

By Representative Crow

1 A bill to be entitled
2 An act relating to the Florida Uniform Land
3 Sales Practices Law; amending s. 498.005, F.S.;
4 providing definitions; amending s. 498.007,
5 F.S.; revising language with respect to the
6 general powers and duties of the Division of
7 Florida Land Sales, Condominiums, and Mobile
8 Homes; amending s. 498.011, F.S.; revising
9 language with respect to per diem and mileage;
10 amending s. 498.017, F.S.; revising certain
11 fees; deleting certain fees; amending s.
12 498.022, F.S.; revising language with respect
13 to jurisdiction over fraudulent acts; providing
14 that it is a violation of the act to dispose
15 of, conceal, or divert any funds or assets of
16 any person so as to adversely affect the
17 interest of a purchaser; amending s. 498.023,
18 F.S.; providing additional criteria with
19 respect to permitted disposal of an interest in
20 subdivided lands; amending s. 498.024, F.S.;
21 revising language with respect to reservations;
22 amending s. 498.025, F.S.; revising language
23 with respect to exemptions; amending s.
24 498.027, F.S.; revising language with respect
25 to application for registration; providing for
26 rules; amending s. 498.029, F.S.; eliminating
27 the registration of certain subdivided lands;
28 amending s. 498.031, F.S.; providing for the
29 time period during which registration becomes
30 effective; revising language with respect to
31 inquiry and examination; amending s. 498.033,

1 F.S.; revising language with respect to the
2 registration of subdivided lands; amending s.
3 498.035, F.S.; authorizing, rather than
4 requiring, the division to approve advertising
5 material; revising language with respect to
6 advertising material; requiring the full
7 disclosure of certain pertinent information;
8 amending s. 498.037, F.S.; revising language
9 with respect to public offering statements;
10 amending s. 498.039, F.S.; revising language
11 with respect to certain trust and escrow
12 accounts; providing for rules; amending s.
13 498.041, F.S.; revising language with respect
14 to annual renewal; providing for termination of
15 registration; amending s. 498.047, F.S.;
16 relating to investigations; providing for
17 rules; amending s. 498.059, F.S.; providing
18 penalties with respect to certain violations;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Section 498.005, Florida Statutes, is
24 amended to read:

25 498.005 Definitions.--As used in this chapter, unless
26 the context otherwise requires, the term:

27 ~~(1) "Active registration" means a registered~~
28 ~~subdivision, except a registration classified as inactive.~~

29 (1)~~(2)~~ "Advertising" means the publication of or the
30 causing to be published of any information for the purpose of
31 inducing any other person to purchase or to acquire an

1 interest in subdivided lands, including ~~the land sales~~
2 ~~contract to be used~~ and any photographs, drawings, or artist's
3 representations of existing or planned physical conditions or
4 facilities on the property, by means of any:
5 (a) Newspaper or periodical;
6 (b) Radio or television broadcast;
7 (c) Written, printed, or photographic matter produced
8 by any duplicating process producing 10 copies or more;
9 (d) Material used in connection with the disposition
10 or offer of subdivided lands by radio, television, telephone,
11 computer, or any other electronic means;
12 (e) Material used by subdividers or their agents,
13 distributors, or any other persons to induce prospective
14 purchasers to visit this state, particularly vacation
15 certificates which involve a land sales presentation by a
16 subdivider or his agents; or
17 (f) Billboards.
18 (2) "Closing" means the transfer of ownership or lease
19 of an interest in subdivided lands to a purchaser as evidenced
20 by the delivery of a deed to the purchaser or to the clerk of
21 the court for recording in the official records of the county
22 in which the subdivided lands are located.
23 ~~(3) "Broker" means any person who is licensed as such~~
24 ~~by, or is exempt from, chapter 475 and who is employed or~~
25 ~~authorized by a subdivider to offer for disposition any~~
26 ~~interest in subdivided lands required to be registered~~
27 ~~pursuant to this chapter and who is responsible for the~~
28 ~~supervision of salesmen who offer for disposition any interest~~
29 ~~in subdivided lands.~~
30 (3)(4) "Conviction" means a determination of guilt
31 resulting from a plea or trial, regardless of whether

1 adjudication was withheld or imposition of sentence was
2 suspended on an offense prohibited by this chapter, or
3 forfeiture of a bond when charged with a criminal offense
4 prohibited by this chapter.

5 ~~(4)~~~~(5)~~ "Disposition" means any transaction involving
6 any interest in subdivided lands entered into for profit,
7 including any sale, resale, lease for more than 5 years,
8 assignment, or award by lottery.

9 ~~(5)~~~~(6)~~ "Division" means the Division of Florida Land
10 Sales, Condominiums, and Mobile Homes of the Department of
11 Business and Professional Regulation.

12 (6) "Escrow" means the delivery to, or deposit with,
13 an escrow agent of funds or property to be held and disbursed
14 by such escrow agent consistent with the provisions of this
15 act.

16 (7) "Escrow agent" means:

17 (a) A savings and loan association or bank located in
18 Florida or any other financial institution located in Florida
19 having a net worth in excess of \$5 million;

20 (b) An attorney who is a member in good standing of
21 The Florida Bar;

22 (c) A real estate broker who is licensed pursuant to
23 chapter 475 and in good standing with the Department of
24 Business and Professional Regulation; or

25 (d) A title insurance agent licensed pursuant to s.
26 626.8417 or a title insurance agency licensed pursuant to s.
27 626.8418.

28 (8) "Governing documents" means the recorded
29 declaration of covenants for a community, and all duly adopted
30 and recorded amendments thereto; and the articles of
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1 incorporation and bylaws of the homeowners' association, and
2 any duly adopted amendments thereto.

3 (9) "Homeowners' association" or "association" means a
4 Florida corporation responsible for the operation of a
5 community in which the voting membership is made up of parcel
6 owners or their agents, or a combination thereof, and in which
7 membership is a mandatory condition of parcel ownership, and
8 which is authorized to impose assessments that, if unpaid, may
9 become a lien on the parcel. The term "homeowners'
10 association" or "association" does not include a community
11 development district or other similar special taxing district
12 created pursuant to statute.

13 (10) "Homesite" means a lot, parcel, unit, or interest
14 contained within a subdivision which is physically accessible
15 by a public or private road at the time of deeding and usable
16 by the purchaser for constructing or installing a
17 single-family residential building without draining, filling,
18 or other improvement, except for reasonable preparation for
19 construction or installation, and that no fact or circumstance
20 exists which prohibits the immediate use of the lot for such
21 purpose upon deeding.

22 ~~(7) "Inactive registration" means one in which a~~
23 ~~subdivision has demonstrated to the satisfaction of the~~
24 ~~division that all requirements under the registration are~~
25 ~~current and there is no ongoing sales program.~~

26 (11)(8) "Material change" means any act or failure to
27 act by a registrant or its agents that would directly and
28 adversely affect the registrant's legal or financial ability
29 to fulfill its contractual commitments to its purchasers or
30 that would alter or change the legal obligations or

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1 commitments of the registrant to its purchasers or to the
2 division.

3 (12)~~(9)~~ "Notice" means a communication in writing from
4 the division executed by its director or other duly authorized
5 officer.

6 (13)~~(10)~~ "Offer" includes every inducement,
7 solicitation, or attempt to encourage a person to acquire any
8 interest in subdivided lands, if undertaken for gain or
9 profit.

10 (14)~~(11)~~ "Offering" means any document, material,
11 representation, agreement, or assurance contained in:

12 (a) Advertising material used in connection with the
13 offer of subdivided lands;

14 (b) A public offering statement;

15 (c) A contract or other agreement which a purchaser
16 executes in connection with the purchase of subdivided land;

17 (d) A document or other material submitted to the
18 division as part of an application for registration and upon
19 which application an order of registration is issued; or

20 (e) An order of registration.

