

By: Senator(s) Hewes

To: Insurance

SENATE BILL NO. 2948

1 AN ACT TO PROVIDE CERTAIN REQUIREMENTS ON SALE OR RESERVATION
2 DEPOSITS PRIOR TO CLOSING ON CONDOMINIUMS; TO REQUIRE THE
3 DEVELOPER TO KEEP CERTAIN RECORDS; TO PROVIDE A PENALTY FOR
4 VIOLATIONS; TO REQUIRE AN IMPLIED WARRANTY OF FITNESS AND
5 MERCHANTABILITY FOR CONDOMINIUMS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** For the purpose of property and casualty
8 insurance risk classification, condominiums shall be classed as
9 residential property.

10 **SECTION 2.** (1) If a developer contracts to sell a
11 condominium parcel and the construction, furnishing, and
12 landscaping of the property submitted or proposed to be submitted
13 to condominium ownership has not been substantially completed in
14 accordance with the plans and specifications and representations
15 made by the developer in the disclosures required by this act, the
16 developer shall pay into an escrow account all payments up to ten
17 percent (10%) of the sale price received by the developer from the
18 buyer towards the sale price. The escrow agent shall give to the
19 purchaser a receipt for the deposit, upon request. In lieu of the
20 foregoing, the escrow agent has the discretion to accept other
21 assurances, including, but not limited to, a surety bond or an
22 irrevocable letter of credit in an amount equal to the escrow
23 requirements of this section. Default determinations and refund
24 of deposits shall be governed by the escrow release provision of
25 this subsection. Funds shall be released from escrow as follows:

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

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

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

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

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

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

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

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

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

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

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

107 (7) Any developer who willfully fails to comply with the
108 provisions of this section concerning establishment of an escrow
109 account, deposits of funds into escrow, and withdrawal of funds
110 from escrow is guilty of a felony. The failure to establish an
111 escrow account or to place funds in an escrow account is prima
112 facie evidence of an intentional and purposeful violation of this
113 section.

114 (8) Every escrow account required by this section shall be
115 established with a bank; a savings and loan association; an
116 attorney who is a member of The Mississippi Bar; a real estate
117 broker registered under the laws of this state; a title insurer
118 authorized to do business in this state, acting through either its
119 employees or a title insurance agent licensed under the laws of
120 this state; or any financial lending institution having a net
121 worth in excess of Five Million Dollars (\$5,000,000.00). The
122 escrow agent shall not be located outside the state unless,
123 pursuant to the escrow agreement, the escrow agent submits to the
124 jurisdiction of the state and the courts of this state for any
125 cause of action arising from the escrow. Every escrow agent shall
126 be independent of the developer, and no developer or any officer,
127 director, affiliate, subsidiary or employee of a developer may

128 serve as escrow agent. Escrow funds may be invested only in
129 securities of the United States or an agency thereof or in
130 accounts in institutions the deposits of which are insured by an
131 agency of the United States.

132 **SECTION 3.** (1) The developer shall be deemed to have
133 granted to the purchaser of each unit an implied warranty of
134 fitness and merchantability for the purposes or uses intended as
135 follows:

136 (a) As to each unit, a warranty for three (3) years
137 commencing with the completion of the building containing the
138 unit.

139 (b) As to the personal property that is transferred
140 with, or appurtenant to, each unit, a warranty which is for the
141 same period as that provided by the manufacturer of the personal
142 property, commencing with the date of closing of the purchase or
143 the date of possession of the unit, whichever is earlier.

144 (c) As to all other improvements for the use of unit
145 owners, a three-year warranty commencing with the date of
146 completion of the improvements.

147 (d) As to all other personal property for the use of
148 unit owners, a warranty which shall be the same as that provided
149 by the manufacturer of the personal property.

150 (e) As to the roof and structural components of a
151 building or other improvements and as to mechanical, electrical
152 and plumbing elements serving improvements or a building, except
153 mechanical elements serving only one (1) unit, a warranty for a
154 period beginning with the completion of construction of each
155 building or improvement and continuing for three (3) years
156 thereafter or one (1) year after owners other than the developer
157 obtain control of the association, whichever occurs last, but in
158 no event more than five (5) years.

159 (f) As to all other property which is conveyed with a
160 unit, a warranty to the initial purchaser of each unit for a

161 period of one (1) year from the date of closing of the purchase or
162 the date of possession, whichever occurs first.

163 (2) The contractor, and all subcontractors and suppliers,
164 grant to the developer and to the purchaser of each unit implied
165 warranties of fitness as to the work performed or materials
166 supplied by them as follows:

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

173 (b) For a period of one (1) year after completion of
174 all construction, a warranty as to all other improvements and
175 materials.

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

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

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

190 (6) Residential condominiums may be covered by an insured
191 warranty program underwritten by a licensed insurance company
192 registered in this state, provided that such warranty program
193 meets the minimum requirements of this section; to the degree that

194 such warranty program does not meet the minimum requirements of
195 this section, such requirements shall apply.

196 **SECTION 4.** This act shall take effect and be in force from
197 and after July 1, 2006.