

By: Representative Peranich

To: Tourism; Judiciary A

HOUSE BILL NO. 1100

1 AN ACT TO PROVIDE CERTAIN REQUIREMENTS REGARDING SALE OR
2 RESERVATION DEPOSITS BEFORE CLOSING ON CONDOMINIUM SALES; TO
3 REQUIRE THE DEVELOPER TO KEEP CERTAIN RECORDS; TO PROVIDE A
4 PENALTY FOR VIOLATIONS; TO REQUIRE AN IMPLIED WARRANTY OF FITNESS
5 AND 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 classified 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 before 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 that are in excess of the ten percent (10%)
42 of the sale price described in subsection (1) and that have been
43 received before completion of construction by the developer from
44 the buyer on a contract for purchase of a condominium parcel shall
45 be held in a special escrow account established as provided in
46 subsection (1) of this section and controlled by an escrow agent
47 and may not be used by the developer before closing the
48 transaction, except as provided in subsection (3) of this section
49 or except in the case of a refund to the buyer. If the money
50 remains in this special account for more than three (3) months and
51 earns interest, the interest shall be paid as provided in
52 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 which 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 DEVELOPER BEFORE CLOSING
67 PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY
68 THE DEVELOPER.

69 (4) The term "completion of construction" means the issuance
70 of a certificate of occupancy for the entire building or
71 improvement, or the equivalent authorization issued by the
72 governmental body having jurisdiction, and, in a jurisdiction
73 where no certificate of occupancy or equivalent authorization is
74 issued, it means substantial completion of construction,
75 finishing, and equipping of the building or improvements according
76 to the plans and 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 in the area in which the condominium
83 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 pursuant
89 to the requirements of this subsection. The funds may be placed
90 in either interest-bearing or noninterest-bearing accounts,
91 provided that the funds shall at all reasonable times be available
92 for 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 such 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 subsequent to the execution of a contract.
103 Upon the execution of a purchase agreement for a unit, any funds
104 paid by the purchaser as a deposit to reserve the unit pursuant to
105 a reservation agreement, and any interest thereon, shall cease to
106 be subject to the provisions of this subsection and shall instead
107 be 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 is guilty of a felony. The failure to establish an
112 escrow account or to place funds in an escrow account is prima
113 facie evidence of an intentional and purposeful violation of this
114 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (6) Residential condominiums may be covered by an insured
192 warranty program underwritten by a licensed insurance company

193 registered in this state, provided that such warranty program
194 meets the minimum requirements of this section; to the degree that
195 such warranty program does not meet the minimum requirements of
196 this section, such requirements shall apply.

197 **SECTION 4.** This act shall take effect and be in force from
198 and after July 1, 2007.