21 (15)~~(12)~~ "Order of registration" means the license
22 issued by the division to evidence the registration status of
23 the registrant for specified subdivided lands.

24 (16)~~(13)~~ "Person" means one or more individuals,
25 corporations, governments or governmental subdivisions or
26 agencies, business trusts, estates, trusts, partnerships,
27 unincorporated associations, or any other legal or commercial
28 entity having a common interest.

29 (17)~~(14)~~ "Purchaser" means a person who acquires,
30 attempts to acquire, or succeeds to an interest in subdivided
31 land.

1 (18)~~(15)~~ "Registrant" means the person or persons
2 specifically named in the order of registration.
3 (19)~~(16)~~ "Registration" means the completion of all
4 application requirements and the furnishing of all required
5 exhibits to ~~the satisfaction of~~ the division.
6 ~~(17) "Salesman" means any person who is licensed as~~
7 ~~such by, or is exempt from, chapter 475 and who is employed or~~
8 ~~authorized by a subdivider or broker to offer for disposition~~
9 ~~any interest in subdivided lands required to be registered~~
10 ~~pursuant to this chapter.~~
11 (20)~~(18)~~ "Subdivider" means a person who owns any
12 interest in subdivided lands or is engaged in the disposition
13 of subdivided lands either directly, indirectly, or through
14 the services of an employee, agent, or independent contractor
15 ~~a broker or salesman.~~
16 (21)~~(19)~~ "Subdivision" or "subdivided lands" means:
17 (a) Any contiguous land which is divided or is
18 proposed to be divided for the purpose of disposition into 50
19 or more lots, parcels, units, or interests; or
20 (b) Any land, whether contiguous or not, which is
21 divided or proposed to be divided into 50 or more lots,
22 parcels, units, or interests which are offered as a part of a
23 common promotional plan.
24 (22)~~(20)~~ "Common promotional plan" means an offering
25 of subdivided lands by a person in a similar plan of
26 disposition. Elements relevant to whether the subdivided lands
27 are being offered as part of a common promotional plan include
28 but are not limited to: the physical relationship of the
29 properties being offered; whether the offered properties are
30 known, designated, or advertised as a common unit or by a
31 common name; the utilization of a common broker or sales

1 personnel, common sales office or facilities, or common
2 promotional methods; the utilization of cross-referrals of
3 prospective purchasers between sales operations; and common
4 ownership interests.

5 Section 2. Section 498.007, Florida Statutes, is
6 amended to read:

7 498.007 General powers and duties.--

8 (1) The division may adopt, amend, or repeal
9 reasonable rules as necessary to carry out all provisions of
10 this act, pursuant to the Administrative Procedure Act.

11 (2) If it appears that a person has violated or is
12 about to violate a provision of this chapter or a division
13 rule or order, the division, with or without prior
14 administrative proceedings, may bring an action in the circuit
15 court to enjoin the violation and to enforce compliance with
16 this chapter or any division rule or order. Upon proper
17 showing, injunctive relief or temporary restraining orders
18 shall be granted, and a receiver or conservator may be
19 appointed. If appointed, the receiver or conservator may take
20 action to implement the provisions of the court order, to
21 ensure the performance of the order, and to remedy any breach
22 thereof. In addition to all other means provided by law for
23 the enforcement of an injunction or temporary restraining
24 order, the circuit court may impound or sequester the property
25 of a party defendant, including books, papers, documents, and
26 records pertaining thereto, and allow the examination and use
27 of said property by the division and a court-appointed
28 receiver or conservator. The division is not required to post
29 a bond in any court proceedings. Venue for actions or
30 proceedings brought pursuant to this subsection may be laid in
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1 any county where the venue is proper under chapter 47 or in
2 Leon County.

3 (3) In addition to any remedy provided by this
4 chapter, the division may:

5 (a) Apply to the circuit court for an order of
6 restitution whereby the defendant in an action brought
7 pursuant to subsection (2) shall be ordered to make
8 restitution of those sums shown by the division to have been
9 obtained by the defendant in violation of any of the
10 provisions of this chapter. Such restitution shall, at the
11 option of the court, be payable to the conservator or receiver
12 appointed pursuant to subsection (2) or directly to the
13 persons whose funds or assets were obtained in violation of
14 this chapter.

15 (b) Seek the imposition of a civil penalty through the
16 circuit court for any violation for which the division may
17 issue a notice to show cause under s. 498.053. The civil
18 penalty shall be no less than \$500 and no more than \$10,000
19 for each violation. The court may also award to the
20 prevailing party court costs and reasonable attorney's fees
21 and, in the event the division prevails, may also award
22 reasonable costs of investigation.

23 (4)(3) The division may intervene in any suit
24 involving subdivided lands. In any suit by or against a
25 subdivider involving subdivided lands, the subdivider shall
26 promptly furnish the division a copy of the complaint and, if
27 requested by the division, copies of all pleadings.

28 (5)(4) The division may:

29 (a) Accept registrations, property reports, or similar
30 disclosure documents filed in other states or with the Federal
31 Government, notwithstanding the requirements of s. 498.037;

1 and may suspend or revoke any registration under this chapter
2 that includes any registration, property report, or similar
3 disclosure document accepted under this subsection if the
4 registration, property report, or similar disclosure is
5 suspended or revoked by the registering state or by the
6 Federal Government;

7 (b) Contract with agencies in this state or other
8 jurisdictions to perform investigative functions; or

9 (c) Accept grants-in-aid from any source.

10 (6)~~(5)~~ The division shall cooperate with similar
11 agencies in other jurisdictions to establish uniform filing
12 procedures and forms, public offering statements, advertising
13 standards, and rules and common administrative practices.

14 (7)~~(6)~~ The division shall adopt uniform accounting
15 principles, policies, and standards by rule ~~methods, in~~
16 ~~accordance with generally accepted accounting principles as~~
17 ~~defined by the rules of the Board of Accountancy, to be used~~
18 by all applicants for and holders of registrations of
19 subdivided lands in the preparation of all financial
20 statements required by this chapter, ~~documents, information,~~
21 ~~and reports required by, and in the transaction of all~~
22 ~~activities regulated under, this chapter.~~

23 (8)~~(7)~~ Notice to a subdivider shall be complete when
24 delivered to the subdivider's address currently on file with
25 the division.

26 (9)~~(8)~~ Notwithstanding any provision of this chapter
27 or any division rule, the division shall not take adverse
28 action with regard to any document filed by any person with
29 regard to subdivided lands solely because the document is not
30 on a division form, if adequate information is provided.

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1 Section 3. Section 498.011, Florida Statutes, is
2 amended to read:

3 498.011 Payment of per diem, mileage, and other
4 expenses to division employees.--The amount of per diem and
5 mileage and expense money paid to employees shall be as
6 provided in s. 112.061, except that the division shall
7 establish by rule the standards for reimbursement of actual
8 verified expenses incurred in connection with an inspection or
9 investigation ~~examination~~ of subdivided lands.

10 Section 4. Section 498.017, Florida Statutes, is
11 amended to read:

12 498.017 Fees.--The division shall charge fees as
13 follows:

14 (1) A base fee of \$450 per subdivision registration
15 application plus a fee of \$4 for each of the first 2,000 lots,
16 parcels, units, or interests in the subdivision and a fee of
17 \$2 for each additional lot, parcel, unit, or interest.

18 (2)(a) Each registration shall be renewed annually as
19 provided in s. 498.041 and shall be accompanied by a base fee
20 of \$300 for each renewal plus 75 ~~50~~ cents for each ~~of the~~
21 ~~first 1,000 undeeded lots, parcels, units or interests and 20~~
22 ~~cents for each additional~~ undeeded lot, parcel, unit, or
23 interest.

