

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 1462 (Glazer)  
Version: April 8, 2024  
Hearing Date: April 23, 2024  
Fiscal: Yes  
Urgency: No  
ID

**SUBJECT**

Subdivisions: disbursements of deposits

**DIGEST**

This bill provides a process through which a developer of a subdivision may disburse a buyer's deposit on a new development to pay for construction costs, and exempts such sales from the three percent liquidated damages cap for real estate sales contracts.

**EXECUTIVE SUMMARY**

Traditional real estate transactions involve a buyer providing a deposit that is an advance payment of a portion of the total purchase price of the real estate. This deposit is placed into an escrow account to be held by a third party until the sale is completed or specified other events take place. Current law also states that any liquidated damages provision of a real estate sales contract, which specify a predetermined amount of damages a buyer would owe the seller if the buyer breaches the contract, is valid when the liquidated damages actually paid are no more than three percent of the purchase price, unless the buyer demonstrates that the amount is unreasonable. This bill proposes to permit a developer to disburse the buyer's deposit from escrow to pay for construction costs for the project, if the developer complies with certain requirements and submits certain information to the Department of Real Estate (DRE) to Review. This bill requires that the developer obtain security to assure the construction of the project, either as a completion or performance bond, an irrevocable letter of credit, or other substantially similar instrument, guarantee, or security approved by DRE. This bill requires that DRE review the documents provided by the developer within 30 days, and requires the developer to provide a specified disclosure in its preliminary and final public reports. This bill also exempts from the three percent liquidated damages cap any sale in which the deposit is disbursed to pay construction costs, as specified by this bill. SB 1462 is author-sponsored and supported by a variety of pro-housing and development groups, and is opposed by the California Association of Realtors. It passed

out of the Senate Business, Professions and Economic Development Committee by a vote of 7 to 2.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Department of Real Estate (DRE) to administer the Real Estate Law. (Bus. & Prof. Code § 10000 et seq.)
- 2) Establishes the Subdivided Lands Act to regulate the sale of subdivided lands in California. (Bus. & Prof. Code § 11000 et seq.)
- 3) Defines “subdivided lands” and “subdivision” as improved or unimproved land in California that is divided, or proposed to be divided, into five or more lots or parcels for sale, lease, or financing, with narrow exemptions. (Bus. & Prof. Code §§ 11000, 11000.1.)
- 4) Defines “escrow” as any transaction in which a neutral third party holds documents of ownership of either real or personal property for a buyer and seller. The buyer and seller provide instructions on the terms and requirements of the transaction to the neutral third party. When all the terms and requirements are met, the neutral third party transfers title to the buyer and the seller receives their funds. (Fin. Code § 17003.)
- 5) Makes it a violation for an escrow agent to unlawfully disburse or cause the disbursement of escrow funds other than in accordance with the Escrow Law. (Fin. Code § 17414(a).)
- 6) Subjects any person who violates any provision of the Escrow Law to a civil penalty of up to \$2,500 for each violation. (Fin. Code § 17701(a).)
- 7) Requires that any person intending to offer subdivided lands for sale or lease must file with DRE an application for a public report with specified information. Requires DRE to issue the public report after examination of the subdivision, unless there are grounds for denial. (Bus. & Prof. Code §§ 11010, 11018.1.)
- 8) Prohibits a person from selling, leasing, or offering for sale or lease any lots or parcels in a subdivision without first obtaining a public report from DRE, except as provided. (Bus. & Prof. Code § 11018.2.)
- 9) Prohibits a subdivider, owner, or agent from selling or leasing lots or parcels in a subdivision when an encumbrance on the subdivision does not have a release clause, unless any of the following occur:

