

CONDOMINIUM ACT (EXCERPT)
Act 59 of 1978

559.203b Section inapplicable to business condominium unit; release of deposits or amounts retained in escrow; conditions; substantial completion; furnishing escrow agent with evidence of adequate security in place of retaining funds; certificate; notice to developer; release of interest paid on amounts escrowed; escrow agent deemed independent party; liability; certification by licensed professional architect or engineer; "licensed professional engineer or architect" defined.

Sec. 103b.

(1) This section shall not apply to a business condominium unit.

(2) Deposits in escrow with an escrow agent required under sections 83 and 84 shall be released pursuant to those sections upon cancellation of a preliminary reservation agreement or withdrawal from a purchase agreement, and in all other cases shall be retained and released pursuant to this section and condominium documents which are not inconsistent with this section.

(3) Except as provided in subsection (5), amounts required to be retained in escrow in connection with the purchase of a unit shall be released to the developer pursuant to subsection (6) only upon all of the following:

(a) Issuance of a certificate of occupancy for the unit, if required by local ordinance.

(b) Conveyance of legal or equitable title to the unit to the purchaser.

(c) Receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect either confirming that those portions of the phase of the project in which the condominium unit is located and which on the condominium subdivision plan are labeled "must be built" are substantially complete, or determining the amount necessary for substantial completion thereof.

(d) Receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect either confirming that recreational or other facilities which on the condominium subdivision plan are labeled "must be built", whether located within or outside of the phase of the project in which the condominium unit is located, and which are intended for common use, are substantially complete, or determining the amount necessary for substantial completion thereof.

(4)

(a) Substantial completion and the estimated cost for substantial completion of the items described in subsections (3)(c) and (3)(d) and in subsection (6) shall be determined by a licensed professional engineer or architect, as provided in subsection (4)(b), subject to the following:

(i) Items referred to in subsection (3)(c) shall be substantially complete only after all utility mains and leads, all major structural components of buildings, all building exteriors and all sidewalks, driveways, landscaping and access roads, to the extent such items are designated on the condominium subdivision plan as "must be built", are substantially complete in accordance with the pertinent plans therefor.

(ii) If the estimated cost of substantial completion of any of the items referred to in subsection (3)(c) and (d) cannot be determined by a licensed professional engineer or architect due to the absence of plans, specifications, or other details that are sufficiently complete to enable such a determination to be made, such cost shall be the minimum expenditure specified in the recorded master deed or amendment for completion thereof. To the extent that any item referred to in subsection (3)(c) and (d) is specifically depicted on the condominium subdivision plan, an estimate of the cost of substantial completion prepared by a licensed professional engineer or architect shall be required in place of the minimum expenditure specified in the recorded master deed or amendment.

(b) A structure, element, facility or other improvement shall be deemed to be substantially complete when it can be reasonably employed for its intended use and, for purposes of certification under this section, shall not be required to be constructed, installed, or furnished precisely in accordance with the specifications for the project. A certificate of substantial completion shall not be deemed to be a certification as to the quality of the items to which it relates.

(5) In place of retaining funds in escrow under subsection (3), the developer may, if the escrow agreement so provides, furnish an escrow agent with evidence of adequate security, including, without limitation, an irrevocable letter of credit, lending commitment, indemnification agreement, or other resource having a value, in the judgment of the escrow agent, of not less than the amount retained pursuant to subsection (3).

(6) Upon receipt of a certificate issued pursuant to subsection (3)(c) and (d) determining the amounts necessary for substantial completion, the escrow agent may release to the developer all funds in escrow in excess of the amounts determined by the issuer of such certificate to be necessary for substantial completion. In addition, upon receipt by the escrow agent of a certificate signed by a licensed professional engineer or architect confirming substantial completion in accordance with the pertinent plans of an item for which funds have been deposited in escrow, the escrow agent shall release to the developer the amount of such funds specified by the issuer of the certificate as being attributable to such substantially completed item. However, if the amounts remaining in escrow

after such partial release would be insufficient in the opinion of the issuer of such certificate for substantial completion of any remaining incomplete items for which funds have been deposited in escrow, only the amount in escrow in excess of such estimated cost to substantially complete shall be released by the escrow agent to the developer. Notwithstanding a release of escrowed funds that is authorized or required by this section, an escrow agent may refuse to release funds from an escrow account if the escrow agent, in its judgment, has sufficient cause to believe the certificate confirming substantial completion or determining the amount necessary for substantial completion is fraudulent or without factual basis.

(7) Not earlier than 9 months after closing the sale of the first unit in a phase of a condominium project for which escrowed funds have been retained under subsection (3)(c) or for which security has been provided under subsection (5), an escrow agent, upon the request of the association or any interested co-owner, shall notify the developer of the amount of funds deposited under subsection (3)(c) or security provided under subsection (5) for such purpose that remains, and of the date determined under this subsection upon which those funds can be released. In the case of a recreational facility or other facility intended for general common use, not earlier than 9 months after the date on which the facility was promised in the condominium documents to be completed by the developer, an escrow agent, upon the request of the association or any interested co-owner, shall notify the developer of the amount of funds deposited under subsection (3)(d) or security provided under subsection (5) for such purpose that remains, and of the date determined under this subsection upon which those funds can be released. Three months after receipt of a request pertaining to funds described in subsection (3)(c) or (3)(d), funds that have not yet been released to the developer may be released by the escrow agent for the purpose of completing incomplete improvements for which the funds were originally retained, or for a purpose specified in a written agreement between the association and the developer entered into after the transitional control date. The agreement may specify that issues relating to the use of the funds be submitted to arbitration. The escrow agent may release funds in the manner provided in such an agreement or may initiate an interpleader action and deposit retained funds with a court of competent jurisdiction. In any interpleader action, the circuit court shall be empowered, in its discretion, to appoint a receiver to administer the application of the funds. Any notice or request provided for in this subsection shall be in writing.

(8) If interest is paid on the amounts escrowed under this act, that interest shall be released in the same manner as provided for release of funds in this section except that the parties may, by written agreement, provide that interest on funds refunded to a depositor upon withdrawal may be paid to the developer.

(9) The escrow agent in the performance of its duties under this section shall be deemed an independent party not acting as the agent of the developer, any purchaser, co-owner, or other interested party. So long as the escrow agent relies upon any certificate, cost estimate, or determination made by a licensed professional engineer or architect, as described in this act, the escrow agent shall have no liability whatever to the developer or to any purchaser, co-owner, or other interested party for any error in such certificate, cost estimate, or determination, or for any act or omission by the escrow agent in reliance thereon. The escrow agent shall be relieved of all liability upon release, in accordance with this section, of all amounts deposited with it pursuant to this act.

(10) A licensed professional architect or engineer undertaking to make a certification under this section shall be held to the normal standard of care required of a member of that profession in determining substantial completion and the estimated cost of substantial completion under this act, but such architect or engineer shall not be required to have designed the improvement or item or to have inspected or to have otherwise exercised supervisory control thereof during the course of construction or installation of the improvement or item with respect to which the certificate is delivered. The certification by a licensed professional architect or engineer shall not be construed to limit the developer's liability for any defect in construction.

(11) For purposes of this section, "licensed professional engineer or architect" means a member of those professions who satisfies all requirements of the laws of this state for the practice of the profession, and who is not an employee of the developer or of a firm in which the developer or an officer or director of the developer is a principal or holds 10% or more of the outstanding shares of that firm.

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