**South Carolina General Assembly**

118th Session, 2009-2010

**S. 105**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Rankin and Rose

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Introduced in the Senate on January 13, 2009

Currently residing in the Senate Committee on **Judiciary**

Summary: Horizontal Property Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/10/2008 Senate Prefiled

12/10/2008 Senate Referred to Committee on **Judiciary**

1/13/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\01-13-09.docx)‑119

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1/23/2009 Senate Referred to Subcommittee: Malloy (ch), Ford, Massey, S.Martin, Mulvaney

**VERSIONS OF THIS BILL**

[12/10/2008](file:///p:\pprever\2009-10\105_20081210.docx)

**A** **BILL**

TO AMEND CHAPTER 3, TITLE 27 OF THE 1976 CODE, RELATING TO THE HORIZONTAL PROPERTY ACT, BY ADDING ARTICLE 3, CONDOMINIUM SALES OR RESERVATION ESCROW ACCOUNTS, TO PROVIDE A DEVELOPER MUST PLACE IN AN ESCROW ACCOUNT ALL FUNDS RECEIVED TOWARD THE PURCHASE PRICE OF A CONDOMINIUM PURSUANT TO A CONTRACT TO SELL A CONDOMINIUM PARCEL IF THE CONSTRUCTION, FURNISHING, AND LANDSCAPING OF THE PROPERTY IS NOT SUBSTANTIALLY COMPLETE AT THE TIME OF THE RECEIPT OF THE FUNDS, TO PROVIDE THAT RESERVATION DEPOSITS MUST BE PLACED IN AN ESCROW ACCOUNT, TO PROVIDE FOR THE MAINTENANCE OF THE ESCROW ACCOUNTS, AND TO PROVIDE FOR PENALTIES FOR VIOLATIONS OF THIS ARTICLE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 31, Title 27 of the 1976 Code is amended by adding:

“Article 3

Condominium Sales or Reservation Escrow Accounts

Section 27‑31‑500. As used in this article:

(1) ‘Completion of construction’ means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(2) ‘Condominium parcel’ means a unit, together with the undivided share in the common elements appurtenant to the unit.

(3) ‘Developer’ means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium who has acquired the unit for his or her own occupancy, nor does it include a lessee, sole owner, or co‑owner of a building which creates a condominium by conversion pursuant to Article 2 of this chapter.

(4) ‘Reservation agreement’ means an agreement between the developer and a purchaser for the disposition of a condominium parcel in a planned condominium development.

(5) ‘Reservation deposit’ means an deposit of monies by a purchaser as consideration for a reservation agreement.

(6) ‘Unit’ means a part of the condominium property that is subject to exclusive ownership.

Section 27‑31‑510. (A) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer to the buyer, the developer shall pay into an escrow account all deposits and other monies received by the developer from the buyer towards the sale price. The escrow agent shall give to the buyer a receipt for the deposit.

(B) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this article.

Section 27‑31‑520. (A) All escrow accounts maintained pursuant to this article must be located in an insured financial institution authorized to conduct business in South Carolina and the account must be in the developer’s corporate name.

(B) All escrow deposits required by Section 27‑31‑510 must be made within forty‑eight hours of receipt of the funds, excluding Saturdays, Sundays, and bank holidays.

(C) All deposits and other monies received by a developer and placed in an escrow account pursuant to a Section 27‑31‑510(A) shall be released from the escrow account as follows:

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

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

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

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

(D) All funds placed in an escrow account by a developer pursuant to Section 27‑31‑510(B) may be placed in either interest‑bearing or non‑interest‑bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsection (C).

(E) The developer shall maintain separate records for each condominium or proposed condominium for which deposits or other payments are being accepted and placed in an escrow account.

(F) A developer, when required by this article to establish and maintain an escrow account, also shall maintain, in his designated principal place of business, a recordkeeping system consisting of:

(1) a journal or an accounting system which records the chronological sequence in which escrowed funds are received and disbursed. For funds received, the journal or accounting system must include the date of receipt, the name of the party from whom the money was received, identification of the property, the date of deposit, the depository, the payee, and the check numbers, dates, and amounts. A running balance must be maintained for each entry of a receipt or disbursement. The journal or accounting system must provide a means of reconciling the accounts;

(2) escrow account deposit documents shall identify the developer and the buyer unless other appropriate written memoranda are maintained;

(3) a monthly reconciliation of each escrow account except where there has been no deposit or disbursement during that month. The reconciliation must include a written worksheet comparing the reconciled escrow balance with the journal balance and with the ledger total to ensure agreement.

(G) A developer may not commingle monies or other property in an escrow account.

(H) Records required by this chapter must be maintained for a minimum of five years by the developer.

Section 27‑31‑530. The failure to establish an escrow account or to place funds in an escrow account is prima facie evidence of a willful violation of this article.

Section 27‑31‑540. The failure to comply with the provisions of this article renders a contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

Section 27‑31‑550. A person who willfully violates this article is guilty of a misdemeanor and, upon conviction, for a first offense must be fined not more than five thousand dollars for each violation. Conviction for a second offense is a misdemeanor and the person must be fined not more than five thousand dollars or imprisoned not more than six months, or both, for each violation. Conviction for a third or subsequent offense is a felony and the person must be fined not more than five thousand dollars or imprisoned not more than five years, or both, for each violation. For purposes of this article, a willful violation occurs when the person committing the violation knew or should have known that his conduct was a violation of this chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

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