- a) The entire deposit advanced by the purchaser or lessee is deposited into an escrow account;
  - b) The title to the subdivision is held in trust under an agreement of trust acceptable to the DRE Commissioner, until a release from the encumbrance is obtained;
  - c) A bond to the state is furnished to the Commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, which shall provide for the return of the moneys paid or advanced by the purchaser or lessee; or
  - d) There is conformance to such other alternative requirement or method with the Commissioner deems acceptable as provided. (Bus. & Prof. Code § 11013.2.)
- 10) Prohibits a subdivider, owner, or agent from selling or leasing lots or parcels in a subdivision not subject to an encumbrance, unless one of the following is complied with:
- a) The entire money paid or advanced by the purchaser or lessee is deposited into an escrow account to be held until the legal title is delivered to the purchaser or lessee, or the purchaser or lessee defaults and a determination is made as to the disposition of the money, or the subdivider orders the return of the money to the purchaser or lessee;
  - b) A bond to the state is furnished to the Commissioner for the benefit and protection of the purchaser or lessee of the lots or parcels, which provides for the return of the money paid or advanced by any purchaser or lessee;
  - c) An association approved by the Commissioner files with the Commissioner a certificate that certifies that the owner, subdivider, or agent is a member of the association and that there is on file a bond as provided in (b);
  - d) Proof is furnished that a security, as defined, has been given, or is unnecessary as determined by the Commissioner, and that a lien and completion bond has been written and issued, as specified;
  - e) Or the entire money paid or advanced by the purchaser or lessee is deposited into an escrow account, or, at the election of the owner, subdivider, or agent, to be disbursed for the construction on the lots or parcels within the subdivision, as specified. (Bus. & Prof. Code § 11013.4.)
- 11) Provides that a provision in a contract to purchase and sell residential property, as defined, that provides that all or any part of the payment made by the buyer constitutes liquidated damages to the seller if the buyer fails to complete the purchase of the property is valid if the amount actually paid pursuant to that provision is three percent or less of the purchase price, unless the buyer establishes that the amount is unreasonable. (Civ. Code § 1675.)

This bill:

- 1) Authorizes a developer of a subdivision to use a purchaser's deposit held in escrow for the purchase of real property before closing to fund costs associated with construction, meeting zoning and building ordinances and codes, architecture, engineering, finance, legal representation, and other incidental expenses.
- 2) Establishes a number of conditions that must be met in order for a purchaser's deposit to be disbursed to a developer, including that:
  - a) DRE has issued an effective date for the developer's preliminary public report;
  - b) the developer has recorded the project's declaration and bylaws; and
  - c) the developer has submitted to the DRE a project budget showing all costs that must be paid to complete the project and evidence that the developer has sufficient funds to pay all costs to complete the project.
- 3) Requires the developer to submit documentation to DRE when a purchaser's funds are disbursed before project completion, including:
  - a) a copy of the executed construction contract;
  - b) a copy of the project's building permit; and
  - c) evidence of sufficient security to ensure completion of the project, which can include a completion or performance bond, an irrevocable letter of credit, or another substantially similar instrument, guarantee, or security approved by DRE.
- 4) Specifies that disbursement can only be made for costs identified in the project budget submitted to DRE.
- 5) Requires a notice in the developer's preliminary and final public report for the project to inform purchasers that their deposits may be disbursed before closing and the conditions and the risk that the purchaser may not be refunded their deposit if the development is not completed.
- 6) Requires the DRE to conduct a complete review of any document submitted within 30 days.
- 7) Authorizes the DRE to charge a fee to offset costs related to reviewing documents, which cannot exceed the reasonable cost of review.
- 8) Allows developers to use all moneys from a conveyed title (home purchase) to fund costs associated with construction, meeting zoning and building ordinances and codes, architecture, engineering, finance, legal representation, and other incidental expenses.

- 9) Requires all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, to be deposited by the developer under an escrow arrangement into a federally insured, interest-bearing account designated solely for that purpose.
- 10) Exempts from the limitation on liquidated damages that may be withheld from deposits at three percent of the purchase price when a buyer defaults, allowing the developer to keep any amount in liquidated damages when a buyer defaults, if the developer has disbursed funds to pay construction costs under the bill's provisions.

