
CAN EARNEST MONEY BE USED TO BUILD THE CONDO?



Earnest money and other buyer deposits can, in certain circumstances, be used to build the condominium. What are those circumstances? First, the sales price of the condominium unit must be more than \$150,000. Second, the sales contract which permits the use of the money must include the following boldface disclosure and this disclosure must be initialed:

“ANY PAYMENT IN EXCESS OF 1 PERCENT OF THE PURCHASE PRICE MADE TO THE SELLER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE SELLER.”

So, for example, if the purchase price of the condominium is \$1,000,000, then 1% of this amount is \$10,000. Therefore, any deposits over \$10,000 can be used to build the condominium.

Third, any monies withdrawn can only be used for the actual construction and development of the condominium property. No portion of the monies which are withdrawn may be used for salaries, commissions, expenses of real estate licensees or advertising purposes. Other than these limitations, all of the deposits can be used to build the condominium. It should be noted that this was not always the law in Georgia. It used to be that all money and other deposits had to be put into an escrow account. However, this law was changed in 2006.