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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2010	.	
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The Committee on Regulated Industries (Wise) recommended the following:

1           **Senate Amendment to Amendment (360622) (with title**  
2 **amendment)**

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4           Between lines 26 and 27  
5 insert:

6           Section 2. Subsection (1) of section 718.501, Florida  
7 Statutes, is amended to read:

8           718.501 Authority, responsibility, and duties of Division  
9 of Florida Condominiums, Timeshares, and Mobile Homes.—

10           (1) The Division of Florida Condominiums, Timeshares, and  
11 Mobile Homes of the Department of Business and Professional  
12 Regulation, referred to as the "division" in this part, has the



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13 power to enforce and ensure compliance with the provisions of  
14 this chapter and rules relating to the development,  
15 construction, sale, lease, ownership, operation, and management  
16 of residential condominium units. In performing its duties, the  
17 division has complete jurisdiction to investigate complaints and  
18 enforce compliance with the provisions of this chapter with  
19 respect to associations that are still under developer control  
20 or the control of a bulk assignee or bulk buyer pursuant to part  
21 VII of this chapter and complaints against developers, bulk  
22 assignees, or bulk buyers involving improper turnover or failure  
23 to turnover, pursuant to s. 718.301. However, after turnover has  
24 occurred, the division shall only have jurisdiction to  
25 investigate complaints related to financial issues, elections,  
26 and unit owner access to association records pursuant to s.  
27 718.111(12).

28 (a)1. The division may make necessary public or private  
29 investigations within or outside this state to determine whether  
30 any person has violated this chapter or any rule or order  
31 hereunder, to aid in the enforcement of this chapter, or to aid  
32 in the adoption of rules or forms hereunder.

33 2. The division may submit any official written report,  
34 worksheet, or other related paper, or a duly certified copy  
35 thereof, compiled, prepared, drafted, or otherwise made by and  
36 duly authenticated by a financial examiner or analyst to be  
37 admitted as competent evidence in any hearing in which the  
38 financial examiner or analyst is available for cross-examination  
39 and attests under oath that such documents were prepared as a  
40 result of an examination or inspection conducted pursuant to  
41 this chapter.



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42 (b) The division may require or permit any person to file a  
43 statement in writing, under oath or otherwise, as the division  
44 determines, as to the facts and circumstances concerning a  
45 matter to be investigated.

46 (c) For the purpose of any investigation under this  
47 chapter, the division director or any officer or employee  
48 designated by the division director may administer oaths or  
49 affirmations, subpoena witnesses and compel their attendance,  
50 take evidence, and require the production of any matter which is  
51 relevant to the investigation, including the existence,  
52 description, nature, custody, condition, and location of any  
53 books, documents, or other tangible things and the identity and  
54 location of persons having knowledge of relevant facts or any  
55 other matter reasonably calculated to lead to the discovery of  
56 material evidence. Upon the failure by a person to obey a  
57 subpoena or to answer questions propounded by the investigating  
58 officer and upon reasonable notice to all persons affected  
59 thereby, the division may apply to the circuit court for an  
60 order compelling compliance.

61 (d) Notwithstanding any remedies available to unit owners  
62 and associations, if the division has reasonable cause to  
63 believe that a violation of any provision of this chapter or  
64 related rule has occurred, the division may institute  
65 enforcement proceedings in its own name against any developer,  
66 bulk assignee, bulk buyer, association, officer, or member of  
67 the board of administration, or its assignees or agents, as  
68 follows:

69 1. The division may permit a person whose conduct or  
70 actions may be under investigation to waive formal proceedings



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71 and enter into a consent proceeding whereby orders, rules, or  
72 letters of censure or warning, whether formal or informal, may  
73 be entered against the person.