### COMMENTS

#### 1. Author's statement

According to the author:

One of the biggest impediments to building condos is financing. This bill allows developers to use deposits made by buyers during the pre-sale process for construction with ironclad consumer protections ensure buyers are refunded if the project does not move forward. From 2011 to 2021, almost no new homes in California were condos because developers cannot secure the necessary financing to build condos. Comparatively, construction for single family homes and apartments are not facing the same challenges. California requires developers to refund any homebuyer's deposit over three percent if the buyer cancels their contract. This limit restricts the interest-free cash developers can use for construction. It also encourages buyers to speculate. They may cancel their contracts on the same project and put it at-risk for failure. Developers take on a lot of financial risk since lenders underwrite risk into the loan, interest rates vary with the economy, and their insurance costs are high. Therefore, providing more interest-free cash to developers would lower their financial risk, allow them to bargain for lower insurance rates, and expand the supply of condos which will help lower prices. This bill includes consumer protections by requiring developers to be bonded or otherwise financially insured to refund buyers if the project does not move forward. In addition, the bill requires oversight from the Department of Real Estate. To properly address the housing crisis, it is crucial for California to reduce costs and risks for developers, such as increasing the availability of interest-free financing while still ensuring consumer protections against unscrupulous developers.

#### 2. The traditional home buying process

Homeownership has long been considered an essential part of the creation and generation of wealth for Californian families. It provides greater stability and lower housing costs over time, and allows families to accrue wealth through the relatively

reliable increase in value that homes usually experience. Scholarship also typically has identified racial gaps in homeownership as a major factor in the racial disparity in generational wealth.

Yet, in recent years, housing in California has become so expensive that homeownership is now out of reach for the vast majority of Californians. The price of homes has increased so significantly that only the wealthiest of prospective buyers can afford to purchase. In mid-2022, the median price of a single-family home in California set an astounding record high of \$898,980.<sup>1</sup> This represented a ten percent increase in the price of homes over the previous year, and the priciest housing market in the nation. Such a median price would require an annual income of more than double the state's median household income. Accordingly, it should be no surprise that homeownership rates in California are the second lowest in the country, at 56 percent from 2016 to 2020.<sup>2</sup>

There typically are two types of home ownership: single-family homes, and multi-family homes. Multi-family homes include condominiums, apartment complexes, townhomes, stock cooperatives, limited-equity housing cooperatives, and other similar types of dwellings in which multiple units are contained within one building, share a wall, or are part of a development sharing common space. These types of dwellings are what are typically considered a subdivision, which California law defines as improved or unimproved land that is divided or proposed to be divided for sale, lease, or financing into five or more lots or parcels. (Bus. & Prof. Code §§ 11000, 11004.5.) The Subdivided Lands Act (SLA) regulates subdivisions to protect purchasers of subdivided interests in these subdivisions from fraud, deceit, or misrepresentation.<sup>3</sup> The SLA prohibits any subdivision from being offered for sale until the Commissioner of the Department of Real Estate (DRE) has issued a subdivision public report. (Bus. & Prof. Code § 11010.) This report includes information and disclosures regarding the subdivision and the developer's commitments regarding facilities and improvements for the subdivision. A developer of the subdivision must meet certain requirements and provide documentation of sufficient financial arrangements for the completion of the improvements and facilities that will be included in the subdivision.

Typically, a real estate transaction in California involves using an escrow process once a buyer has signed a real estate purchase agreement. In this process, the buyer provides a percentage of the total sales price for the unit to a third party, such as an escrow agent, to hold until specified events take place and the sale closes. Under the escrow process, the parties agree ahead of time of the conditions and events that must take place for the

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<sup>1</sup> Ryan Lillis, "Unaffordable: California home prices break yet another record. How do we compare to US?" The Sacramento Bee (Jun. 29, 2022), available at <https://www.sacbee.com/news/california/article262865873.html>.

<sup>2</sup> Marisol Cuellar Mejia et al, "Homeownership Trends in California," Public Policy Institute of California (Jun. 14, 2022), available at <https://www.ppic.org/blog/homeownership-trends-in-california/>.

