning establishment of an escrow
110 account, deposits of funds into escrow, and withdrawal of funds
111 from escrow shall be guilty of a felony, and, upon conviction
112 thereof, be punished by a fine of not less than Five Thousand
113 Dollars (\$5,000.00) nor more than Ten Thousand Dollars
114 (\$10,000.00), or by imprisonment for a term not to exceed five (5)
115 years, or both. The failure to establish an escrow account or to
116 place funds in an escrow account is prima facie evidence of an
117 intentional and purposeful violation of this section.

118 (8) Every escrow account required by this section shall be
119 established with a bank; a savings and loan association; an
120 attorney who is a member of The Mississippi Bar; a real estate
121 broker registered with the Mississippi Real Estate Commission; a
122 title insurer authorized to do business in this state, acting
123 through either its employees or a licensed Mississippi title
124 insurance agent; or any financial lending institution having a net
125 worth in excess of Five Million Dollars (\$5,000,000.00). The
126 escrow agent shall not be located outside the state unless, under
127 the escrow agreement, the escrow agent submits to the jurisdiction
128 of the courts of this state for any cause of action arising from

129 the escrow. Every escrow agent shall be independent of the
130 developer, and no developer or any officer, director, affiliate,
131 subsidiary, or employee of a developer may serve as escrow agent.
132 Escrow funds may be invested only in securities of the United
133 States or an agency thereof or in accounts in institutions the
134 deposits of which are insured by an agency of the United States.

135 **SECTION 2.** The following shall be codified as Section
136 89-9-41, Mississippi Code of 1972:

137 89-9-41. (1) The developer of a condominium shall be deemed
138 to have granted to the purchaser of each unit an implied warranty
139 of fitness and merchantability for the purposes or uses intended
140 as follows:

141 (a) As to each unit, a warranty for three (3) years
142 beginning with the completion of the building containing the unit.

143 (b) As to the personal property that is transferred
144 with, or appurtenant to, each unit, a warranty which is for the
145 same period as that provided by the manufacturer of the personal
146 property, beginning with the date of closing of the purchase or
147 the date of possession of the unit, whichever is earlier.

148 (c) As to all other improvements for the use of unit
149 owners, a three-year warranty beginning with the date of
150 completion of the improvements.

151 (d) As to all other personal property for the use of
152 unit owners, a warranty that shall be the same as that provided by
153 the manufacturer of the personal property.

154 (e) As to the roof and structural components of a
155 building or other improvements and as to mechanical, electrical,
156 and plumbing elements serving improvements or a building, except
157 mechanical elements serving only one (1) unit, a warranty for a
158 period beginning with the completion of construction of each
159 building or improvement and continuing for three (3) years
160 thereafter or one (1) year after owners other than the developer

161 obtain control of the association, whichever occurs last, but in
162 no event more than five (5) years.

163 (f) As to all other property that is conveyed with a
164 unit, a warranty to the initial purchaser of each unit for a
165 period of one (1) year from the date of closing of the purchase or
166 the date of possession, whichever occurs first.

167 (2) The contractor, and all subcontractors and suppliers,
168 grant to the developer and to the purchaser of each unit implied
169 warranties of fitness as to the work performed or materials
170 supplied by them as follows:

171 (a) For a period of three (3) years from the date of
172 completion of construction of a building or improvement, a
173 warranty as to the roof and structural components of the building
174 or improvement and mechanical and plumbing elements serving a
175 building or an improvement, except mechanical elements serving
176 only one (1) unit.

177 (b) For a period of one (1) year after completion of
178 all construction, a warranty as to all other improvements and
179 materials.

180 (3) "Completion of a building or improvement" means issuance
181 of a certificate of occupancy for the entire building or
182 improvement, or the equivalent authorization issued by the
183 governmental body having jurisdiction, and in jurisdictions where
184 no certificate of occupancy or equivalent authorization is issued,
185 it means substantial completion of construction, finishing, and
186 equipping of the building or improvement according to the plans
187 and specifications.

188 (4) These warranties are conditioned upon routine
189 maintenance being performed, unless the maintenance is an
190 obligation of the developer or a developer-controlled association.

191 (5) The warranties provided by this section shall inure to
192 the benefit of each owner and his or her successor owners and to
193 the benefit of the developer.

194 (6) Residential condominiums may be covered by an insured
195 warranty program underwritten by a licensed insurance company
196 registered in this state, provided that the warranty program meets
197 the minimum requirements of this section; to the degree that the
198 warranty program does not meet the minimum requirements of this
199 section, the requirements shall apply.

200 **SECTION 3.** This act shall take effect and be in force from
201 and after July 1, 2006.