

By Senator Pizzo

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1 A bill to be entitled
2 An act relating to condominium associations; amending
3 s. 718.111, F.S.; revising criminal penalties relating
4 to the acceptance of things or services of value or
5 kickbacks; revising the documents required to be
6 included with accounting records; requiring an
7 association to maintain official records in a
8 specified manner; revising requirements for the
9 creation of a rebuttable presumption relating to the
10 provision of records; authorizing an association to
11 direct certain persons to the association's website to
12 fulfill certain obligations relating to the inspection
13 of records; requiring an association to provide a
14 checklist and a sworn affidavit to persons requesting
15 to inspect records; requiring the association to
16 maintain the checklist for a specified period of time;
17 creating a rebuttable presumption for an association
18 that provides such checklist and sworn affidavit;
19 providing criminal penalties for certain violations
20 relating to official association records; defining the
21 term "repeatedly"; requiring certain associations to
22 post copies of certain documents on their websites by
23 a specified date; revising criminal penalties relating
24 to the use of association debit cards; defining the
25 term "lawful obligation of the association"; creating
26 s. 718.129, F.S.; providing criminal penalties for
27 fraudulent voting activities related to association
28 elections; amending s. 718.501, F.S.; revising the
29 jurisdiction of the Division of Florida Condominiums,

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30 Timeshares, and Mobile Homes of the Department of
31 Business and Professional Regulation with regard to
32 investigating complaints; defining the term "financial
33 issues"; providing an effective date.
34

35 Be It Enacted by the Legislature of the State of Florida:
36

37 Section 1. Paragraphs (a) and (d) of subsection (1),
38 paragraphs (a), (b), (c), and (g) of subsection (12), and
39 paragraph (b) of subsection (15) of section 718.111, Florida
40 Statutes, are amended to read:

41 718.111 The association.—

42 (1) CORPORATE ENTITY.—

43 (a) The operation of the condominium shall be by the
44 association, which must be a Florida corporation for profit or a
45 Florida corporation not for profit. However, any association
46 which was in existence on January 1, 1977, need not be
47 incorporated. The owners of units shall be shareholders or
48 members of the association. The officers and directors of the
49 association have a fiduciary relationship to the unit owners. It
50 is the intent of the Legislature that nothing in this paragraph
51 shall be construed as providing for or removing a requirement of
52 a fiduciary relationship between any manager employed by the
53 association and the unit owners. An officer, director, or
54 manager may not solicit, offer to accept, or accept any thing or
55 service of value or kickback for which consideration has not
56 been provided for his or her own benefit or that of his or her
57 immediate family, from any person providing or proposing to
58 provide goods or services to the association. Any such officer,

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59 director, or manager who knowingly so solicits, offers to
60 accept, or accepts any thing or service of value or kickback
61 commits a felony of the third degree, punishable as provided in
62 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil
63 penalty pursuant to s. 718.501(1) (d) ~~and, if applicable, a~~
64 ~~criminal penalty as provided in paragraph (d).~~ However, this
65 paragraph does not prohibit an officer, director, or manager
66 from accepting services or items received in connection with
67 trade fairs or education programs. An association may operate
68 more than one condominium.

69 (d) As required by s. 617.0830, an officer, director, or
70 agent shall discharge his or her duties in good faith, with the
71 care an ordinarily prudent person in a like position would
72 exercise under similar circumstances, and in a manner he or she
73 reasonably believes to be in the interests of the association.
74 An officer, director, or agent shall be liable for monetary
75 damages as provided in s. 617.0834 if such officer, director, or
76 agent breached or failed to perform his or her duties and the
77 breach of, or failure to perform, his or her duties constitutes
78 a violation of criminal law as provided in s. 617.0834;
79 constitutes a transaction from which the officer or director
80 derived an improper personal benefit, either directly or
81 indirectly; or constitutes recklessness or an act or omission
82 that was in bad faith, with malicious purpose, or in a manner
83 exhibiting wanton and willful disregard of human rights, safety,
84 or property. ~~Forgery of a ballot envelope or voting certificate~~
85 ~~used in a condominium association election is punishable as~~
86 ~~provided in s. 831.01, the theft or embezzlement of funds of a~~
87 ~~condominium association is punishable as provided in s. 812.014,~~

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88 ~~and the destruction of or the refusal to allow inspection or~~
89 ~~copying of an official record of a condominium association that~~
90 ~~is accessible to unit owners within the time periods required by~~
91 ~~general law in furtherance of any crime is punishable as~~
92 ~~tampering with physical evidence as provided in s. 918.13 or as~~
93 ~~obstruction of justice as provided in chapter 843.~~ An officer or
94 director charged by information or indictment with a crime
95 referenced in this paragraph must be removed from office, and
96 the vacancy shall be filled as provided in s. 718.112(2)(d)2.
97 until the end of the officer's or director's period of
98 suspension or the end of his or her term of office, whichever
99 occurs first. If a criminal charge is pending against the
100 officer or director, he or she may not be appointed or elected
101 to a position as an officer or a director of any association and
102 may not have access to the official records of any association,
103 except pursuant to a court order. However, if the charges are
104 resolved without a finding of guilt, the officer or director
105 must be reinstated for the remainder of his or her term of
106 office, if any.