<sup>3</sup> Alberto Esquivel & Jaime R. Alvaayay, A Guide to Understanding Residential Subdivisions in California, California Department of Real Estate (2014), p. 54.

escrow funds to be distributed or transferred from the third party. The laws that prescribe the escrow process are contained in the California Escrow Law. (Fin. Code § 17000 et seq.)

There are currently a limited number of specified instances in which a buyer's escrow deposit may be used by the developer or seller before the close of the sale. Under Section 11013.2 of the Business and Professions Code, if a development project is subject to a trust, deed, mortgage, or any other lien or encumbrance that the developer utilized as part of funding the development (this is typically a construction loan), a "release clause" must be included that provides the purchaser with legal title free and clear of the encumbrance upon compliance with the terms and conditions of the purchase. (Bus. & Prof. Code § 11013.1.) If there is no release clause, the developer can only sell the unit if the deposit from the buyer is placed in an escrow depository, a bond is furnished for the benefit and protection of purchasers of such lots or parcels providing for the return of the funds paid by the buyer, or if the developer conforms to other similar requirements. (Bus. & Prof. Code § 11013.2.) The law also provides for a way to utilize a bond in place of holding a buyer's deposit in escrow under specified conditions if the subdivision is not subject to an encumbrance. (Bus. & Prof. Code § 11013.4.) Like when an encumbrance is present, this section requires what is a purchase money bond, which protects the buyer's deposit when a developer does not deliver the unit and legal title to the property the buyer purchased.

State law also limits what a seller can take from the buyer's deposit when a buyer backs out of a sale. Sometimes, real estate sales contracts include "liquidated damages" provisions, which provide for an amount of the deposit or total sales price of the property that a seller is automatically entitled to keep when the buyer defaults, or fails to follow through with the purchase of the unit. State law includes a limitation on liquidated damages that caps the maximum liquidated damages that a seller can require at three percent of the sales price of the property. (Civ. Code § 1675.) Under the law, a three percent liquidated damages clause is valid unless the buyer establishes that it is unreasonable. Such a cap ensures that a buyer does not forfeit a tremendous portion of the sales price of the home and lose out on their savings for a down payment if something goes wrong and they need to cancel the sale. Thus, if a buyer defaults, they can at most be penalized for the default by three percent of the purchase price.

3. SB 1462 allows developers to use the escrow deposit to fund construction interest-free

SB 1462 proposes to provide an arrangement through which a developer of a new construction subdivision can utilize the purchaser's deposit and not comply with the liquidated damages cap in Civil Code Section 1675. It allows a developer to have the purchaser's deposit disbursed before the closing of the sale for the purpose of paying project construction costs, if the developer provides DRE with a project budget, evidence of the availability of sufficient funds to pay all costs required to complete the

project, and certain other conditions are met. These conditions include that the developer has recorded the project's declaration and bylaws, and DRE has issued an effective date for the project's preliminary public report. The developer must submit certain documents to DRE, and DRE is required to review the documentation within 30 days. In addition, SB 1462 requires a developer to provide satisfactory evidence to DRE of security for the completion of construction, which is described as a completion or performance bond, an irrevocable letter of credit, or another substantially similar instrument, guarantee, or security approved by DRE. A performance bond would guarantee the performance of the developer under the real estate sales contract i.e., that the construction be completed. It would be a different bond from the purchase moneys bond currently allowed in law in place of holding a buyer's deposit in escrow, as purchase money bonds ensure that the funds of the buyer can be returned if the sale is not completed.

SB 1462 also requires that certain disclosures be made in the preliminary and final public report, warning that a purchaser's deposit may be disbursed to pay construction costs, and that the purchaser may not be refunded if the project is not completed.

Lastly, SB 1462 exempts real estate sales contracts between a developer utilizing SB 1462's provisions for disbursing the buyer's deposit from the three percent liquidated damages cap. This means that, if a developer disburses the buyer's deposit to pay for construction costs, the developer would not be obligated to give any portion of the deposit back to the buyer if the buyer defaults. Essentially, there would be no cap to the amount of liquidated damages that a developer could require.

