§ 71-a. Further trust of funds received or receivable by owner under executory contract for the sale and improvement of real property. 1. As used in this section,

(a) A "contract of sale" is an executory contract for the sale of real property and the improvement thereof by the construction of a building thereon.

(b) "Advances" include funds received by the owner and his rights of action for payment thereof.

2. (a) Advances made by or on behalf of a vendee of real property to the owner under or pursuant to a contract of sale shall constitute assets of a trust, as defined in this section, of which the owner is trustee, notwithstanding that such advances may also be assets of a trust defined in section seventy of this chapter.

(b) Such advances shall be held and applied by the owner for the payment of the cost of improvement. The trust claims defined in subdivision three (a) of section seventy-one of this chapter shall have priority over trust claims which the vendee has under the further trust provided in this section. Advances shall cease to be subject to the further trust provided in this section after they have been applied by the owner for payment of the cost of improvement, provided that no part of the advances shall be applied or be deemed applied for payment of the cost of improvement until all trust assets, as defined in subdivisions five (a) to five (f), inclusive, of section seventy of this chapter, which have been received by the owner from all other sources, have been exhausted.

(c) Such advances, or any portion thereof remaining after application of such advances for payment of the cost of improvement, shall continue to be held in trust by the owner for the benefit of the vendee, until the trust is terminated (i) by the owner's performance of the terms of the contract of sale, or (ii) by a default of the vendee excusing the owner's performance of the terms of the contract of sale, or (iii) by release or discharge of the owner's liability to refund such advances to the vendee.

(d) Until the further trust is terminated as provided in this section, such advances shall not be applied by the owner for any purpose other than payment of the cost of improvement and satisfaction of any

liability of the owner to refund such advances, or any part thereof, to the vendee. Upon termination of the said trust, the beneficial interest in such advances or any portion thereof remaining in the hands of the owner shall vest in the owner, provided that all trust claims applicable to such advances have been paid or discharged.

(e) Any provision whereby the vendee waives the provisions of this section, whether contained in the contract of sale or otherwise, shall be absolutely void.

(f) Subject to the provisions of this section, the rights and remedies which may be exercised by a holder of trust claims with respect to assets of a trust defined in section seventy of this chapter may be exercised, in the same manner and to the same extent, by the vendee with respect to such advances.

(g) The enforcement of the trust provided in this section shall not be deemed to prohibit the vendee from seeking to enforce such additional or alternative remedies provided by law as shall afford the vendee complete relief.

3. (a) The initial advance pursuant to a contract of sale which by its terms provides for or is incidental to a contract providing for the construction on the subject real property of residential condominium unit or any structure designed solely for residential occupancy of not more than two families living separately, on property to be purchased shall, at the vendee's option, be deposited within five business days thereafter by the recipient in an interest bearing escrow account in a bank, trust company, savings bank, state or federal savings and loan association, located in this state. Such deposit, together with the interest accumulated thereon, shall remain the property of the vendee except as otherwise provided herein. The recipient shall advise the vendee in writing of the name of the depository where the funds have been placed within ten business days after such deposit has been made.

(b) In lieu of making the deposit of such moneys in an escrow account as provided in paragraph (a) of this subdivision, the recipient may post with the vendee a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, guaranteeing the return of the moneys which otherwise would be required to be deposited in such escrow account, in which case the recipient

shall not be required to deposit such money in an escrow account. Said bond or contract of indemnity shall be delivered to the vendee within ten business days after receipt of the initial advance.

(c) At any time after making the deposit of such moneys in the escrow account, the recipient may post with the vendee a bond or contract of indemnity issued by a surety company licensed to execute such an instrument in this state guaranteeing the return of such moneys, in which case the recipient shall not be required to maintain the deposit of such moneys in such account.