107 (12) OFFICIAL RECORDS.—

108 (a) From the inception of the association, the association
109 shall maintain each of the following items, if applicable, which
110 constitutes the official records of the association:

111 1. A copy of the plans, permits, warranties, and other
112 items provided by the developer pursuant to s. 718.301(4).

113 2. A photocopy of the recorded declaration of condominium
114 of each condominium operated by the association and each
115 amendment to each declaration.

116 3. A photocopy of the recorded bylaws of the association

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117 and each amendment to the bylaws.

118 4. A certified copy of the articles of incorporation of the
119 association, or other documents creating the association, and
120 each amendment thereto.

121 5. A copy of the current rules of the association.

122 6. A book or books that contain the minutes of all meetings
123 of the association, the board of administration, and the unit
124 owners.

125 7. A current roster of all unit owners and their mailing
126 addresses, unit identifications, voting certifications, and, if
127 known, telephone numbers. The association shall also maintain
128 the e-mail addresses and facsimile numbers of unit owners
129 consenting to receive notice by electronic transmission. The e-
130 mail addresses and facsimile numbers are not accessible to unit
131 owners if consent to receive notice by electronic transmission
132 is not provided in accordance with sub-subparagraph (c)5.3.
133 ~~(e)3.e.~~ However, the association is not liable for an
134 inadvertent disclosure of the e-mail address or facsimile number
135 for receiving electronic transmission of notices.

136 8. All current insurance policies of the association and
137 condominiums operated by the association.

138 9. A current copy of any management agreement, lease, or
139 other contract to which the association is a party or under
140 which the association or the unit owners have an obligation or
141 responsibility.

142 10. Bills of sale or transfer for all property owned by the
143 association.

144 11. Accounting records for the association and separate
145 accounting records for each condominium that the association

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146 operates. Any person who knowingly or intentionally defaces or
147 destroys such records, or who knowingly or intentionally fails
148 to create or maintain such records, with the intent of causing
149 harm to the association or one or more of its members, is
150 personally subject to a civil penalty pursuant to s.

151 718.501(1)(d). The accounting records must include, but are not
152 limited to:

153 a. Accurate, itemized, and detailed records of all receipts
154 and expenditures.

155 b. A current account and a monthly, bimonthly, or quarterly
156 statement of the account for each unit designating the name of
157 the unit owner, the due date and amount of each assessment, the
158 amount paid on the account, and the balance due.

159 c. All audits, reviews, accounting statements, and
160 financial reports of the association or condominium.

161 d. All contracts for work to be performed. Bids for work to
162 be performed are also considered official records and must be
163 maintained by the association.

164 e. All bank statements, canceled checks, and credit card
165 statements.

166 f. All invoices, transaction receipts, deposit slips, or
167 other underlying documentation that substantiates any receipt or
168 expenditure of funds by the association.

169 12. Ballots, sign-in sheets, voting proxies, and all other
170 papers and electronic records relating to voting by unit owners,
171 which must be maintained for 1 year from the date of the
172 election, vote, or meeting to which the document relates,
173 notwithstanding paragraph (b).

174 13. All rental records if the association is acting as

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175 agent for the rental of condominium units.

176 14. A copy of the current question and answer sheet as
177 described in s. 718.504.

178 15. All other written records of the association not
179 specifically included in the foregoing which are related to the
180 operation of the association.

181 16. A copy of the inspection report as described in s.
182 718.301(4)(p).

183 17. Bids for materials, equipment, or services.

184 (b) The official records specified in subparagraphs (a)1.-
185 6. must be permanently maintained from the inception of the
186 association. All other official records must be maintained
187 within the state for at least 7 years, unless otherwise provided
188 by general law. All official records must be maintained in a
189 manner and format prescribed by division rule so that the
190 records are easily accessible for inspection. The records of the
191 association shall be made available to a unit owner within 45
192 miles of the condominium property or within the county in which
193 the condominium property is located within 10 working days after
194 receipt of a written request by the board or its designee.
195 However, such distance requirement does not apply to an
196 association governing a timeshare condominium. This paragraph
197 may be complied with by having a copy of the official records of
198 the association available for inspection or copying on the
199 condominium property or association property, or the association
200 may offer the option of making the records available to a unit
201 owner electronically via the Internet or by allowing the records
202 to be viewed in electronic format on a computer screen and
203 printed upon request. The association is not responsible for the

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204 use or misuse of the information provided to an association
205 member or his or her authorized representative pursuant to the
206 compliance requirements of this chapter unless the association
207 has an affirmative duty not to disclose such information
208 pursuant to this chapter.