24 (b) A penalty not to exceed \$20 per day may be
25 assessed for a delinquent renewal; and the order of
26 registration shall be suspended by operation of law after the
27 10th day of delinquency until the renewal fee and penalty are
28 received by the division. In no event shall the penalty fee
29 exceed \$400 per registration.

30 ~~(c) The division may, by rule, increase the per lot~~
31 ~~fees provided in paragraph (a), not to exceed 75 cents.~~

1 (3) The division shall charge subdividers of
2 out-of-state subdivisions disposed of or offered for
3 disposition in this state an initial and annual renewal fee
4 equal to the fees charged for subdivided lands located within
5 the state.

6 (4) ~~Except as provided in subsection (13),~~The
7 application for registration required by s. 498.027 shall be
8 accompanied by the initial fee, and when an inspection is to
9 be made of the subdivided lands ~~situated outside the state and~~
10 ~~being disposed of or offered for disposition in this state,~~
11 the application shall also be accompanied by an amount
12 equivalent to the cost of travel ~~round-trip from Florida to~~
13 and from the location of the subdivided lands, as estimated by
14 the division, and by a further amount estimated to be
15 necessary to cover the additional expenses of the inspection.
16 The division shall not approve ~~accept~~ a registration until the
17 subdivider pays any other actual verified expenses incurred in
18 the inspection ~~and examination~~.

19 ~~(5) The division shall charge each subdivider who~~
20 ~~seeks an exemption under this chapter an initial fee of \$200,~~
21 ~~plus \$1 for each lot. The application for exemption shall be~~
22 ~~accompanied by the initial fee, and when a field inspection or~~
23 ~~examination is to be made relative to subdivided lands, the~~
24 ~~subdivider shall also pay all actual verified expenses~~
25 ~~incurred in the inspection or examination.~~

26 (5)~~(6)~~ The division shall charge each subdivider a
27 fee, which it shall set by rule, for filing notification of a
28 material change of the offering. The fee shall not be less
29 than \$200 nor more than \$1,000 unless the division determines
30 that the actual costs of processing the material change
31 exceeds \$1,000. If the division so determines, it shall issue

1 its order charging the registrant with the actual costs of
2 processing the material change. The order shall include
3 documentation of the actual costs, and the registrant shall be
4 entitled to a hearing under chapter 120, upon request.

5 (6)~~(7)~~ Each request for release of assurances
6 established for improvements shall be accompanied by a \$50
7 fee; the subdivider shall also pay all actual verified
8 expenses for onsite inspections or examinations.

9 (7)~~(8)~~ Each request for an exemption advisory opinion
10 shall be accompanied by a \$100 fee.

11 (8)~~(9)~~ Each filing of advertising material as required
12 by s. 498.035 ~~submitted for approval, other than that~~
13 ~~submitted as part of an initial registration or exemption of~~
14 ~~subdivided lands,~~ shall be accompanied by a fee of \$25.

15 (9)~~(10)~~ The division shall charge a subdivider \$250
16 for filing a reservation program.

17 (10)~~(11)~~ The division may contract with any subdivider
18 or others for reasonable charges for any extra or special
19 service pertaining to any registration or application for
20 registration.

21 (11)~~(12)~~ The division shall charge a subdivider \$250
22 for filing a no-action letter request.

23 ~~(13) The division shall charge each subdivider who~~
24 ~~seeks an exemption pursuant to s. 498.025(4) an initial fee of~~
25 ~~\$200. The application for this exemption shall be accompanied~~
26 ~~by the initial fee, and by an amount equivalent to the cost of~~
27 ~~round-trip travel to the site, as estimated by the division,~~
28 ~~and by a further amount estimated to be necessary to cover the~~
29 ~~additional expenses of the investigation, as prescribed in s.~~
30 ~~498.011, for each day spent on site. Before issuance of the~~

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1 ~~exemption order, the subdivider shall pay any other actual~~
2 ~~verified expenses incurred in the investigation.~~

3 Section 5. Section 498.022, Florida Statutes, is
4 amended to read:

5 498.022 Jurisdiction over fraudulent acts.--

6 (1) It shall be unlawful and a violation of this
7 chapter for a ~~any~~ person to offer or dispose of ~~25 or more~~
8 lots, parcels, units, or interests in a subdivision pursuant
9 ~~to a common promotional plan, and to:~~

10 (a) Employ any device, scheme, or artifice to defraud.

11 (b) Obtain money or property by means of a false
12 statement of a material fact, or the failure to state a
13 material fact which makes the statement misleading in light of
14 the circumstances and the context of the overall transaction,
15 with respect to any information pertinent to the transaction.

16 (c) Engage in any transaction, practice, or course of
17 business which operates or would operate as a fraud or deceit
18 upon a purchaser.

19 (d) Make any false, fictitious, or fraudulent
20 statement or representation, or make or use any false writing
21 or document knowing the same to contain any false, fictitious,
22 or fraudulent statement or entry.

23 (e) Falsify, conceal, or cover up, by any trick,
24 scheme, or device, a material fact.

25 (f) Dispose of, conceal, or divert any funds or assets
26 of any person so as to substantially and adversely affect the
27 interest of a purchaser.

28 (2) Those persons qualifying for exemptions pursuant
29 to s. 498.025 shall not be exempt from the provisions of this
30 section, and the division shall have the authority to use any
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1 powers granted to it by this chapter to prevent, investigate,
2 or punish any violation of this section.

3 (3) Any violation of the provisions of subsection (1)
4 shall give to any purchaser of the lots, units, or interests
5 the same rights the purchasers would have under s. 498.061, as
6 if the lots, units, or interests were "subdivided lands" as
7 defined in s. 498.005~~(21)~~~~(19)~~.

8 (4) Notwithstanding any other provision of this
9 chapter, the term "subdivision" or "subdivided lands" as used
10 in this section means any contiguous land which is divided or
11 is proposed to be divided for the purpose of disposition into
12 25 or more lots, parcels, units, or interests and also
13 includes any land, whether contiguous or not, which is divided
14 or proposed to be divided into 25 or more lots, parcels,
15 units, or interests which are offered as a part of a common
16 promotional plan.

17 ~~(5)~~~~(4)~~ Any willful violation of the provisions of
18 subsection (1) shall be a felony of the third degree,
19 punishable as provided in s. 775.082, s. 775.083, or s.
20 775.084.

21 Section 6. Subsection (2) and paragraph (d) of
22 subsection (3) of section 498.023, Florida Statutes, are
23 amended to read:

24 498.023 Prohibitions on dispositions of interests in
25 subdivided lands.--Unless the subdivided lands or the
26 transaction is exempt pursuant to s. 498.025:

27 (2) No person may dispose of, or participate in the
28 disposition of, any interest in subdivided lands unless:

29 (a) A current public offering statement is delivered
30 to the purchaser prior to the disposition;

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1 (b) The purchaser is afforded a reasonable opportunity
2 to examine the public offering statement prior to the
3 disposition; and

4 (c) The contract and public offering statement
5 authorize the purchaser to cancel the agreement without cause
6 until midnight of the seventh business day after he executes
7 the contract.

8 (d) The public offering statement, contract, note,
9 mortgage, deed, or other sales documents, delivered to the
10 purchaser, are in the language in which the sales campaign is
11 conducted, unless an accurate translation is attached to the
12 document.

