

1 AN ACT concerning deposits.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short Title. This Act may be cited as the
5 Builder Purchaser Deposit Act.

6 Section 5. Purposes. The purposes of this Act are: to
7 protect any money deposit of a purchaser paid to a builder
8 from attachment by any creditor of the builder and to limit
9 the application of the purchaser's deposits to the final cost
10 of the property; and to establish the role of the builder as
11 that of a fiduciary and to require the builder to act in a
12 fiduciary capacity for the benefit of the purchaser.

13 Section 10. Definitions. As used in this Act, unless
14 this context otherwise requires:

15 "Builder" means an individual or any other entity,
16 including a domestic or foreign real estate developer,
17 engaged in the construction of a single family residence,
18 townhouse, or a multi-family residence of no greater than 4
19 units for sale to a purchaser.

20 "Purchaser" means any person or persons, other than the
21 builder, who purchase and occupy a single family residence,
22 townhouse, or multi-family residence of no greater than 4
23 units in a bona fide transaction for value.

24 "Property" means all the land and space comprising the
25 real estate to be sold, all improvements and structures
26 erected, constructed, or contained thereon, including the
27 building and all easements, rights, and appurtenances
28 belonging thereto, and all fixtures and equipment intended
29 for the use, benefit, and enjoyment of the purchaser.

1 Section 15. Application. Any earnest money, deposit,
2 payment, or advance in payment of the purchase price, or any
3 other related expense, in the aggregate amount of \$5,000 or
4 greater, paid for the construction of a single family
5 residence, townhouse, or multi-family residence of no greater
6 than 4 units received by a builder, developer, or an agent of
7 the builder or developer, shall be held in a segregated
8 account until title to the property is conveyed to the
9 purchaser. No ownership rights in the deposits shall vest in
10 the builder, developer, or agent of the builder or developer
11 until the conveyance of title to the purchaser. The deposit
12 shall be segregated in an account established by a builder,
13 developer, or agent of the builder or developer as trustee
14 for the benefit of the purchaser. The deposit shall be held
15 in a federally insured interest bearing account and the
16 interest shall be credited to the purchaser toward the
17 purchase price of the residence. No interest shall be
18 credited if the transfer of title occurs less than 60 days
19 from the date of contract. In the event of a refund or
20 default, the deposit or any interest earned shall not be
21 subject to attachment by any creditor of a purchaser or of a
22 builder or by the holder of a lien against any portion of the
23 property. The terms and provisions of this Act shall apply to
24 any contract executed after the effective date of this Act.

25 Section 20. Verification. Upon receipt of the moneys
26 referenced in Section 15, the builder shall provide to the
27 purchaser, within 10 business days, the name of the financial
28 institution and the name on the account in which the money is
29 held.

30 Section 25. Opt out; purchaser security. The parties to
31 the contract may opt out of the requirements of this Act in
32 writing, signed by the builder and the purchaser, provided

1 that the builder delivers to the purchaser an irrevocable
2 letter of credit, issued by a financial institution that is
3 guaranteed by the Federal Deposit Insurance Corporation, in
4 the amount of the deposit money advanced to the builder by
5 the purchaser. The letter of credit shall serve to secure the
6 deposit money and shall expressly provide for payment to the
7 purchaser of the amount if the financial institution receives
8 a court order directing that amount be paid to the purchaser.

9 Section 30. Exemption. This Act does not apply to any
10 transaction in which the purchaser is the owner of the real
11 property on which the construction is to be completed.

12 Section 35. Violation. Violation of this Act shall
13 constitute an unlawful practice within the meaning of the
14 Consumer Fraud and Deceptive Business Practices Act.

15 Section 90. The Consumer Fraud and Deceptive Business
16 Practices Act is amended by changing Section 2Z as follows:

17 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

18 Sec. 2Z. Violations of other Acts. Any person who
19 knowingly violates the Automotive Repair Act, the Home Repair
20 and Remodeling Act, the Dance Studio Act, the Physical
21 Fitness Services Act, the Hearing Instrument Consumer
22 Protection Act, the Illinois Union Label Act, the Job
23 Referral and Job Listing Services Consumer Protection Act,
24 the Travel Promotion Consumer Protection Act, the Credit
25 Services Organizations Act, the Automatic Telephone Dialers
26 Act, the Pay-Per-Call Services Consumer Protection Act, the
27 Telephone Solicitations Act, the Illinois Funeral or Burial
28 Funds Act, the Cemetery Care Act, the Safe and Hygienic Bed
29 Act, the Pre-Need Cemetery Sales Act, subsection (a) or (b)
30 of Section 3-10 of the Cigarette Tax Act, subsection (a) or

1 (b) of Section 3-10 of the Cigarette Use Tax Act, the
2 Electronic Mail Act, the Builder Purchaser Deposit Act, or
3 paragraph (6) of subsection (k) of Section 6-305 of the
4 Illinois Vehicle Code commits an unlawful practice within the
5 meaning of this Act.

6 (Source: P.A. 91-164, eff. 7-16-99; 91-230, eff. 1-1-00;
7 91-233, eff. 1-1-00; 91-810, eff. 6-13-00; 92-426, eff.
8 1-1-02.)