74 2. The division may issue an order requiring the developer,  
75 bulk assignee, bulk buyer, association, developer-designated  
76 officer, or developer-designated member of the board of  
77 administration, developer-designated assignees or agents, bulk  
78 assignee-designated assignees or agents, bulk buyer-designated  
79 assignees or agents, community association manager, or community  
80 association management firm to cease and desist from the  
81 unlawful practice and take such affirmative action as in the  
82 judgment of the division will carry out the purposes of this  
83 chapter. If the division finds that a developer, bulk assignee,  
84 bulk buyer, association, officer, or member of the board of  
85 administration, or its assignees or agents, is violating or is  
86 about to violate any provision of this chapter, any rule adopted  
87 or order issued by the division, or any written agreement  
88 entered into with the division, and presents an immediate danger  
89 to the public requiring an immediate final order, it may issue  
90 an emergency cease and desist order reciting with particularity  
91 the facts underlying such findings. The emergency cease and  
92 desist order is effective for 90 days. If the division begins  
93 nonemergency cease and desist proceedings, the emergency cease  
94 and desist order remains effective until the conclusion of the  
95 proceedings under ss. 120.569 and 120.57.

96 3. If a developer, bulk assignee, or bulk buyer fails to  
97 pay any restitution determined by the division to be owed, plus  
98 any accrued interest at the highest rate permitted by law,  
99 within 30 days after expiration of any appellate time period of



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100 a final order requiring payment of restitution or the conclusion  
101 of any appeal thereof, whichever is later, the division shall  
102 bring an action in circuit or county court on behalf of any  
103 association, class of unit owners, lessees, or purchasers for  
104 restitution, declaratory relief, injunctive relief, or any other  
105 available remedy. The division may also temporarily revoke its  
106 acceptance of the filing for the developer to which the  
107 restitution relates until payment of restitution is made.

108 4. The division may petition the court for the appointment  
109 of a receiver or conservator. If appointed, the receiver or  
110 conservator may take action to implement the court order to  
111 ensure the performance of the order and to remedy any breach  
112 thereof. In addition to all other means provided by law for the  
113 enforcement of an injunction or temporary restraining order, the  
114 circuit court may impound or sequester the property of a party  
115 defendant, including books, papers, documents, and related  
116 records, and allow the examination and use of the property by  
117 the division and a court-appointed receiver or conservator.

118 5. The division may apply to the circuit court for an order  
119 of restitution whereby the defendant in an action brought  
120 pursuant to subparagraph 4. shall be ordered to make restitution  
121 of those sums shown by the division to have been obtained by the  
122 defendant in violation of this chapter. Such restitution shall,  
123 at the option of the court, be payable to the conservator or  
124 receiver appointed pursuant to subparagraph 4. or directly to  
125 the persons whose funds or assets were obtained in violation of  
126 this chapter.

127 6. The division may impose a civil penalty against a  
128 developer, bulk assignee, bulk buyer, or association, or its



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129 assignee or agent, for any violation of this chapter or a rule  
130 adopted under this chapter. The division may impose a civil  
131 penalty individually against any officer or board member who  
132 willfully and knowingly violates a provision of this chapter,  
133 adopted rule, or a final order of the division; may order the  
134 removal of such individual as an officer or from the board of  
135 administration or as an officer of the association; and may  
136 prohibit such individual from serving as an officer or on the  
137 board of a community association for a period of time. The term  
138 "willfully and knowingly" means that the division informed the  
139 officer or board member that his or her action or intended  
140 action violates this chapter, a rule adopted under this chapter,  
141 or a final order of the division and that the officer or board  
142 member refused to comply with the requirements of this chapter,  
143 a rule adopted under this chapter, or a final order of the  
144 division. The division, prior to initiating formal agency action  
145 under chapter 120, shall afford the officer or board member an  
146 opportunity to voluntarily comply with this chapter, a rule  
147 adopted under this chapter, or a final order of the division. An  
148 officer or board member who complies within 10 days is not  
149 subject to a civil penalty. A penalty may be imposed on the  
150 basis of each day of continuing violation, but in no event shall  
151 the penalty for any offense exceed \$5,000. By January 1, 1998,  
152 the division shall adopt, by rule, penalty guidelines applicable  
153 to possible violations or to categories of violations of this  
154 chapter or rules adopted by the division. The guidelines must  
155 specify a meaningful range of civil penalties for each such  
156 violation of the statute and rules and must be based upon the  
157 harm caused by the violation, the repetition of the violation,