13 (3) When the principal solicitation of the disposition
14 is by long-distance telephone, no person may dispose of, or
15 participate in the disposition of, any interest in subdivided
16 lands unless:

17 (d) One of the following takes place subsequent to the
18 solicitation of the disposition by long-distance telephone:

19 1. The prospective purchaser personally inspects the
20 property before executing the agreement to purchase and so
21 certifies in writing; or

22 2. The prospective purchaser executes an agreement to
23 purchase which expressly provides that the purchaser or
24 purchaser's agent has 6 months from the date the purchaser
25 received the fully executed agreement to purchase in which to
26 take a subdivider-guided personal inspection of the subdivided
27 lands, and, at that time, if the purchaser is not satisfied
28 with his purchase and the agreement to purchase is not in
29 default, the purchaser may request in writing a refund of all
30 moneys paid in under the agreement to purchase, and shall be
31 entitled to the refund, even though the aforesaid 30-day

1 period has expired. The agreement to purchase shall also
2 provide that the subdivider must make available a guided
3 personal inspection of the subdivision upon request by the
4 purchaser and that the purchaser may request, and shall be
5 entitled to, the refund if the subdivider fails to make the
6 inspection available. ~~The documents mailed or delivered in~~
7 ~~accordance with this paragraph shall be governed by s.~~
8 ~~498.037(3).~~

9 Section 7. Section 498.024, Florida Statutes, is
10 amended to read:

11 498.024 Reservations.--

12 (1) Notwithstanding s. 498.023, prior to filing an
13 application for ~~an order or exemption pursuant to s.~~
14 ~~498.025(3) or (4) or an order of~~ registration pursuant to s.
15 498.027, a subdivider may file an application for a
16 reservation program which shall be approved by the division if
17 the following conditions are met:

18 (a) The subdivider has established an escrow ~~or trust~~
19 account with an escrow agent ~~which meets the requirements of~~
20 ~~this section;~~

21 (b) The subdivider has filed and received approval for
22 all advertising, promotional material, reservation agreements,
23 and ~~trust or~~ escrow agreements; and

24 (c) The subdivider obtains an order of registration ~~or~~
25 ~~order of exemption~~ prior to any release of funds, except those
26 made to prospective purchasers. Should the offer or property
27 be exempt pursuant to s. 498.025(1), or (2), or (3), the
28 subdivider shall notify the division of the exemption, prior
29 to the release of funds.

30 (2) Approval of a reservation program shall not be
31 unreasonably withheld, and the division shall render a

1 decision within 20 days from the date it receives adequate
2 information, unless the subdivider extends the time limit in
3 writing.

4 (3) The provisions for an acceptable escrow ~~or trust~~
5 account pursuant to this section shall be as follows:

6 (a) The subdivider shall give the prospective
7 purchaser a receipt for and shall deposit all reservation
8 deposits into an escrow account established with an escrow
9 agent ~~acceptable trust company, or a bank having trust powers~~
10 within 5 ~~3~~ business days after ~~of~~ receipt.

11 (b) The escrow agent shall notify the prospective
12 purchaser that the reservation deposit was received within 7
13 business days after ~~of~~ receipt by the escrow agent. The
14 notice shall state that the funds are being held and will be
15 released only in accordance with this section.

16 (c) The funds may only be placed in accounts and
17 financial institutions that are insured by an agency of the
18 United States Government. The funds may be placed in an
19 interest-bearing or non-interest-bearing account, provided,
20 the funds shall be available for withdrawal in full by the
21 escrow agent at all reasonable times.

22 (d) The subdivider shall maintain separate books and
23 records ~~within his books~~ for each reservation program in
24 accordance with good accounting practices ~~generally accepted~~
25 ~~accounting standards, as defined by rule of the Board of~~
26 ~~Accountancy~~.

27 (e) Upon the written request of a prospective
28 purchaser, the escrow agent shall immediately and without
29 qualification refund in full all moneys deposited by the
30 prospective purchaser. Any applicable interest shall be paid
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1 to the prospective purchaser, unless otherwise provided in the
2 reservation agreement.

3 (f) The escrow agent may release reservation deposits
4 to the subdivider only upon adequate showing that the
5 prospective purchaser has entered into a binding contract or
6 agreement for purchase of the subject lot, parcel, or unit.
7 Any applicable interest shall be paid to the prospective
8 purchaser, unless otherwise provided in the reservation
9 agreement.

10 (g) The reservation deposit shall be held by the
11 escrow agent for a maximum of 180 days, after which time it
12 shall be distributed to either the prospective purchasers or
13 the subdivider as provided for in this section, unless the
14 reservation program is extended with the written approval of
15 the division and the purchasers are given notice of the right
16 to receive a refund if they so request. This time limit is
17 suspended for the period in which a registration ~~or exemption~~
18 application for the subject subdivided lands is pending with
19 the division.

20 (4) The lot, parcel, or unit sales price to a person
21 holding a reservation shall not be increased from the price
22 stated in the reservation program for that unit, unless the
23 possibility of a variance is fully disclosed in the
24 reservation program.

25 ~~(5) When this chapter requires delivery of a public~~
26 ~~offering statement to the prospective purchaser or an onsite~~
27 ~~inspection by the prospective purchaser prior to execution of~~
28 ~~the contract for purchase or lease of subdivided lands, the~~
29 ~~prospective purchaser shall have the right of rescission for a~~
30 ~~period of 7 days from the date of delivery of the public~~
31 ~~offering statement or of the onsite inspection.~~

1 ~~(5)(6)~~ Any subdivider who willfully fails to comply
2 with the escrow requirements of this section is guilty of a
3 felony of the third degree, punishable as provided in s.
4 775.082.

5 Section 8. Section 498.025, Florida Statutes, 1996
6 Supplement, is amended to read:

7 498.025 Exemptions.--

8 (1) Except as provided in s. 498.022, the provisions
9 of this chapter do not apply to:

10 (a) The ~~An~~ offer or disposition of an ~~any~~ interest in
11 subdivided lands by a purchaser for his own account in a
12 single or isolated transaction, ~~except that this exemption~~
13 ~~shall not apply to registrants.~~

14 (b) The ~~An~~ offer or disposition of an interest in
15 subdivided lands ~~land~~ by or to any government or government
16 agency. This exemption shall not apply to registrants.

17 (c) The ~~An~~ offer or disposition of an interest in
18 subdivided lands ~~land~~ as cemetery lots or interest.

19 ~~(d) A subdivision as to which the plan of ultimate~~
20 ~~disposition is to dispose to 45 or fewer persons.~~

21 ~~(d)(e)~~ An offer or transfer of securities currently
22 registered with the Department of Banking and Finance or the
23 United States Securities and Exchange Commission, except when
24 s. 498.023(4) applies.

25 ~~(e)(f)~~ Any offer or disposition constituting a single
26 sale or offer to sell to a person when the purchase price is
27 \$50,000 or more.

28 ~~(f)(g)~~ The offer or disposition of an interest in
29 subdivided lands to a ~~The sale or lease of land to any~~ person
30 engaged in the business of constructing residential or
31 commercial buildings, or to any person who acquires the land

1 for the purpose of resale or lease to a person engaged in such
2 business ~~unless the person who acquires the land sells it to~~
3 ~~individuals as unimproved lots with no legal obligation on the~~
4 ~~seller to construct a building on the lot within 2 years from~~
5 ~~the date of disposition.~~

6 (g)~~(h)~~ The ~~Any~~ offer or disposition of an interest in
7 subdivided lands ~~land~~ on which there is a residential,
8 commercial, or industrial building or as to which the seller
9 has a legal obligation to construct such a building within 2
10 years from date of disposition.

11 (h)~~(i)~~ The ~~An~~ offer or disposition of an interest in
12 subdivided lands in which the registrant conveys a lot, unit,
13 or parcel or portion thereof to the purchaser of the
14 contiguous lot. If only a portion of a lot, unit, or parcel
15 is conveyed to the purchaser of contiguous property, the
16 remaining balance of the lot, unit, or parcel shall be
17 conveyed only to a purchaser of contiguous property. The only
18 purpose of this conveyance shall be to increase the size of a
19 purchaser's holdings; and restrictions shall be recorded to
20 restrict the use of such lots, units, or parcels and the
21 contiguous portions for use only as single-family homesites.