#### 4. Amendments

To address concerns relating to a buyer providing informed consent for the disbursement and to Section 2 of the bill that provides for "early close," the author has accepted amendments that eliminate Section 2 of the bill and require that the developer obtain a buyer's informed consent before being able to disburse the deposit to pay for construction costs. These amendments also clarify that DRE will be reviewing and approving the developer's request to disburse the buyer's deposit, consistent with the author's intent. A mock-up of these amendments is attached at the end of this analysis.

#### 5. Arguments in support

According to the California Home Building Alliance, which is in support of SB 1462:

The California Home Building Alliance (HBA) is committed to supporting legislation and administrative actions that will increase housing production in our state. We write to you in support of Senate Bill 1462 (Glazer), to allow developers to use deposits made by buyers during the pre-sale process for

condominiums with oversight by the California Department of Real Estate and a surety bond in place to protect the buyer and ensure the project is completed.

This coalition includes trade associations representing small and large businesses, for-profit and not-for-profit home builders, realtors, developers, employers, affordable housing infill builders, and non-profit research, education, and advocacy organizations focused on increasing the supply of new housing and improving the quality and affordability of housing in California.

According to research conducted by the Lambda Alpha International, the global land economics society, states such as Hawaii and Washington and the Canadian province of British Columbia produce ten times the number of condominiums that California does on an annual basis.

Only about 3,000 condominiums are built each year in California because of the risk developers and lenders associate with them, in part due to the statutes that govern pre-sales and deposits.

One important reason condo production is depressed in California is due to the state's limit on developers' ability to utilize homebuyers' deposits when constructing condo projects. There is a de facto three percent earnest money deposit cap, requiring any funds over three percent to be fully refunded to the buyer if they decide to terminate the deal. This limit restricts the cash developers use to purchase the land and construction and forces them to use more expensive debt. It also encourages buyers purchase the condos speculatively. They may cancel their contracts and put the project at risk for failure.

In order to create more affordable homeownership opportunities in California, we must reduce the cost and risk for developers, such as increasing the availability of interest-free financing while still requiring strong consumer protections.

## 6. Arguments in opposition

According to the California Association of Realtors, which is opposed to SB 1462:

The California Association of REALTORS® writes to OPPOSE SB 1462 (Glazer), which will be heard shortly in the Senate Judiciary Committee. SB 1462 is out of step with this state's strong consumer protection laws and creates a substantial risk of massive financial loss to buyers desperate to purchase a new home.

SB 1462 not only eliminates the state's liquidated damages cap for new condominium development but also enables developers to use a buyer's good faith deposit towards any costs of the project. Effectively, SB 1462 allows

developers to keep the buyer's ENTIRE deposit regardless of the percentage of the sales price.

Allowing developers to use buyer funds for project costs, construction costs, financing costs, etc. means the buyer is effectively lending money to the developer at 0% interest. If the developer does not have the funds for basic construction, they should not be in the business. Having a home purchase where a buyer is warned they might not get a home they sacrificed to afford because the developer does not complete the project and may not get their money back is unprecedented. It is contrary to California's long history of consumer protection to simply warn a prospective home buyer that they might not get a home they sacrificed to afford because the developer does not complete the project. This would be an unprecedented change to current law. Californians are desperate for homeownership, and might enter these predatory contracts, but C.A.R. cannot support a bill which creates such a substantial risk of harm.

Californians are desperate for homeownership, which makes them highly susceptible to entering these predatory contracts. We cannot support a bill which creates such a substantial risk of harm to potential homeowners and must ask for a "NO" Vote on SB 1462. There are no amendments that will resolve our concerns.