(d) Such advance shall be retained in the escrow account or such bond or contract of indemnity continued in effect until the trust is terminated (i) by the recipient's performance of the terms of the contract of sale, or (ii) by default of the vendee excusing the recipient's performance of the terms of the contract of sale, or (iii) by release or discharge of the recipient's liability to refund such advance to the vendee, or (iv) upon transfer of title of the real property to the vendee.

(e) Every contract of sale which by its terms provides for or is incidental to a contract providing for the construction on the subject real property of a residential condominium unit or a structure designed solely for the residential occupancy by not more than two families living apart, shall contain a statement advising the vendee of the provisions of this subdivision. Such statement shall be printed in bold type which is at least two points larger than any other printing contained thereon and shall read as follows:

"YOU, AS THE PURCHASER OF THIS RESIDENCE, MAY REQUIRE THE RECIPIENT OR CONTRACTOR TO DEPOSIT THE INITIAL ADVANCE MADE BY YOU IN AN ESCROW ACCOUNT. IN LIEU OF SUCH DEPOSIT, THE RECIPIENT OR CONTRACTOR MAY POST A BOND OR CONTRACT OF INDEMNITY WITH YOU GUARANTEEING THE RETURN OF SUCH ADVANCE."

4. (a) Under a home improvement contract, payments received from an owner by a home improvement contractor prior to the substantial completion of work under the contract shall be deposited within five business days thereafter by the recipient in an escrow account in a bank, trust company, savings bank, or state or federal savings and loan

association, located in this state. No depository institution acting on the instructions or otherwise dealing with a home improvement contractor shall be obliged to inquire into the validity or propriety of any deposits to or withdrawals from any escrow account established by the home improvement contractor in compliance with this subdivision or to insure that any withdrawals from such account are applied for any specific purpose or purposes by the home improvement contractor. Such deposit or deposits shall remain the property of such owner except as otherwise provided herein. Unless the home improvement contract specifies the name of the depositary where the funds will be placed, no later than ten business days after the deposit has been made, the recipient shall advise the owner in writing of the name of the depositary where the funds have been placed. The recipient shall not be required to keep in separate depositary accounts the funds of the separate owners from whom payments have been received, provided his books of account shall clearly show the allocation to each owner of the funds deposited in his general or special depositary account or accounts.

(b) In lieu of making the deposit of such payment or payments in an escrow account as provided in paragraph (a) of this subdivision, the recipient may post with the owner a bond or contract of indemnity, issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the return of the payments, or the proper application of the payments to the purposes of the contract, which otherwise would be required to be deposited in such escrow account, in which case the recipient shall not be required to deposit such payments in an escrow account. Said bond or contract of indemnity or irrevocable letter of credit shall be delivered to the owner within ten business days after receipt of the payment.

(c) At any time after making the deposit of such payment or payments in the escrow account, the recipient may post with the owner a bond or contract of indemnity issued by a surety company licensed to execute such an instrument in this state, or an irrevocable letter of credit issued by a bank, trust company, savings bank, or state or federal savings and loan institution located in this state, guaranteeing the

return or proper application of such payment to the purposes of the contract, in which case the recipient shall not be required to maintain the deposit of such payment in such account.

(d) Such deposit or deposits shall remain the property of the owner or such bond or contract of indemnity or irrevocable letter of credit continued in effect until (i) the proper payment, transfer or application of such deposits by the contractor to the purposes of the home improvement contract under the schedule of payments provided therein; or (ii) the default or breach of the owner excusing the recipient's performance of the terms of the home improvement contract, but only to the extent of any reasonable liquidated damage amount as defined in section 2-718 of the uniform commercial code and set forth in the contract, and only after seven days prior written notice to the owner; or (iii) substantial performance of the contract.

(e) The recipient shall not withdraw deposits from the escrow account in excess at any time of the total amount shown in the schedule of payments in the home improvement contract. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials purchased, or expenses for which the contractor would be obligated.

(f) If the home improvement contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, this subdivision shall not apply to such payments for such work or materials.

(g) Failure to place customer deposits in escrow, except as provided herein, shall constitute a violation of this section.