22 (i)~~(j)~~ Any offer or disposition constituting a single
23 sale or offer to sell to a person if the lot, parcel, unit, or
24 interest in the subdivision contains at least 20 acres. In
25 determining eligibility for the exemption, easements for
26 ingress and egress or public utilities are considered part of
27 the total acreage of the lot, parcel, unit, or interest if the
28 purchaser retains ownership of the property affected by the
29 easement.

30 (j) The disposition of fewer than 25 homesites located
31 within this state by a person within a consecutive period of

1 12 calendar months beginning after December 31, 1997, provided
2 that the grantor or lessor holds marketable title to the
3 subdivided lands to be conveyed or leased to purchasers and
4 the purchaser physically inspects the homesite prior to the
5 execution of the contract or lease.

6 (k) The offering or disposition of a homesite by one
7 party together with the sale of a mobile home or manufactured
8 home by another party if both contracts for purchase contain
9 no provision which restricts the purchaser's remedy of
10 bringing suit for specific performance and contain the
11 following provisions:

12 1. Each seller is obligated to perform contingent upon
13 the other seller carrying out its obligations so that the
14 mobile home or manufactured home will be installed on a
15 homesite lot within 2 years after the date the purchaser signs
16 the contract to purchase the lot.

17 2. All funds or property paid by the purchaser shall
18 be escrowed until closing of the transaction.

19 3. All funds or property received by the seller shall
20 be released to the purchaser upon demand if the homesite on
21 which the mobile home or manufactured home has been erected is
22 not conveyed within 2 years.

23 4. The homesite is developed in conformance with all
24 applicable local land development laws and regulations
25 pursuant to part II of chapter 163, including lots, parcels,
26 units, or interest vested under such part.

27 5. At the time of closing:

28 a. Domestic water supply and sanitary sewage disposal
29 are available to the homesite;

30 b. Electric power has been extended to the lot line;

31 c. The homesite is accessible by a street or road;

1 d. All promised improvements, including any common
2 areas or recreational facilities represented by the seller or
3 the seller's agent, are complete and provisions for perpetual
4 maintenance have been provided; and

5 e. The purchaser receives marketable title to the
6 homesite.

7 (l) The offer of disposition of an interest in
8 subdivided lands located within the boundaries of a special
9 dependent or independent district, subject to the following
10 conditions:

11 1. All funds or property paid by a purchaser are
12 escrowed until closing; and

13 2. Closing shall not occur until all promised
14 improvements including infrastructure, facilities, and
15 amenities represented in any manner by the seller or the
16 seller's agent are complete and the plat of same is recorded
17 in the official records of the county in which the subdivision
18 is located.

19 (m) The offer or disposition of an interest in
20 subdivided lands to an accredited investor, as defined by rule
21 of the Florida Department of Banking and Finance in accordance
22 with Securities and Exchange Commission Regulation 230.501, 17
23 C.F.R. 230.501.

24 (n) An offer or disposition of any interest in a
25 subdivision that has received a development order pursuant to
26 s. 380.060 or s. 380.061, or the offer or disposition of any
27 interest in subdivided lands by a person who has entered into
28 a development agreement with local government in accordance
29 with part II of chapter 163, subject to the following
30 conditions:

31

1 1. All funds or property paid by a purchaser are
2 escrowed until closing; and

3 2. Closing shall not occur until all promised
4 improvements including infrastructure, facilities, and
5 amenities represented by the seller or the seller's agent are
6 deemed complete and the plat of same is recorded in the
7 official records of the county in which the subdivision is
8 located.

9 (o) The offer or disposition of an interest in
10 subdivided lands which are zoned by the appropriate
11 governmental authority for industrial or commercial
12 development or which are restricted to such use by restrictive
13 covenants which have been recorded in the official records of
14 the city or county in which such real estate is located, when:

15 1. Local authorities have approved access from such
16 real estate to a public street or highway;

17 2. The purchaser of such real estate is a duly
18 organized corporation, partnership, trust, or business entity
19 engaged in commercial or industrial business;

20 3. The purchaser of such real estate is represented in
21 the transaction of sale or lease by a representative of its
22 own selection;

23 4. The purchaser of such real estate affirms in
24 writing to the seller or lessor that it either:

25 a. Is purchasing such real estate substantially for
26 its own use; or

27 b. Has a binding commitment to sell, lease, or
28 sublease such real estate to an entity which is engaged in
29 commercial or industrial business, and is not affiliated with
30 the seller, lessor, or agent thereof; and

31

1 5. A policy of title insurance or a title opinion is
2 issued in connection with the transaction showing that title
3 to the real estate purchased is vested in the seller or
4 lessor, subject only to such exceptions as may be approved in
5 writing by such purchaser prior to recordation of the
6 instrument of conveyance or execution of a lease.

7 a. Nothing in this subparagraph shall be construed as
8 requiring the recordation of a lease; and

9 b. Any purchaser may waive, in writing in a separate
10 document, the requirement of this subparagraph that a policy
11 of title insurance or title opinion be issued in connection
12 with the transaction.

13 (p) The offer or disposition of condominium or
14 cooperative parcels pursuant to chapter 718 or chapter 719,
15 respectively.

16 (2) Except as provided in s. 498.022, the provisions
17 of this chapter do not apply to offers or dispositions of
18 interests in lots, parcels, or units contained in a recorded
19 subdivision plat, or resulting from the subdivision of land in
20 accordance with applicable local land development laws and
21 regulations pursuant to part II of chapter 163, including
22 lots, parcels, units, or interest vested under such part, if
23 all of the following conditions exist:

24 (a) Each lot, parcel, or unit is situated on an
25 existing, dedicated road or street that is constructed to the
26 specifications of the appropriate local governing body which
27 has voluntarily agreed to accept the road or street for
28 maintenance, and, if a waiting period is required, adequate
29 assurances have been established with the appropriate local
30 governing body. Alternatively, maintenance may be provided by
31 an acceptable homeowners' ~~property owner's~~ association,

1 community development district, or special dependent or
2 independent district. A homeowners'~~property owner's~~
3 association shall be acceptable if it is a duly incorporated,
4 not-for-profit nonprofit corporation whose governing documents
5 ~~<O>~~bylaws, which provide for the assessment of the cost of
6 maintenance of the roads on a pro rata basis, have been
7 incorporated into the restrictive covenants imposed upon the
8 subdivision.

9 (b) The subdivision has drainage structures and fill
10 necessary to prevent flooding, which have been approved by the
11 appropriate local governing body and, if a waiting period is
12 required, adequate assurances have been established with the
13 appropriate local governing body. In addition, provisions for
14 perpetual maintenance of these drainage structures must be
15 established with the appropriate local governing body,
16 community development district, special taxing district, or an
17 acceptable homeowners'~~property owners'~~association or through
18 ~~<U>~~restrictive covenants ~~running with the land.~~

19 (c) Electric power is available at or near each lot,
20 parcel, or unit.

21 (d) Domestic water supply and sanitary sewage disposal
22 meeting the requirements of the applicable governmental
23 authority are available at or near each lot, parcel, or unit.

24 (e) The subdivider is the fee simple owner of the
25 subdivided land offered and to be leased or conveyed to
26 purchasers.

27 (f) All promised improvements, including
28 infrastructure, facilities, and amenities represented by the
29 seller or the seller's agent ~~any common areas or recreational~~
30 ~~facilities~~, are complete.

31

1 (g) The contract for purchase or lease contains, and
2 the subdivider complies with, the following provisions:

3 1. The purchaser must inspect the subdivided land
4 prior to the execution of the contract or lease.

