

New Guidance for Condo Developers on Use of Contract Deposits

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Effective July 1, 2021, the Florida Legislature has clarified Florida Statutes section 718.202 concerning what certain purchaser condominium unit purchase deposits may be used by the condominium developer if authorized in the purchase contract. “Excess deposits” are defined as those deposits that represent more than 10% of the unit’s purchase price. Until now, the only statutory guidance was that such excess deposits could be used for the “actual construction and development of the condominium property in which the unit to be sold is located,” but excluding “salaries, commissions, or expenses of salespersons” or “for advertising” purposes.

Beginning July 1, the costs of construction have been clarified to include, without limitation, “expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property.” The excluded uses of the excess deposits have also been clarified to add “marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.”

We believe that these legislative changes do not actually change existing law, but they provide better guidance about the permitted and prohibited uses of the excess deposits. There remain some unsettled questions such as reimbursements to developers for permitted expenses that were advanced, or how exactly to account for excess deposits by the purchaser of a unit that was the subject of a previous contract where deposits were used for construction. These situations need to be reviewed on a case-by-case basis.

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