209 (c)1.a. The official records of the association are open to
210 inspection by any association member or the authorized
211 representative of such member at all reasonable times. The right
212 to inspect the records includes the right to make or obtain
213 copies, at the reasonable expense, if any, of the member or
214 authorized representative of such member. A renter of a unit has
215 a right to inspect and copy the association's bylaws and rules.
216 The association may adopt reasonable rules regarding the
217 frequency, time, location, notice, and manner of record
218 inspections and copying. The failure of an association to
219 provide the records within 10 working days after receipt of a
220 written request that complies with the association's document
221 inspection rule creates a rebuttable presumption that the
222 association willfully failed to comply with this paragraph. A
223 unit owner who is denied access to official records is entitled
224 to the actual damages or minimum damages for the association's
225 willful failure to comply. Minimum damages are \$50 per calendar
226 day for up to 10 days, beginning on the 11th working day after
227 receipt of the written request that complies with the
228 association's document inspection rule. The failure to permit
229 inspection entitles any person prevailing in an enforcement
230 action to recover reasonable attorney fees from the person in
231 control of the records who, directly or indirectly, knowingly
232 denied access to the records. If the requested records are

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233 posted on an association's website, the association may fulfill
234 its obligations as provided under this paragraph by directing to
235 the website all persons authorized to request access to official
236 records pursuant to this paragraph.

237 b. In response to a statutorily compliant written request
238 to inspect records, the association must simultaneously provide
239 a checklist to the requestor of all records made available for
240 inspection and copying and a sworn affidavit in which the person
241 facilitating or handling the association's compliance with the
242 request attests to the veracity of the checklist provided to the
243 requestor. The checklist must also identify any of the
244 association's official records that were not made available to
245 the requestor. An association must maintain a checklist provided
246 under this sub-subparagraph for 7 years. An association
247 delivering a checklist and affidavit pursuant to this sub-
248 subparagraph creates a rebuttable presumption that the
249 association has complied with this paragraph.

250 2. Any director or member of the board or association or a
251 community association manager who knowingly, willfully, and
252 repeatedly violates subparagraph 1. commits a misdemeanor of the
253 second degree, punishable as provided in s. 775.082 or s.
254 775.083. For purposes of this subparagraph, the term
255 "repeatedly" means two or more violations within a 12-month
256 period.

257 3.2. Any person who knowingly or intentionally defaces or
258 destroys accounting records that are required by this chapter to
259 be maintained during the period for which such records are
260 required to be maintained, or who knowingly or intentionally
261 fails to create or maintain accounting records that are required

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262 to be created or maintained, with the intent of causing harm to
263 the association or one or more of its members, commits a
264 misdemeanor of the first degree, punishable as provided in s.
265 775.082 or s. 775.083 ~~is personally subject to a civil penalty~~
266 ~~pursuant to s. 718.501(1)(d).~~

267 4. Any person who willfully and knowingly refuses to
268 release or otherwise produce association records with the intent
269 to avoid or escape detection, arrest, trial, or punishment for
270 the commission of a crime, or to assist another person with such
271 avoidance or escape, commits a felony of the third degree,
272 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

273 ~~5.3.~~ The association shall maintain an adequate number of
274 copies of the declaration, articles of incorporation, bylaws,
275 and rules, and all amendments to each of the foregoing, as well
276 as the question and answer sheet as described in s. 718.504 and
277 year-end financial information required under this section, on
278 the condominium property to ensure their availability to unit
279 owners and prospective purchasers, and may charge its actual
280 costs for preparing and furnishing these documents to those
281 requesting the documents. An association shall allow a member or
282 his or her authorized representative to use a portable device,
283 including a smartphone, tablet, portable scanner, or any other
284 technology capable of scanning or taking photographs, to make an
285 electronic copy of the official records in lieu of the
286 association's providing the member or his or her authorized
287 representative with a copy of such records. The association may
288 not charge a member or his or her authorized representative for
289 the use of a portable device. Notwithstanding this paragraph,
290 the following records are not accessible to unit owners:

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291 a. Any record protected by the lawyer-client privilege as
292 described in s. 90.502 and any record protected by the work-
293 product privilege, including a record prepared by an association
294 attorney or prepared at the attorney's express direction, which
295 reflects a mental impression, conclusion, litigation strategy,
296 or legal theory of the attorney or the association, and which
297 was prepared exclusively for civil or criminal litigation or for
298 adversarial administrative proceedings, or which was prepared in
299 anticipation of such litigation or proceedings until the
300 conclusion of the litigation or proceedings.