5 2. The purchaser shall have an absolute right to
6 cancel the contract or lease for any reason whatsoever for a
7 period of 7 business days following the date on which the
8 contract or lease was executed by the purchaser.

9 3. In the event the purchaser elects to cancel within
10 the period provided, all funds or other property paid by the
11 purchaser shall be refunded without penalty or obligation
12 within 20 days of the receipt of the notice of cancellation by
13 the developer.

14 4. All funds or property paid by the purchaser shall
15 be escrowed until closing has occurred and the lease or deed
16 has been recorded.

17 5. Unless otherwise timely canceled, closing shall
18 occur ~~and the deed shall be recorded~~ within 180 days of the
19 date of execution of the contract by the purchaser.

20 6. When title is conveyed, said title shall be
21 conveyed by statutory warranty deed unencumbered by any lien
22 or mortgage except for any first purchase money mortgage given
23 by the purchaser and restrictions, covenants, or easements of
24 record.

25 7. The subdivider presents to the purchaser the
26 disclosure required by s. 689.26 prior to the execution of the
27 contract or lease.

28 (h) The agreement for deed contains, and the
29 subdivider complies with, the following provisions:

30 1. The purchaser must inspect the subdivided land
31 prior to the execution of the agreement for deed.

1 2. The purchaser shall have an absolute right to
2 cancel the agreement for deed for any reason whatsoever for a
3 period of 7 business days following the date on which the
4 agreement for deed was executed by the purchaser.

5 3. If the purchaser elects to cancel within the period
6 provided, all funds or other property paid by the purchaser
7 shall be refunded without penalty or obligation within 20 days
8 after the receipt of the notice of cancellation by the
9 developer.

10 4. All funds for property paid by the purchaser shall
11 be escrowed until the agreement for deed has been recorded in
12 the county in which the subdivision is located.

13 5. Unless otherwise timely canceled, the agreement for
14 deed shall be recorded within 180 days after its execution by
15 the purchaser.

16 6. Sale of lots in the subdivision shall be restricted
17 solely to residents of the state.

18 7. The underlying mortgage or other ancillary
19 documents shall contain release provisions for the individual
20 lot purchased.

21 8. The subdivider presents to the purchaser the
22 disclosure required by s. 689.26 prior to the execution of the
23 agreement for deed.

24 ~~(3) Except as provided in s. 498.022, the provisions~~
25 ~~of this chapter do not apply to offers or dispositions of~~
26 ~~interests in lots, parcels, or units contained in a recorded~~
27 ~~subdivision plat, or resulting from the subdivision of land in~~
28 ~~accordance with applicable local land development law and~~
29 ~~regulations pursuant to part II of chapter 163, including~~
30 ~~lots, parcels, units, or interest vested under such part, if~~
31 ~~all of the following conditions exist:~~

1 ~~(a) Each lot, parcel, or unit is situated on an~~
2 ~~existing, dedicated road or street that is constructed to the~~
3 ~~specifications of the appropriate local governing body.~~
4 ~~Alternatively, maintenance may be provided by an acceptable~~
5 ~~property owner's association. A property owner's association~~
6 ~~shall be acceptable if it is a duly incorporated nonprofit~~
7 ~~corporation whose bylaws, which provide for the assessment of~~
8 ~~the costs of maintenance of the roads on a pro rata basis,~~
9 ~~have been incorporated into the restrictive covenants imposed~~
10 ~~upon the subdivision.~~

11 ~~(b) The subdivision has drainage structures and fill~~
12 ~~necessary to prevent flooding, which have been approved by the~~
13 ~~appropriate local governing body. In addition, provisions for~~
14 ~~perpetual maintenance of such drainage structures must be~~
15 ~~established with the appropriate local governing body or an~~
16 ~~acceptable property owner's association or through covenants~~
17 ~~running with the land.~~

18 ~~(c) Electric power is available at or near each lot,~~
19 ~~parcel, or unit.~~

20 ~~(d) Domestic water supply and sanitary sewage disposal~~
21 ~~meeting the requirements of the applicable governmental~~
22 ~~authority are available at or near each lot, parcel, or unit.~~

23 ~~(e) The subdivider is the fee simple owner of the~~
24 ~~subdivided land offered and to be conveyed to purchasers.~~

25 ~~(f) All promised improvements, including any common~~
26 ~~areas or recreational facilities, are complete.~~

27 ~~(g) The agreement for deed contains, and the~~
28 ~~subdivider complies with, the following provisions:~~

29 ~~1. The purchaser must inspect the subdivided land~~
30 ~~prior to the execution of the agreement for deed.~~

31

1 ~~2. The purchaser shall have an absolute right to~~
2 ~~cancel the agreement for deed for any reason whatsoever for a~~
3 ~~period of 7 business days following the date on which the~~
4 ~~agreement for deed was executed by the purchaser.~~

5 ~~3. If the purchaser elects to cancel within the period~~
6 ~~provided, all funds or other property paid by the purchaser~~
7 ~~shall be refunded without penalty or obligation within 20 days~~
8 ~~after the receipt of the notice of cancellation by the~~
9 ~~developer.~~

10 ~~4. All funds for property paid by the purchaser shall~~
11 ~~be escrowed until the agreement for deed has been recorded in~~
12 ~~the county in which the subdivision is located.~~

13 ~~5. Unless otherwise timely canceled, the agreement for~~
14 ~~deed shall be recorded within 180 days after its execution by~~
15 ~~the purchaser.~~

16 ~~6. Sale of lots in the subdivision shall be restricted~~
17 ~~solely to residents of the state.~~

18 ~~7. The underlying mortgage or other ancillary~~
19 ~~documents shall contain release provisions for the individual~~
20 ~~lot purchased.~~

21 ~~(4) The division may also grant additional exemptions~~
22 ~~from the registration and reporting provisions of this chapter~~
23 ~~if the subdivider demonstrates to the division's satisfaction~~
24 ~~that he has qualified for an order of exemption in those cases~~
25 ~~involving offers or dispositions of interests in subdivided~~
26 ~~lands where:~~

27 ~~(a) The contract for purchase contains, and the~~
28 ~~subdivider complies with, the following provisions:~~

29 ~~1. The purchaser must inspect the subdivided land~~
30 ~~prior to the execution of the contract.~~

31

1 ~~2. The purchaser shall have an absolute right to~~
2 ~~cancel the contract for any reason whatsoever for a period of~~
3 ~~7 business days following the date on which the contract was~~
4 ~~executed by the purchaser.~~

5 ~~3. In the event the purchaser elects to cancel within~~
6 ~~the period provided, all funds or other property paid by the~~
7 ~~purchaser shall be refunded without penalty or obligation~~
8 ~~within 20 days of the receipt of the notice of cancellation by~~
9 ~~the developer.~~

10 ~~4. All funds or property paid by the purchaser shall~~
11 ~~be escrowed until closing has occurred and the deed has been~~
12 ~~recorded.~~

13 ~~5. Unless otherwise timely canceled, closing shall~~
14 ~~occur and the deed shall be recorded within 180 days of the~~
15 ~~date of execution of the contract by the purchaser.~~

16 ~~6. Title shall be conveyed by statutory warranty deed~~
17 ~~unencumbered by any lien or mortgage except for any first~~
18 ~~purchase money mortgage given by the purchaser and~~
19 ~~restrictions, covenants, or easements of record.~~

20 ~~(b) The subdivider has completed all improvements~~
21 ~~promised;~~

22 ~~(c) The land is useful for the purpose for which it is~~
23 ~~offered;~~

24 ~~(d) The purchaser has personally inspected the~~
25 ~~property prior to the execution of the purchase contract and~~
26 ~~has so certified in writing; and~~

27 ~~(e) Each lot, parcel, or unit is accessible by a~~
28 ~~street or road that is constructed to the specifications of~~
29 ~~the appropriate local governing body or, if the local~~
30 ~~governing body does not have specifications, the street or~~
31 ~~road shall be constructed in accordance with applicable~~

1 ~~standards from the Department of Transportation, and~~
2 ~~provisions acceptable to the division have been made for their~~
3 ~~perpetual maintenance.~~

4 (3)(5) A registrant or other person may obtain an
5 exemption advisory opinion from the division stating whether
6 or not a particular method of disposition or offer is exempt
7 from the provisions of this chapter. Any opinion request
8 shall be accompanied by the required fee as provided in s.
9 498.017, a comprehensive statement of facts and applicable law
10 under which the petitioner believes the method of disposition
11 or offer to be exempt, and any other information as is
12 required by rule or requested by the division. Within 30 days
13 after the date adequate information has been provided, the
14 division shall issue an exemption advisory opinion indicating
15 whether or not the method of disposition or offer is exempt.
16 The advisory opinion shall not bind the division with regard
17 to future action if circumstances should change, nor shall it
18 affect any right which any purchaser may have under this
19 chapter.

