

FIRST REGULAR SESSION

# SENATE BILL NO. 444

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TAYLOR.

Read 1st time February 28, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

0292S.04I

## AN ACT

To amend chapter 429, RSMo, by adding thereto one new section relating to establishing escrow accounts to satisfy mechanics' liens with respect to certain real estate transactions, with penalty provisions.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 429, RSMo, is amended by adding thereto one new section, to be known as section 429.365, to read as follows:

**429.365. 1. In all offers-to-purchase, sales agreements, or written contracts made between a building contractor or a developer and a prospective buyer of a residential home, the building contractor or developer shall notify the buyer that:**

**(1) Twenty percent of the purchase price shall be deposited in an escrow account with a title agency or title insurance company authorized to insure real property within this state;**

**(2) The building contractor or developer will maintain a corporate surety bond in the amount equal to twenty percent of the purchase price of the residential home; or**

**(3) The building contractor or developer will provide an affidavit complying with the requirements of subsection 7 of this section.**

**2. Prior to or upon the final settlement or closing on the residential home, the building contractor or developer shall set aside twenty percent of the purchase price in the escrow account established under subsection 1 of this section. The title agency or title insurance company shall serve as the escrow agent and shall act in a fiduciary capacity with respect to such account. The escrow account shall be**

established in a federally insured bank, savings and loan association, or credit union. All interest earned on the deposited funds shall be credited to the escrow account. Funds deposited in the escrow account shall be held to satisfy valid mechanics' liens filed by contractors, subcontractors, or other materialmen who have provided materials or labor with respect to the new residential home.

3. The monies shall be held in escrow no longer than six months following the final closing or settlement date on the residential home and shall be released to the building contractor or developer upon such date unless the title agency or title insurance company receives notice from a contractor, subcontractor, materialman, or other person that a mechanic's lien has been filed pursuant to sections 429.010 to 429.340. If any mechanics' liens have been filed pursuant to the provisions of sections 429.010 to 429.340, the monies shall be held in escrow until the parties' rights to the escrowed funds have been determined by a court of competent jurisdiction or by agreement between the principal contractor and the subcontractor, materialman, or other person who filed the claim.

4. Funds held in the escrow account shall be available to satisfy valid mechanics' lien claims that are successfully adjudicated and for the payment of court costs and reasonable attorney fees associated with the claim.

5. Any building contractor or developer who willfully fails to comply with the provisions of this section shall be guilty of a class A misdemeanor. The failure to place funds in an escrow account, as required by this section, within five business days of the closing date shall be prima facie evidence of a violation of this section.

6. In lieu of and as an alternative to the requirements of subsection 2 of this section, a building contractor or developer may obtain and maintain a corporate surety bond issued by a company licensed to do business in this state, or letter of credit, or other acceptable financial instrument in an amount equal to twenty percent of the purchase price. Such surety bond, letter of credit, or other acceptable financial instrument shall be used to ensure payment of mechanics' liens in the same manner as provided for in subsections 3 and 4 of this section.

7. In lieu of and as an alternative to the requirements of establishing an escrow account under subsection 2 of this section, or obtaining a corporate surety bond under subsection 6 of this section, a building contractor or developer may provide to the buyer, or the buyer's agent, an affidavit stating that the building contractor or developer has paid each of the building contractor's or developer's subcontractors, laborers, or materialmen in full for all labor and materials provided. In the event, however, that the building contractor or developer has not paid each of the subcontractors, laborers, or materialmen in full, the building contractor or developer shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each subcontractor, laborer, or materialman to whom the payment is owed. Any building contractor or developer who intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section shall, upon conviction, be guilty of a class D felony.

8. The remedies provided for in this section are not exclusive and shall be in addition to any other procedures, rights or remedies that exist with respect to any other provisions of law or common law.

9. As used in this section, the following terms mean:

(1) "Building contractor", any individual, partnership, corporation, or entity who, for compensation, constructs and sells residential homes;

(2) "Buyer", any individual, partnership, corporation, or entity purchasing any estate or interest in a residential home;

(3) "Closing", the point of time at which legal title to the real property shall transfer from grantor to grantee;

(4) "Residential home", a multi-family, single family, or townhouse dwelling constructed for use as a residence.

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