301 b. Information obtained by an association in connection
302 with the approval of the lease, sale, or other transfer of a
303 unit.

304 c. Personnel records of association or management company
305 employees, including, but not limited to, disciplinary, payroll,
306 health, and insurance records. For purposes of this sub-
307 subparagraph, the term "personnel records" does not include
308 written employment agreements with an association employee or
309 management company, or budgetary or financial records that
310 indicate the compensation paid to an association employee.

311 d. Medical records of unit owners.

312 e. Social security numbers, driver license numbers, credit
313 card numbers, e-mail addresses, telephone numbers, facsimile
314 numbers, emergency contact information, addresses of a unit
315 owner other than as provided to fulfill the association's notice
316 requirements, and other personal identifying information of any
317 person, excluding the person's name, unit designation, mailing
318 address, property address, and any address, e-mail address, or
319 facsimile number provided to the association to fulfill the

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320 association's notice requirements. Notwithstanding the
321 restrictions in this sub-subparagraph, an association may print
322 and distribute to parcel owners a directory containing the name,
323 parcel address, and all telephone numbers of each parcel owner.
324 However, an owner may exclude his or her telephone numbers from
325 the directory by so requesting in writing to the association. An
326 owner may consent in writing to the disclosure of other contact
327 information described in this sub-subparagraph. The association
328 is not liable for the inadvertent disclosure of information that
329 is protected under this sub-subparagraph if the information is
330 included in an official record of the association and is
331 voluntarily provided by an owner and not requested by the
332 association.

333 f. Electronic security measures that are used by the
334 association to safeguard data, including passwords.

335 g. The software and operating system used by the
336 association which allow the manipulation of data, even if the
337 owner owns a copy of the same software used by the association.
338 The data is part of the official records of the association.

339 (g)1. By January 1, 2022 ~~2019~~, an association managing a
340 condominium with 25 ~~150~~ or more units which does not contain
341 timeshare units shall post digital copies of the documents
342 specified in subparagraph 2. on its website.

343 a. The association's website must be:

344 (I) An independent website or web portal wholly owned and
345 operated by the association; or

346 (II) A website or web portal operated by a third-party
347 provider with whom the association owns, leases, rents, or
348 otherwise obtains the right to operate a web page, subpage, web

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349 portal, or collection of subpages or web portals dedicated to
350 the association's activities and on which required notices,
351 records, and documents may be posted by the association.

352 b. The association's website must be accessible through the
353 Internet and must contain a subpage, web portal, or other
354 protected electronic location that is inaccessible to the
355 general public and accessible only to unit owners and employees
356 of the association.

357 c. Upon a unit owner's written request, the association
358 must provide the unit owner with a username and password and
359 access to the protected sections of the association's website
360 that contain any notices, records, or documents that must be
361 electronically provided.

362 2. A current copy of the following documents must be posted
363 in digital format on the association's website:

364 a. The recorded declaration of condominium of each
365 condominium operated by the association and each amendment to
366 each declaration.

367 b. The recorded bylaws of the association and each
368 amendment to the bylaws.

369 c. The articles of incorporation of the association, or
370 other documents creating the association, and each amendment
371 thereto. The copy posted pursuant to this sub-subparagraph must
372 be a copy of the articles of incorporation filed with the
373 Department of State.

374 d. The rules of the association.

375 e. A list of all executory contracts or documents to which
376 the association is a party or under which the association or the
377 unit owners have an obligation or responsibility and, after

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378 bidding for the related materials, equipment, or services has
379 closed, a list of bids received by the association within the
380 past year. Summaries of bids for materials, equipment, or
381 services which exceed \$500 must be maintained on the website for
382 1 year. In lieu of summaries, complete copies of the bids may be
383 posted.

384 f. The annual budget required by s. 718.112(2)(f) and any
385 proposed budget to be considered at the annual meeting.

386 g. The financial report required by subsection (13) and any
387 monthly income or expense statement to be considered at a
388 meeting.

389 h. The certification of each director required by s.
390 718.112(2)(d)4.b.

391 i. All contracts or transactions between the association
392 and any director, officer, corporation, firm, or association
393 that is not an affiliated condominium association or any other
394 entity in which an association director is also a director or
395 officer and financially interested.

396 j. Any contract or document regarding a conflict of
397 interest or possible conflict of interest as provided in ss.
398 468.436(2)(b)6. and 718.3027(3).

399 k. The notice of any unit owner meeting and the agenda for
400 the meeting, as required by s. 718.112(2)(d)3., no later than 14
401 days before the meeting. The notice must be posted in plain view
402 on the front page of the website, or on a separate subpage of
403 the website labeled "Notices" which is conspicuously visible and
404 linked from the front page. The association must also post on
405 its website any document to be considered and voted on by the
406 owners during the meeting or any document listed on the agenda

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407 at least 7 days before the meeting at which the document or the
408 information within the document will be considered.