20 (4)(6) Whenever the division determines, on the basis
21 of material ~~the~~ facts presented and a demonstration that
22 adequate safeguards and assurances exist with respect to a
23 particular offer or disposition, the division shall have the
24 discretion to issue a letter ~~any other relevant information,~~
25 ~~that an exemption is indicated, a letter may be issued within~~
26 ~~30 days after the date adequate information has been provided~~
27 ~~stating that~~ it will take no action ~~may be taken by the~~
28 ~~division.~~ The letter shall not bind the division with regard
29 to future action relating to these matters if circumstances
30 should change nor affect any right which any purchaser may
31 have under this chapter.

1 ~~(5)(7)~~ Under this section or other provisions of this
2 chapter, the burden of establishing the right to any exemption
3 shall be upon the person claiming the benefit of such
4 exemption, and it shall not be necessary for the division to
5 negate any of the exemptions provided in this chapter in any
6 notice to show cause, cease and desist order, complaint, or
7 other suit or proceedings brought under this chapter.

8 (6) The division may adopt, amend, or repeal rules as
9 necessary to carry out the provisions of this section,
10 pursuant to chapter 120.

11 Section 9. Subsection (1) of section 498.027, Florida
12 Statutes, is amended, and subsection (5) is added to said
13 section, to read:

14 498.027 Application for registration.--

15 (1) The application for registration of subdivided
16 lands shall be filed as prescribed by the rules of the
17 division and shall contain any of the following documents and
18 information required by the division:

19 (a) If the subdivided lands offered for registration
20 are located within this state, the application shall contain
21 the following:

22 1. A recorded or proposed plat which meets the
23 criteria required by applicable law or ordinance and a showing
24 of the relation of the subdivided lands to existing streets,
25 roads, and other offsite improvements. If the plat is
26 unrecorded, it shall be recorded prior to the issuance of the
27 order of registration. Notwithstanding any applicable local
28 ordinance, law, or regulation, no portion of a platted lot may
29 be offered for registration or for disposition unless the
30 registration application fully discloses that this may occur
31 and appropriate disclosure acceptable to the division is made

1 to prospective purchasers. This paragraph is not intended to
2 supersede any local ordinance, law, or regulation that
3 prohibits the disposition of less than a whole platted lot.†

4 2. If the lands are subdivided into lots, parcels, or
5 units which are not required to be platted by local ordinance,
6 special law, or general law of local application, a ~~proposed~~
7 ~~or recorded~~ plat meeting the criteria prescribed in part I of
8 chapter 177, ~~and. If unrecorded, the plat shall be recorded~~
9 ~~in the situs county prior to the disposition of any lands,~~
10 ~~unless prohibited by the county, and the subdivider shall~~
11 ~~provide satisfactory evidence of recording to the division.~~
12 ~~If any improvements are included in the offer, arrangements~~
13 ~~acceptable to the division shall be made for the their~~
14 ~~permanent maintenance of improvements included in the~~
15 ~~offering.†~~

16 3. ~~If the minimum size of a lot, parcel, or unit is 2~~
17 ~~1/2 acres or less, or, regardless of size, if the lot,~~
18 ~~parcel, or unit is intended for homesites, Evidence that the~~
19 ~~following conditions and the requirements of the local~~
20 ~~governing body, have been or will be met:~~

21 a. ~~A plat has been recorded with Provisions are made~~
22 ~~for legal and physical access to each lot, parcel, or unit.†~~

23 b. A showing is made that the access road to, and all
24 streets within, the subdivided lands are or will be
25 constructed ~~traversable by conventional automobile pursuant to~~
26 ~~specifications adopted by the appropriate local governing~~
27 ~~body, and acceptable to the division;† and~~

28 c. ~~Arrangements acceptable to the division have been~~
29 ~~made for the perpetual maintenance of all roads and streets;†~~

30
31

1 4. Evidence that arrangements acceptable to the
2 division have been made for the perpetual maintenance of
3 improvements, including, but not limited to, streets or roads.

4 ~~5.4. A showing that the lands meet, or will meet at~~
5 ~~the time specified by the local governing bodies, all~~
6 requirements of the local governing bodies in effect on the
7 date of registration, including requirements relating to
8 public or private roads and streets, drainage, telephone and
9 electric utilities, domestic water supply, and sanitary sewage
10 disposal.†

11 (b) If the subdivided lands offered for registration
12 are located outside this state, the application shall contain
13 the following:

14 1. A proposed or recorded plat which meets the
15 requirements of applicable state or local law or ordinance,
16 which, if unrecorded, shall be recorded prior to the
17 disposition of any lands.† ~~and~~

18 2. A legal description of the lands, together with a
19 map, showing the division proposed or made; the dimensions of
20 the lots, parcels, and units; and the relationship of the
21 subdivided lands to existing streets, roads, and other offsite
22 improvements.

23
24 Notwithstanding any applicable local ordinance, law, or
25 regulation, no portion of a platted lot may be offered for
26 registration or for disposition unless the registration
27 application fully discloses that this may occur and
28 appropriate disclosure acceptable to the division is made to
29 prospective purchasers. This paragraph is not intended to
30 supersede any local ordinance, law, or regulation that
31 prohibits the disposition of less than a whole platted lot.†

1 3. If no state or local law or ordinance for platting
2 exists, a legal description of the subdivided lands, together
3 with a map showing the existing or proposed dimensions of the
4 lots, parcels, units, or interests and the relationship of the
5 subdivided lands to existing streets, roads, and other offsite
6 improvements.†

7 4. ~~If the minimum size lot or parcel is 2 1/2 acres~~
8 ~~or less, or, regardless of size if the lot or parcel is~~
9 ~~intended for homesites,~~Evidence that the following conditions
10 and the requirements of the local governing body have been or
11 will be met:

12 a. Provisions are made for legal and physical access
13 to each lot, parcel, or unit.~~the subdivided lands†~~

14 b. A showing is made that the access street or road
15 to, and all streets or roads within, the subdivided lands are
16 or will be constructed ~~traversable by conventional automobile~~
17 ~~pursuant~~ to specifications adopted by the appropriate local
18 governing body and acceptable to the division; and

19 c. ~~Arrangements acceptable to the division have been~~
20 ~~made for the perpetual maintenance of the streets or roads†~~

21 5. ~~If the minimum size lot or parcel is more than 2~~
22 ~~1/2 acres and is not offered as a homesite,~~Evidence that
23 arrangements acceptable to the division have been made for the
24 perpetual maintenance of improvements, including, but not
25 limited to, streets or roads.†

26 6. A showing that the subdivided lands meet or will
27 meet all requirements of the appropriate local governing body
28 in effect ~~bodies~~ on the date of registration, including
29 requirements relating to public or private, ~~but not limited~~
30 ~~to, streets or roads~~ and streets, drainage, telephone and
31

