

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 24-0915.01 Clare Haffner x6137

HOUSE BILL 24-1094

HOUSE SPONSORSHIP

Lukens and Soper, Bird, Boesenecker, Froelich, Jodeh, Lindstedt, Marshall, Mauro, McCluskie

SENATE SPONSORSHIP

Roberts and Will, Priola

House Committees

Business Affairs & Labor

Senate Committees

Local Government & Housing

SENATE
3rd Reading Unamended
April 17, 2024

101

**CONCERNING EARNEST MONEY DEPOSITS RECEIVED AFTER THE REAL
ESTATE COMMISSION HAS APPROVED A DEVELOPER'S
SUBDIVISION REGISTRATION, AND, IN CONNECTION THEREWITH,
ALLOWING THE USE OF DEVELOPER SUBDIVISION EARNEST
MONEY DEPOSITS BY ACCREDITED INVESTORS.**

SENATE
2nd Reading Unamended
April 16, 2024

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

HOUSE
3rd Reading Unamended
February 20, 2024

Before transferring or negotiating to transfer any subdivision or part of a subdivision, a developer is required to apply for registration with

HOUSE
Amended 2nd Reading
February 16, 2024

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

the real estate commission (commission). Current law requires that, with permission from the commission, any reservation fees that a developer receives from prospective purchasers while the developer's registration application is pending must be held in trust by a third party and be fully refundable.

The bill requires that, after the commission has approved a developer's registration application, any earnest money received by the developer from a prospective purchaser must be held in trust by an independent third party. The bill creates an exception to this requirement for earnest money deposits received from an accredited investor. A developer may use funds from an accredited investor's deposit for development purposes only if the purchase contract or other written disclosure clearly sets forth:

- To whom the funds will be delivered;
- When the delivery will occur;
- How the funds will be used; and
- Any restrictions on the use of the funds.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-10-502, **add (3)**
3 as follows:

4 **12-10-502. Registration required.** (3) (a) UPON THE
5 COMMISSION'S APPROVAL OF A DEVELOPER'S SUBDIVISION REGISTRATION
6 PURSUANT TO SECTION 12-10-503, THE DEVELOPER MAY ENTER INTO
7 BINDING PURCHASE CONTRACTS WITH PROSPECTIVE BUYERS AND ACCEPT
8 EARNEST MONEY DEPOSITS. EXCEPT AS PROVIDED IN SUBSECTION (3)(b)
9 OF THIS SECTION, AN EARNEST MONEY DEPOSIT MUST BE HELD IN TRUST BY
10 AN INDEPENDENT THIRD PARTY.

11 (b) (I) NOTWITHSTANDING SUBSECTION (3)(a) OF THIS SECTION OR
12 ANY OTHER PROVISION IN THIS PART 5, UPON SUBDIVISION REGISTRATION
13 APPROVAL, A DEVELOPER MAY RECEIVE EARNEST MONEY DEPOSITS FROM
14 AN ACCREDITED INVESTOR AND USE SOME OR ALL OF THE FUNDS TOWARD
15 DEVELOPMENT OF A SUBDIVISION, BUT ONLY IF THE PURCHASE CONTRACT
16 OR OTHER WRITTEN DISCLOSURE CONTAINS A CLEAR STATEMENT SETTING

1 FORTH:

2 (A) TO WHOM THE FUNDS WILL BE DELIVERED;
3 (B) WHEN THE DELIVERY OF THE FUNDS WILL OCCUR;
4 (C) HOW THE FUNDS WILL BE USED; AND
5 (D) ANY RESTRICTION ON THE USE OF THE FUNDS.

6 (II) A DEVELOPER MAY RECEIVE EARNEST MONEY DEPOSITS FROM
7 AN ACCREDITED INVESTOR PURSUANT TO THE REQUIREMENTS IN
8 SUBSECTION (3)(b)(I) OF THIS SECTION WITHOUT FIRST HAVING TO POST A
9 BOND OR OTHER SECURITY.

10 (c) THIS SUBSECTION (3) APPLIES ONLY IF THE SUBDIVISION IS A
11 TIME SHARE ESTATE, AS DEFINED IN SECTION 38-33-110 (5).

12 **SECTION 2.** In Colorado Revised Statutes, 12-10-501, **amend**
13 (1); and **add** (1.5) as follows:

14 **12-10-501. Definitions.** As used in this part 5, unless the context
15 otherwise requires:

16 (1) "~~Commission~~" means the real estate commission established
17 under section 12-10-206. "~~ACCREDITED INVESTOR~~" HAS THE SAME
18 MEANING AS DEFINED IN THE SECURITIES AND EXCHANGE COMMISSION'S
19 RULE 501 OF REGULATION D, 17 CFR 230.501 (a).

20 (1.5) "COMMISSION" MEANS THE REAL ESTATE COMMISSION
21 ESTABLISHED UNDER SECTION 12-10-206.

22 **SECTION 3. Act subject to petition - effective date.** This act
23 takes effect at 12:01 a.m. on the day following the expiration of the
24 ninety-day period after final adjournment of the general assembly; except
25 that, if a referendum petition is filed pursuant to section 1 (3) of article V
26 of the state constitution against this act or an item, section, or part of this
27 act within such period, then the act, item, section, or part will not take

1 effect unless approved by the people at the general election to be held in
2 November 2024 and, in such case, will take effect on the date of the
3 official declaration of the vote thereon by the governor.