409 1. Notice of any board meeting, the agenda, and any other
410 document required for the meeting as required by s.
411 718.112(2)(c), which must be posted no later than the date
412 required for notice pursuant to s. 718.112(2)(c).

413 3. The association shall ensure that the information and
414 records described in paragraph (c), which are not allowed to be
415 accessible to unit owners, are not posted on the association's
416 website. If protected information or information restricted from
417 being accessible to unit owners is included in documents that
418 are required to be posted on the association's website, the
419 association shall ensure the information is redacted before
420 posting the documents online. Notwithstanding the foregoing, the
421 association or its agent is not liable for disclosing
422 information that is protected or restricted pursuant to this
423 paragraph unless such disclosure was made with a knowing or
424 intentional disregard of the protected or restricted nature of
425 such information.

426 4. The failure of the association to post information
427 required under subparagraph 2. is not in and of itself
428 sufficient to invalidate any action or decision of the
429 association's board or its committees.

430 5. By January 1, 2022, an association managing 25 or more
431 units, not including timeshare units, shall post on its website
432 digital copies of all official records subject to inspection by
433 tenants or unit owners or their authorized representatives.

434 (15) DEBIT CARDS.—

435 (b) A person who uses ~~Use of~~ a debit card issued in the

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436 name of the association, or billed directly to the association,
437 for any expense that is not a lawful obligation of the
438 association commits theft under s. 812.014. For the purposes of
439 this paragraph, a "lawful obligation of the association" means
440 an obligation that has been properly preapproved by the board
441 and is reflected in the meeting minutes or the written budget
442 ~~may be prosecuted as credit card fraud pursuant to s. 817.61.~~

443 Section 2. Section 718.129, Florida Statutes, is created to
444 read:

445 718.129 Fraudulent voting activities related to association
446 elections; penalties.-

447 (1) Each of the following acts is a fraudulent voting
448 activity related to association elections and constitutes a
449 felony of the third degree, punishable as provided in s.
450 775.082, s. 775.083, or s. 775.084:

451 (a) Willfully and falsely swearing or affirming any oath or
452 affirmation, or willfully procuring another person to swear or
453 affirm falsely to an oath or affirmation, in connection with or
454 arising out of voting or elections.

455 (b) Perpetrating or attempting to perpetrate, or aiding in
456 the perpetration of, any fraud in connection with any vote cast,
457 to be cast, or attempted to be cast.

458 (c) Preventing an elector from voting, or preventing an
459 elector from voting as the elector intended, by fraudulently
460 changing or attempting to change a ballot, ballot envelope,
461 vote, or voting certificate of the elector.

462 (d) Using bribery, menace, threat, or any other corruption
463 to attempt, directly or indirectly, to influence, deceive, or
464 deter any elector in voting.

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465 (e) Directly or indirectly giving or promising anything of
466 value to another person with the intent to buy the vote of that
467 person or another person or to corruptly influence that person
468 or another person in casting his or her vote. However, this
469 paragraph does not apply to the serving of food to be consumed
470 at an election rally or meeting or to any item of nominal value
471 which is used as an election advertisement, including a campaign
472 message designed to be worn by a person.

473 (f) Directly or indirectly using or threatening to use
474 force, violence, or intimidation or any tactic of coercion or
475 intimidation to induce or compel an individual to vote or
476 refrain from voting in an election or on any particular ballot
477 measure.

478 (2) Each of the following acts constitutes a felony of the
479 third degree, punishable as provided in s. 775.082, s. 775.083,
480 or s. 775.084:

481 (a) Knowingly aiding, abetting, or advising a person in the
482 commission of a fraudulent voting activity related to
483 association elections.

484 (b) Agreeing, conspiring, combining, or confederating with
485 at least one other person to commit a fraudulent voting activity
486 related to association elections.

487 (c) Having knowledge of a fraudulent voting activity
488 related to association elections and giving any aid to the
489 offender with intent that the offender avoid or escape
490 detection, arrest, trial, or punishment. This paragraph does not
491 apply to a licensed attorney giving legal advice to a client.