### SUPPORT

California Community Builders  
California YIMBY  
City of San Jose  
East Bay YIMBY  
Fremont for Everyone  
Grow the Richmond  
Housing Action Coalition  
How to ADU  
East Bay for Everyone  
People for Housing  
Mountain View YIMBY  
Napa-Solano for Everyone  
Northern Neighbors  
Peninsula for Everyone  
People for Housing Orange County  
Progress Noe Valley  
San Francisco YIMBY  
Santa Cruz YIMBY  
Santa Rosa YIMBY  
SLOCo YIMBY

South Bay YIMBY  
South Side Forward  
SPUR  
Streets for People  
Urban Environmentalists  
Ventura County YIMBY  
YIMBY Action

**OPPOSITION**

California Association of Realtors

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 2020 (Fuentes, Ch. 665, Stats. 2008) requires sellers of residential condominium to perform an accounting in certain circumstances, and provides for the factors to be taken into account when determining the reasonableness of a liquidated damages amount in the event of a buyer's default.

**PRIOR VOTES:**

Senate Business, Professions and Economic Development Committee (Ayes 7, Noes 2)

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**PROPOSED COMMITTEE AMENDMENTS FOR SB 1462**

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 11013.7 is added to the Business and Professions Code, to read:

**11013.7.** (a) Subject to the conditions set forth in this section, a purchaser's deposit that is held in escrow pursuant to a binding sales contract for a lot or parcel within a subdivision **that is not yet constructed or developed** may be disbursed before closing to pay for project construction costs, including, in the case of a conversion, for any repair necessary to cure a violation of any county zoning and building ordinance and code, for architectural, engineering, finance, and legal fees, and for any other incidental expense of the project.

(b) The disbursement of a purchaser's deposit before closing may be permitted only if all of the following conditions are met:

(1) The Department of Real Estate has issued an effective date for the developer's preliminary public report for the project.

(2) The developer has recorded the project's declaration and bylaws.

(3) The developer has submitted to the Department of Real Estate both of the following:

(A) A project budget showing all costs that are required to be paid in order to complete the project, including lease payments, real property taxes, construction costs, architectural, engineering and legal fees, and financing costs.

(B) Evidence satisfactory to the Department of Real Estate of the availability of sufficient funds to pay all costs required to be paid in order to complete the project. Those funds may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds.

**(4) The Department of Real Estate has reviewed and approved the proposed disbursement, as required under (g)**

**(5) The purchaser provides express informed consent, as required in (f).**

(c) If a purchaser's funds are to be disbursed before the completion of construction of the project, the developer shall submit to the Department of Real Estate all of the following:

(1) A copy of the executed construction contract.

(2) A copy of the building permit for the project.

(3) (A) Satisfactory evidence of security for the completion of construction, which evidence may include any of the following, in forms and content approved by the Department of Real Estate:

(i) A completion or performance bond issued by a surety licensed in this state in an amount equal to 100 percent of the cost of construction or percent of construction remaining.

(ii) A completion or performance bond issued by a surety or other qualified financial institution in an amount equal to 100 percent of the cost of construction.

(iii) An irrevocable letter of credit issued by a federally insured financial institution in an amount equal to 100 percent of the cost of construction.

(iv) Other substantially similar instrument, guaranty, or security approved by the Department of Real Estate.

(B) (i) A completion or performance bond issued by a surety or other qualified financial institution, an irrevocable letter of credit, and any alternatives shall contain a provision that the Department of Real Estate shall be notified in writing before any payment is made to beneficiaries of the bond.

(ii) Adequate disclosures shall be made in the developer's preliminary and final public report concerning the developer's use of a completion or performance bond issued by a qualified financial institution instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

**(4) A copy of the purchaser's written informed consent, as described in (f) below, for the use of their deposit funds for the purposes described in (a)**

(d) (1) A purchaser's deposit may be disbursed before closing only to pay any cost set forth in the project budget submitted pursuant to subparagraph (A) of paragraph (3) of subdivision (b) that is approved for payment by the project lender or an otherwise qualified, financially disinterested person.