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158 and upon such other factors deemed relevant by the division. For  
159 example, the division may consider whether the violations were  
160 committed by a developer, bulk assignee, bulk buyer, or owner-  
161 controlled association, the size of the association, and other  
162 factors. The guidelines must designate the possible mitigating  
163 or aggravating circumstances that justify a departure from the  
164 range of penalties provided by the rules. It is the legislative  
165 intent that minor violations be distinguished from those which  
166 endanger the health, safety, or welfare of the condominium  
167 residents or other persons and that such guidelines provide  
168 reasonable and meaningful notice to the public of likely  
169 penalties that may be imposed for proscribed conduct. This  
170 subsection does not limit the ability of the division to  
171 informally dispose of administrative actions or complaints by  
172 stipulation, agreed settlement, or consent order. All amounts  
173 collected shall be deposited with the Chief Financial Officer to  
174 the credit of the Division of Florida Condominiums, Timeshares,  
175 and Mobile Homes Trust Fund. If a developer, bulk assignee, or  
176 bulk buyer fails to pay the civil penalty and the amount deemed  
177 to be owed to the association, the division shall issue an order  
178 directing that such developer, bulk assignee, or bulk buyer  
179 cease and desist from further operation until such time as the  
180 civil penalty is paid or may pursue enforcement of the penalty  
181 in a court of competent jurisdiction. If an association fails to  
182 pay the civil penalty, the division shall pursue enforcement in  
183 a court of competent jurisdiction, and the order imposing the  
184 civil penalty or the cease and desist order will not become  
185 effective until 20 days after the date of such order. Any action  
186 commenced by the division shall be brought in the county in



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187 which the division has its executive offices or in the county  
188 where the violation occurred.

189 7. If a unit owner presents the division with proof that  
190 the unit owner has requested access to official records in  
191 writing by certified mail, and that after 10 days the unit owner  
192 again made the same request for access to official records in  
193 writing by certified mail, and that more than 10 days has  
194 elapsed since the second request and the association has still  
195 failed or refused to provide access to official records as  
196 required by this chapter, the division shall issue a subpoena  
197 requiring production of the requested records where the records  
198 are kept pursuant to s. 718.112.

199 8. In addition to subparagraph 6., the division may seek  
200 the imposition of a civil penalty through the circuit court for  
201 any violation for which the division may issue a notice to show  
202 cause under paragraph (r). The civil penalty shall be at least  
203 \$500 but no more than \$5,000 for each violation. The court may  
204 also award to the prevailing party court costs and reasonable  
205 attorney's fees and, if the division prevails, may also award  
206 reasonable costs of investigation.

207 (e) The division may prepare and disseminate a prospectus  
208 and other information to assist prospective owners, purchasers,  
209 lessees, and developers of residential condominiums in assessing  
210 the rights, privileges, and duties pertaining thereto.

211 (f) The division has authority to adopt rules pursuant to  
212 ss. 120.536(1) and 120.54 to implement and enforce the  
213 provisions of this chapter.

214 (g) The division shall establish procedures for providing  
215 notice to an association and the developer during the period



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216 where the developer controls the association when the division  
217 is considering the issuance of a declaratory statement with  
218 respect to the declaration of condominium or any related  
219 document governing in such condominium community.

220 (h) The division shall furnish each association which pays  
221 the fees required by paragraph (2) (a) a copy of this act,  
222 subsequent changes to this act on an annual basis, an amended  
223 version of this act as it becomes available from the Secretary  
224 of State's office on a biennial basis, and the rules adopted  
225 thereto on an annual basis.

226 (i) The division shall annually provide each association  
227 with a summary of declaratory statements and formal legal  
228 opinions relating to the operations of condominiums which were  
229 rendered by the division during the previous year.

230 (j) The division shall provide training and educational  
231 programs for condominium association board members and unit  
232 owners. The training may, in the division's discretion, include  
233 web-based electronic media, and live training and seminars in  
234 various locations throughout the state. The division shall have  
235 the authority to review and approve education and training  
236 programs for board members and unit owners offered by providers  
237 and shall maintain a current list of approved programs and  
238 providers and shall make such list available to board members  
239 and unit owners in a reasonable and cost-effective manner.

240 (k) The division shall maintain a toll-free telephone  
241 number accessible to condominium unit owners.