492 Section 3. Subsection (1) of section 718.501, Florida
493 Statutes, is amended to read:

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494 718.501 Authority, responsibility, and duties of Division
495 of Florida Condominiums, Timeshares, and Mobile Homes.—

496 (1) The division may enforce and ensure compliance with the
497 provisions of this chapter and rules relating to the
498 development, construction, sale, lease, ownership, operation,
499 and management of residential condominium units. In performing
500 its duties, the division has complete jurisdiction to
501 investigate complaints and enforce compliance with respect to
502 associations that are still under developer control or the
503 control of a bulk assignee or bulk buyer pursuant to part VII of
504 this chapter and complaints against developers, bulk assignees,
505 or bulk buyers involving improper turnover or failure to
506 turnover, pursuant to s. 718.301. However, after turnover has
507 occurred, the division has jurisdiction to investigate
508 complaints related only to financial issues, elections,
509 maintenance of official records, and unit owner access to
510 association records pursuant to s. 718.111(12). As used in this
511 subsection, the term "financial issue" means an issue related to
512 operating budgets; reserve schedules; financial records under s.
513 718.111(12) (a)11.; notices of meetings and meeting minutes for
514 budget or financial statement related meetings; any assessment
515 for common expenses, fees, or fines; commingling of funds; and
516 any other record necessary to determine the revenues and
517 expenses of the association. The division may adopt rules to
518 further define the term "financial issue."

519 (a)1. The division may make necessary public or private
520 investigations within or outside this state to determine whether
521 any person has violated this chapter or any rule or order
522 hereunder, to aid in the enforcement of this chapter, or to aid

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523 in the adoption of rules or forms.

524 2. The division may submit any official written report,
525 worksheet, or other related paper, or a duly certified copy
526 thereof, compiled, prepared, drafted, or otherwise made by and
527 duly authenticated by a financial examiner or analyst to be
528 admitted as competent evidence in any hearing in which the
529 financial examiner or analyst is available for cross-examination
530 and attests under oath that such documents were prepared as a
531 result of an examination or inspection conducted pursuant to
532 this chapter.

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

537 (c) For the purpose of any investigation under this
538 chapter, the division director or any officer or employee
539 designated by the division director may administer oaths or
540 affirmations, subpoena witnesses and compel their attendance,
541 take evidence, and require the production of any matter which is
542 relevant to the investigation, including the existence,
543 description, nature, custody, condition, and location of any
544 books, documents, or other tangible things and the identity and
545 location of persons having knowledge of relevant facts or any
546 other matter reasonably calculated to lead to the discovery of
547 material evidence. Upon the failure by a person to obey a
548 subpoena or to answer questions propounded by the investigating
549 officer and upon reasonable notice to all affected persons, the
550 division may apply to the circuit court for an order compelling
551 compliance.

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552 (d) Notwithstanding any remedies available to unit owners
553 and associations, if the division has reasonable cause to
554 believe that a violation of any provision of this chapter or
555 related rule has occurred, the division may institute
556 enforcement proceedings in its own name against any developer,
557 bulk assignee, bulk buyer, association, officer, or member of
558 the board of administration, or its assignees or agents, as
559 follows:

560 1. The division may permit a person whose conduct or
561 actions may be under investigation to waive formal proceedings
562 and enter into a consent proceeding whereby orders, rules, or
563 letters of censure or warning, whether formal or informal, may
564 be entered against the person.

565 2. The division may issue an order requiring the developer,
566 bulk assignee, bulk buyer, association, developer-designated
567 officer, or developer-designated member of the board of
568 administration, developer-designated assignees or agents, bulk
569 assignee-designated assignees or agents, bulk buyer-designated
570 assignees or agents, community association manager, or community
571 association management firm to cease and desist from the
572 unlawful practice and take such affirmative action as in the
573 judgment of the division carry out the purposes of this chapter.
574 If the division finds that a developer, bulk assignee, bulk
575 buyer, association, officer, or member of the board of
576 administration, or its assignees or agents, is violating or is
577 about to violate any provision of this chapter, any rule adopted
578 or order issued by the division, or any written agreement
579 entered into with the division, and presents an immediate danger
580 to the public requiring an immediate final order, it may issue

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581 an emergency cease and desist order reciting with particularity
582 the facts underlying such findings. The emergency cease and
583 desist order is effective for 90 days. If the division begins
584 nonemergency cease and desist proceedings, the emergency cease
585 and desist order remains effective until the conclusion of the
586 proceedings under ss. 120.569 and 120.57.

587 3. If a developer, bulk assignee, or bulk buyer, fails to
588 pay any restitution determined by the division to be owed, plus
589 any accrued interest at the highest rate permitted by law,
590 within 30 days after expiration of any appellate time period of
591 a final order requiring payment of restitution or the conclusion
592 of any appeal thereof, whichever is later, the division must
593 bring an action in circuit or county court on behalf of any
594 association, class of unit owners, lessees, or purchasers for
595 restitution, declaratory relief, injunctive relief, or any other
596 available remedy. The division may also temporarily revoke its
597 acceptance of the filing for the developer to which the
598 restitution relates until payment of restitution is made.