(2) A purchaser's deposit may be disbursed before closing to pay construction costs of the material and work completed by the contractor, as certified by a licensed architect or engineer.

(e) If a purchaser's deposit is to be disbursed before closing, the following notice shall be prominently displayed in the developer's preliminary and final public report for the project:

"Important Notice Regarding Your Deposits: Deposits that you make under your sales contract for the purchase of the unit may be disbursed, **upon your consent**, before closing of your purchase to pay for project costs, construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should

be completed, it is possible that the project may not be completed. If your deposits are disbursed to pay project costs and the project is not completed, there is a risk that your deposits will not be refunded to you. **Additionally, if your deposit is disbursed prior to close, and you back out of the sale or fail to complete the purchase, the developer may be allowed to keep your entire deposit under Civil Code Section 1675(g).** You should carefully consider this risk in deciding whether to proceed with your purchase **consent to disbursement of the deposit.**"

**(f) (A) A purchaser's deposit may only be disbursed before closing if the purchaser provides the developer express informed consent for the disbursement and use of the escrow funds toward specified construction costs. Sufficient express informed consent requires:**

**(i) the developer provides the purchaser with the following at the time of requesting the purchaser's express informed consent:**

**(A) The specified disclosure in (e).**

**(B) Satisfactory evidence of the security for the completion of construction that the developer will use to ensure completion of the project or reimbursement of the deposit to the purchaser, as required in (c)(3)(A)**

**(ii) the purchaser provides consent, in writing, confirming that they have received the above required information, reviewed the above required information, and consent to the disbursement of the deposit to cover the construction costs outlined in the project budget.**

**(B) a copy of the purchaser's express informed consent must be provided to the Department of Real Estate, as provided in (c)(4), and to the appropriate escrow agent before funds may be disbursed.**

**(fg)** The Department of Real Estate shall complete a review required by this section within 30 days of receipt of the document to be reviewed.

**(gh)** The Department of Real Estate may charge a fee to complete a review required by this section, but the fee shall not exceed the reasonable costs of conducting the review.

**SEC. 2.** Section 11013.8 is added to the Business and Professions Code, to read:

**11013.8.** (a) (1) Subject to the conditions set forth in this section, if a unit within a subdivision is conveyed or leased before the completion of construction of the building or buildings for the purpose of financing the construction, all moneys from the sale of the units, including any payments made on loan commitments from lending institutions, shall be deposited by the developer under an escrow arrangement into a federally insured, interest-bearing account designated solely for that purpose, at a financial institution authorized to do business in this state.

(2) Any disbursements from the escrow account may be made to pay for project construction costs, including, in the case of a conversion, for repairs necessary to cure violations of county zoning and building ordinances and codes, for architectural, engineering, finance, and legal fees, and for other incidental expenses of the project.

~~(b) The conveyance or leasing of any unit before completion of construction shall be permitted only if all of the following conditions are met:~~

~~(1) The Department of Real Estate has issued an effective date for the developer's preliminary and final public report for the project.~~

~~(2) The developer has recorded the project's declaration and bylaws.~~

~~(3) The developer has submitted to the Department of Real Estate all of the following:~~

~~(A) A project budget showing all costs required to be paid in order to complete the project, including real property taxes, construction costs, architectural, engineering and legal fees, and financing costs.~~

~~(B) Evidence satisfactory to the Department of Real Estate of the availability of sufficient funds to pay all costs required to be paid in order to complete the project, that may include purchaser funds, equity funds, interim or permanent loan commitments, and other sources of funds.~~

~~(C) A copy of the executed construction contract.~~

~~(D) A copy of the building permit for the project.~~

~~(E) (i) Satisfactory evidence of security for the completion of construction, that may include any of the following, in forms and content approved by the Department of Real Estate:~~

~~(I) A completion or performance bond issued by a surety licensed in this state in an amount equal to 100 percent of the cost of construction.~~

~~(II) A completion or performance bond issued by a qualified surety in an amount equal to 100 percent of the cost of construction.~~