242 (l) The division shall develop a program to certify both  
243 volunteer and paid mediators to provide mediation of condominium  
244 disputes. The division shall provide, upon request, a list of



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245 such mediators to any association, unit owner, or other  
246 participant in arbitration proceedings under s. 718.1255  
247 requesting a copy of the list. The division shall include on the  
248 list of volunteer mediators only the names of persons who have  
249 received at least 20 hours of training in mediation techniques  
250 or who have mediated at least 20 disputes. In order to become  
251 initially certified by the division, paid mediators must be  
252 certified by the Supreme Court to mediate court cases in county  
253 or circuit courts. However, the division may adopt, by rule,  
254 additional factors for the certification of paid mediators,  
255 which factors must be related to experience, education, or  
256 background. Any person initially certified as a paid mediator by  
257 the division must, in order to continue to be certified, comply  
258 with the factors or requirements imposed by rules adopted by the  
259 division.

260 (m) When a complaint is made, the division shall conduct  
261 its inquiry with due regard to the interests of the affected  
262 parties. Within 30 days after receipt of a complaint, the  
263 division shall acknowledge the complaint in writing and notify  
264 the complainant whether the complaint is within the jurisdiction  
265 of the division and whether additional information is needed by  
266 the division from the complainant. The division shall conduct  
267 its investigation and shall, within 90 days after receipt of the  
268 original complaint or of timely requested additional  
269 information, take action upon the complaint. However, the  
270 failure to complete the investigation within 90 days does not  
271 prevent the division from continuing the investigation,  
272 accepting or considering evidence obtained or received after 90  
273 days, or taking administrative action if reasonable cause exists



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274 to believe that a violation of this chapter or a rule of the  
275 division has occurred. If an investigation is not completed  
276 within the time limits established in this paragraph, the  
277 division shall, on a monthly basis, notify the complainant in  
278 writing of the status of the investigation. When reporting its  
279 action to the complainant, the division shall inform the  
280 complainant of any right to a hearing pursuant to ss. 120.569  
281 and 120.57.

282 (n) Condominium association directors, officers, and  
283 employees; condominium developers; condominium bulk assignees  
284 and bulk buyers; community association managers; and community  
285 association management firms have an ongoing duty to reasonably  
286 cooperate with the division in any investigation pursuant to  
287 this section. The division shall refer to local law enforcement  
288 authorities any person whom the division believes has altered,  
289 destroyed, concealed, or removed any record, document, or thing  
290 required to be kept or maintained by this chapter with the  
291 purpose to impair its verity or availability in the department's  
292 investigation.

293 (o) The division may:

- 294 1. Contract with agencies in this state or other  
295 jurisdictions to perform investigative functions; or  
296 2. Accept grants-in-aid from any source.

297 (p) The division shall cooperate with similar agencies in  
298 other jurisdictions to establish uniform filing procedures and  
299 forms, public offering statements, advertising standards, and  
300 rules and common administrative practices.

301 (q) The division shall consider notice to a developer, bulk  
302 assignee, and bulk buyer to be complete when it is delivered to



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303 the ~~developer's~~ address of the developer, bulk assignee, or bulk  
304 buyer currently on file with the division.

305 (r) In addition to its enforcement authority, the division  
306 may issue a notice to show cause, which shall provide for a  
307 hearing, upon written request, in accordance with chapter 120.

308 (s) The division shall submit to the Governor, the  
309 President of the Senate, the Speaker of the House of  
310 Representatives, and the chairs of the legislative  
311 appropriations committees an annual report that includes, but  
312 need not be limited to, the number of training programs provided  
313 for condominium association board members and unit owners, the  
314 number of complaints received by type, the number and percent of  
315 complaints acknowledged in writing within 30 days and the number  
316 and percent of investigations acted upon within 90 days in  
317 accordance with paragraph (m), and the number of investigations  
318 exceeding the 90-day requirement. The annual report shall also  
319 include an evaluation of the division's core business processes  
320 and make recommendations for improvements, including statutory  
321 changes. The report shall be submitted by September 30 following  
322 the end of the fiscal year.

323  
324 ===== T I T L E A M E N D M E N T =====

325 And the title is amended as follows:

326 Between lines 337 and 338

327 insert:

328 amending s. 718.501, F.S.; revising the jurisdiction of the  
329 Florida Division of Condominiums, Timeshares, and Mobile Homes  
330 to include bulk assignees and bulk buyers;