599 4. The division may petition the court for appointment of a
600 receiver or conservator. If appointed, the receiver or
601 conservator may take action to implement the court order to
602 ensure the performance of the order and to remedy any breach
603 thereof. In addition to all other means provided by law for the
604 enforcement of an injunction or temporary restraining order, the
605 circuit court may impound or sequester the property of a party
606 defendant, including books, papers, documents, and related
607 records, and allow the examination and use of the property by
608 the division and a court-appointed receiver or conservator.

609 5. The division may apply to the circuit court for an order

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610 of restitution whereby the defendant in an action brought
611 pursuant to subparagraph 4. is ordered to make restitution of
612 those sums shown by the division to have been obtained by the
613 defendant in violation of this chapter. At the option of the
614 court, such restitution is payable to the conservator or
615 receiver appointed pursuant to subparagraph 4. or directly to
616 the persons whose funds or assets were obtained in violation of
617 this chapter.

618 6. The division may impose a civil penalty against a
619 developer, bulk assignee, or bulk buyer, or association, or its
620 assignee or agent, for any violation of this chapter or related
621 rule. The division may impose a civil penalty individually
622 against an officer or board member who willfully and knowingly
623 violates a provision of this chapter, adopted rule, or a final
624 order of the division; may order the removal of such individual
625 as an officer or from the board of administration or as an
626 officer of the association; and may prohibit such individual
627 from serving as an officer or on the board of a community
628 association for a period of time. The term "willfully and
629 knowingly" means that the division informed the officer or board
630 member that his or her action or intended action violates this
631 chapter, a rule adopted under this chapter, or a final order of
632 the division and that the officer or board member refused to
633 comply with the requirements of this chapter, a rule adopted
634 under this chapter, or a final order of the division. The
635 division, before initiating formal agency action under chapter
636 120, must afford the officer or board member an opportunity to
637 voluntarily comply, and an officer or board member who complies
638 within 10 days is not subject to a civil penalty. A penalty may

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639 be imposed on the basis of each day of continuing violation, but
640 the penalty for any offense may not exceed \$5,000. By January 1,
641 1998, the division shall adopt, by rule, penalty guidelines
642 applicable to possible violations or to categories of violations
643 of this chapter or rules adopted by the division. The guidelines
644 must specify a meaningful range of civil penalties for each such
645 violation of the statute and rules and must be based upon the
646 harm caused by the violation, the repetition of the violation,
647 and upon such other factors deemed relevant by the division. For
648 example, the division may consider whether the violations were
649 committed by a developer, bulk assignee, or bulk buyer, or
650 owner-controlled association, the size of the association, and
651 other factors. The guidelines must designate the possible
652 mitigating or aggravating circumstances that justify a departure
653 from the range of penalties provided by the rules. It is the
654 legislative intent that minor violations be distinguished from
655 those which endanger the health, safety, or welfare of the
656 condominium residents or other persons and that such guidelines
657 provide reasonable and meaningful notice to the public of likely
658 penalties that may be imposed for proscribed conduct. This
659 subsection does not limit the ability of the division to
660 informally dispose of administrative actions or complaints by
661 stipulation, agreed settlement, or consent order. All amounts
662 collected shall be deposited with the Chief Financial Officer to
663 the credit of the Division of Florida Condominiums, Timeshares,
664 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
665 bulk buyer fails to pay the civil penalty and the amount deemed
666 to be owed to the association, the division shall issue an order
667 directing that such developer, bulk assignee, or bulk buyer

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668 cease and desist from further operation until such time as the
669 civil penalty is paid or may pursue enforcement of the penalty
670 in a court of competent jurisdiction. If an association fails to
671 pay the civil penalty, the division shall pursue enforcement in
672 a court of competent jurisdiction, and the order imposing the
673 civil penalty or the cease and desist order is not effective
674 until 20 days after the date of such order. Any action commenced
675 by the division shall be brought in the county in which the
676 division has its executive offices or in the county where the
677 violation occurred.

678 7. If a unit owner presents the division with proof that
679 the unit owner has requested access to official records in
680 writing by certified mail, and that after 10 days the unit owner
681 again made the same request for access to official records in
682 writing by certified mail, and that more than 10 days has
683 elapsed since the second request and the association has still
684 failed or refused to provide access to official records as
685 required by this chapter, the division shall issue a subpoena
686 requiring production of the requested records where the records
687 are kept pursuant to s. 718.112.

688 8. In addition to subparagraph 6., the division may seek
689 the imposition of a civil penalty through the circuit court for
690 any violation for which the division may issue a notice to show
691 cause under paragraph (r). The civil penalty shall be at least
692 \$500 but no more than \$5,000 for each violation. The court may
693 also award to the prevailing party court costs and reasonable
694 attorney ~~attorney's~~ fees and, if the division prevails, may also
695 award reasonable costs of investigation.

696 (e) The division may prepare and disseminate a prospectus

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697 and other information to assist prospective owners, purchasers,
698 lessees, and developers of residential condominiums in assessing
699 the rights, privileges, and duties pertaining thereto.