~~(III) An irrevocable letter of credit issued by a federally insured financial institution in an amount equal to 100 percent of the cost of construction.~~

~~(IV) Other substantially similar instrument or security approved by the Department of Real Estate.~~

~~(ii) A completion or performance bond issued by a surety or other qualified financial institution, an irrevocable letter of credit, and any alternatives shall contain a provision that the Department of Real Estate shall be notified in writing before any payment is made to beneficiaries of the bond.~~

~~(iii) Adequate disclosures shall be made in the developer's preliminary and final public report concerning the developer's use of a completion or performance bond issued by a~~

qualified financial institution instead of a surety, and the impact of any restrictions on the developer's use of purchaser's funds.

~~(c) (1) Moneys from the conveyance or leasing of units before completion of construction may be disbursed only to pay costs set forth in the project budget submitted pursuant to subparagraph (A) of paragraph (3) of subdivision (b) that are approved for payment by the project lender or an otherwise qualified, financially disinterested person.~~

~~(2) Moneys as described in paragraph (1) may be disbursed to pay construction costs of the material and work completed by the contractor, as certified by a licensed architect or engineer.~~

~~(3) The balance of any purchase price may be disbursed to the developer only upon completion of construction of the project and the satisfaction of any mechanics' lien.~~

~~(d) If moneys from the conveyance or leasing of units before completion of construction are to be disbursed to pay for project costs, the following notice shall be prominently displayed in the developer's preliminary and final public report for the project:~~

~~"Important Notice Regarding Your Funds: Payments that you make under your sales contract for the purchase of the unit may be disbursed before closing of your purchase to pay for project costs, including construction costs, project architectural, engineering, finance, and legal fees, and other incidental expenses of the project. While the developer has submitted satisfactory evidence that the project should be completed, it is possible that the project may not be completed. If your payments are disbursed to pay project costs and the project is not completed, there is a risk that your payments will not be refunded to you. You should carefully consider this risk in deciding whether to proceed with your purchase."~~

~~(e) The Department of Real Estate shall complete a review required by this section within 30 days of receipt of the document to be reviewed.~~

~~(f) The Department of Real Estate may charge a fee to complete a review required by this section, but the fee shall not exceed the reasonable costs of conducting the review.~~

**SEC. 3.** Section 1675 of the Civil Code is amended to read:

**1675.** (a) As used in this section, "residential property" means real property primarily consisting of a dwelling that meets both of the following requirements:

(1) The dwelling contains not more than four residential units.

(2) At the time the contract to purchase and sell the property is made, the buyer intends to occupy the dwelling or one of its units as the buyer's residence.

(b) A provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer shall constitute liquidated damages to the seller upon the buyer's failure to complete the purchase of the property is valid to the extent that payment in the form of cash or check, including a postdated check, is actually made if the provision satisfies the requirements of Sections 1677 and 1678 and either subdivision (c) or (d) of this section.

(c) If the amount actually paid pursuant to the liquidated damages provision does not exceed 3 percent of the purchase price, the provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(d) If the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages.

(e) For the purposes of subdivisions (c) and (d), the reasonableness of an amount actually paid as liquidated damages shall be determined by taking into account both of the following:

(1) The circumstances existing at the time the contract was made.

(2) The price and other terms and circumstances of any subsequent sale or contract to sell and purchase the same property if the sale or contract is made within six months of the buyer's default.

(f) (1) Notwithstanding either subdivision (c) or (d), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783, that involves the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 3 percent of the purchase price of the residential unit in the transaction both of the following shall occur in the event of a buyer's default:

(A) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(B) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 3 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 3 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a new qualified buyer has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, "structure" means either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, "new qualified buyer" means a buyer who either:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

(g) Notwithstanding subdivisions (c) and (d), the amount actually paid pursuant to a liquidated damages provision may exceed 3 percent of the purchase price if the conditions set forth in Section 11013.7 or ~~11013.8~~ of the Business and Professions Code are satisfied, in which case the liquidated damages shall equal the amount of the deposit.