700 (f) The division may adopt rules to administer and enforce
701 the provisions of this chapter.

702 (g) The division shall establish procedures for providing
703 notice to an association and the developer, bulk assignee, or
704 bulk buyer during the period in which the developer, bulk
705 assignee, or bulk buyer controls the association if the division
706 is considering the issuance of a declaratory statement with
707 respect to the declaration of condominium or any related
708 document governing such condominium community.

709 (h) The division shall furnish each association that pays
710 the fees required by paragraph (2) (a) a copy of this chapter, as
711 amended, and the rules adopted thereto on an annual basis.

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

716 (j) The division shall provide training and educational
717 programs for condominium association board members and unit
718 owners. The training may, in the division's discretion, include
719 web-based electronic media, and live training and seminars in
720 various locations throughout the state. The division may review
721 and approve education and training programs for board members
722 and unit owners offered by providers and shall maintain a
723 current list of approved programs and providers and make such
724 list available to board members and unit owners in a reasonable
725 and cost-effective manner.

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

728 (l) The division shall develop a program to certify both
729 volunteer and paid mediators to provide mediation of condominium
730 disputes. The division shall provide, upon request, a list of
731 such mediators to any association, unit owner, or other
732 participant in arbitration proceedings under s. 718.1255
733 requesting a copy of the list. The division shall include on the
734 list of volunteer mediators only the names of persons who have
735 received at least 20 hours of training in mediation techniques
736 or who have mediated at least 20 disputes. In order to become
737 initially certified by the division, paid mediators must be
738 certified by the Supreme Court to mediate court cases in county
739 or circuit courts. However, the division may adopt, by rule,
740 additional factors for the certification of paid mediators,
741 which must be related to experience, education, or background.
742 Any person initially certified as a paid mediator by the
743 division must, in order to continue to be certified, comply with
744 the factors or requirements adopted by rule.

745 (m) If a complaint is made, the division must conduct its
746 inquiry with due regard for the interests of the affected
747 parties. Within 30 days after receipt of a complaint, the
748 division shall acknowledge the complaint in writing and notify
749 the complainant whether the complaint is within the jurisdiction
750 of the division and whether additional information is needed by
751 the division from the complainant. The division shall conduct
752 its investigation and, within 90 days after receipt of the
753 original complaint or of timely requested additional
754 information, take action upon the complaint. However, the

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755 failure to complete the investigation within 90 days does not
756 prevent the division from continuing the investigation,
757 accepting or considering evidence obtained or received after 90
758 days, or taking administrative action if reasonable cause exists
759 to believe that a violation of this chapter or a rule has
760 occurred. If an investigation is not completed within the time
761 limits established in this paragraph, the division shall, on a
762 monthly basis, notify the complainant in writing of the status
763 of the investigation. When reporting its action to the
764 complainant, the division shall inform the complainant of any
765 right to a hearing pursuant to ss. 120.569 and 120.57.

766 (n) Condominium association directors, officers, and
767 employees; condominium developers; bulk assignees, bulk buyers,
768 and community association managers; and community association
769 management firms have an ongoing duty to reasonably cooperate
770 with the division in any investigation pursuant to this section.
771 The division shall refer to local law enforcement authorities
772 any person whom the division believes has altered, destroyed,
773 concealed, or removed any record, document, or thing required to
774 be kept or maintained by this chapter with the purpose to impair
775 its verity or availability in the department's investigation.

776 (o) The division may:

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

780 (p) The division shall cooperate with similar agencies in
781 other jurisdictions to establish uniform filing procedures and
782 forms, public offering statements, advertising standards, and
783 rules and common administrative practices.

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784 (q) The division shall consider notice to a developer, bulk
785 assignee, or bulk buyer to be complete when it is delivered to
786 the address of the developer, bulk assignee, or bulk buyer
787 currently on file with the division.

788 (r) In addition to its enforcement authority, the division
789 may issue a notice to show cause, which must provide for a
790 hearing, upon written request, in accordance with chapter 120.

791 (s) The division shall submit to the Governor, the
792 President of the Senate, the Speaker of the House of
793 Representatives, and the chairs of the legislative
794 appropriations committees an annual report that includes, but
795 need not be limited to, the number of training programs provided
796 for condominium association board members and unit owners, the
797 number of complaints received by type, the number and percent of
798 complaints acknowledged in writing within 30 days and the number
799 and percent of investigations acted upon within 90 days in
800 accordance with paragraph (m), and the number of investigations
801 exceeding the 90-day requirement. The annual report must also
802 include an evaluation of the division's core business processes
803 and make recommendations for improvements, including statutory
804 changes. The report shall be submitted by September 30 following
805 the end of the fiscal year.

806 Section 4. This act shall take effect October 1, 2020.