1 electric utilities, domestic water supply, and sanitary sewage
2 disposal.†

3 (c) Regardless of where the subdivided lands are
4 located, the application shall contain the following:

5 1. An irrevocable consent that, in noncriminal suits,
6 proceedings, and actions growing out of any violation of this
7 chapter or any rule or order of the division, the service on
8 the division of any notice, process, or pleading authorized by
9 the laws of this state shall be valid and binding as if due
10 service had been made on the applicant.†

11 2. The states or jurisdictions in which an application
12 for registration or similar document has been filed, and any
13 adverse order, judgment, or decree entered in connection with
14 the subdivided lands by the regulatory authorities in each
15 jurisdiction or by any court.†

16 3. The applicant's name and address, the form, date,
17 and jurisdiction of organization, and the address of each of
18 its offices in this state.†

19 4. The name, home address, and principal occupation
20 for the past 5 years of each director and officer of the
21 applicant or of any person occupying a similar status or
22 performing similar functions or any person who, in accordance
23 with the rules of the division, is determined to be able to
24 directly or indirectly control the operation of the business
25 of the applicant; the name and home address of each
26 shareholder holding a 10-percent-or-greater interest in the
27 applicant, and the extent and nature of their interest in the
28 applicant or the subdivided lands, as of a specified date
29 within 30 days of the filing of the application.†

30 5. A statement, such as a title opinion of a licensed
31 attorney who is not a salaried employee, officer, or director

1 of the applicant or owner, or other evidence of title
2 acceptable to the division, of the condition of the title to
3 the subdivided lands, including encumbrances, as of a
4 specified date within 30 days of the date of application.†

5 6. Copies of the instruments, acceptable to the
6 division, which will be delivered to a purchaser showing his
7 interest in the subdivided lands and of the contracts and
8 other agreements which a purchaser will be required to agree
9 to or sign.†

10 7. Copies of the instruments by which the interest in
11 the subdivided lands was acquired and a statement of any lien
12 or encumbrance upon the title and copies of the instruments
13 creating the lien or encumbrance, if any, showing the
14 recording data.†

15 8. If a lien or encumbrance exists which affects more
16 than one lot, parcel, unit, or interest, a statement of the
17 consequences for a purchaser of the subdivider's failure to
18 discharge the lien or encumbrance and the steps, if any, taken
19 to protect the purchaser if this occurs.†

20 9. Copies of instruments creating easements,
21 restrictive covenants ~~restrictions~~, or other encumbrances
22 affecting the subdivided lands.†

23 10. A statement of the zoning and other governmental
24 regulations affecting the use of the subdivided lands, and of
25 any existing taxes and existing or proposed special taxes or
26 assessments which affect the subdivided lands.†

27 11. A statement of the existing provisions for legal
28 and physical access; a statement of the existing or proposed
29 provisions for sewage disposal and potable water; a statement
30 of other public utilities available in the subdivision; a
31 statement of the improvements to be installed and the schedule

1 for their completion, which may not be more than 4 years from
2 the date of the issuance of the order of registration for
3 roads and drainage and for other improvements in accordance
4 with a development agreement pursuant to ss.
5 163.3220-163.3243; and a statement as to the provisions for
6 perpetual maintenance of these improvements.†

7 12. A narrative description of the promotional plan
8 for the disposition of the subdivided lands together with
9 copies of any proposed advertising material.†

10 13. The proposed public offering statement.†

11 14. Any other information which the division by its
12 rules requires for the protection of purchasers., ~~including a~~
13 ~~current financial statement; and~~

14 15. Notice of any local or state land use regulation
15 or plan, and of any moratorium, the duration of which is 180
16 days or more, imposed by executive order, law, ordinance,
17 regulation, or proclamation adopted by any governmental body
18 or agency which prohibits or restricts the development or
19 improvement of property not otherwise prohibited or restricted
20 by applicable law, and the effect on the proposed use of the
21 property.

22 (5) The division may adopt, amend, or repeal rules as
23 necessary to carry out the provisions of this section,
24 pursuant to chapter 120.

25 Section 10. Subsection (4) of section 498.029, Florida
26 Statutes, 1996 Supplement, is amended to read:

27 498.029 Notice of filing and registration.--

28 ~~(4) Notwithstanding the provisions of ss. 498.027(2)~~
29 ~~and 498.033(3), the division shall enter an order registering~~
30 ~~subdivided lands which are otherwise qualified for~~
31 ~~registration pursuant to this chapter if:~~

1 ~~(a) The applicant submits evidence that he has applied~~
2 ~~for the permits required by chapters 253, 373, 380, and 403~~
3 ~~and the certificates required by the Federal Water Pollution~~
4 ~~Control Act, Pub. L. No. 92-500; and~~

5 ~~(b) The state agency charged with the responsibility~~
6 ~~of issuing such permits or certificates has failed, within 120~~
7 ~~days of the filing of the applications, either:~~

8 ~~1. To issue the permit or certificate; or~~

9 ~~2. To deny the application setting forth in writing:~~

10 ~~a. The rules, guidelines, and criteria used to~~
11 ~~evaluate the application;~~

12 ~~b. The reasons for denial and the rules, guidelines,~~
13 ~~and criteria the application fails to satisfy; and~~

14 ~~c. The action the applicant must take to satisfy the~~
15 ~~agency's requirements.~~

16
17 ~~Any subdivider who obtains an order of registration under this~~
18 ~~subsection shall show in its public offering statement, in a~~
19 ~~manner prescribed by the division, that it has not received~~
20 ~~the necessary permit, certificate, or other authorization~~
21 ~~which must be granted prior to the construction of a specified~~
22 ~~improvement.~~

23 Section 11. Subsection (1) of section 498.031, Florida
24 Statutes, is amended, and subsections (4) and (5) are added to
25 said section, to read:

26 498.031 Inquiry and examination.--

27 (1) Upon receipt of an application for registration in
28 proper form and if subject to the provisions of s. 498.039,
29 the division shall conduct an examination to determine
30 whether:

31

1 (a) The subdivider can convey or cause to be conveyed
2 marketable title to the interest in any subdivided lands
3 offered for disposition if the purchaser complies with the
4 terms of the offer ~~and, when appropriate, that release~~
5 ~~clauses, conveyances in trust, or other safeguards have been~~
6 ~~provided;~~

7 (b) Reasonable assurance is given that all obligations
8 imposed by this chapter and all obligations contained in the
9 offering purchase contract, public offering statement, and
10 ~~registration statement~~ will be complied with by the
11 subdivider;

12 (c) ~~The advertising material and~~ The general
13 promotional plan is are not false or misleading and complies
14 ~~comply~~ with the standards prescribed by the division in its
15 rules and afford full and fair disclosure;

16 (d) The subdivider has not, or, if a corporation, its
17 officers, directors, or principals have not, been convicted of
18 a crime involving land dispositions or any aspect of the land
19 sales business in this state, the United States, or any other
20 state or foreign country, or had a bond forfeited when charged
21 with such a crime, within the past 10 years;

22 (e) No evidence exists which would reasonably lead the
23 division to believe that the subdivider is, or, if a
24 corporation, its officers, directors, or principals are,
25 contemplating a fraudulent or misleading sales promotion;

26 (f) The public offering statement requirements of this
27 chapter have been satisfied; and

28 (g) The subdivided lands which are the subject of the
29 proposed registration are have been or will be made usable as
30 homesites ~~for the purpose for which they are being offered or~~
31 ~~sold.~~

1 (4) Upon receipt of an application for registration in
2 proper form that is not subject to the provisions of s.
3 498.039, the registration shall become effective within 10
4 days, and the division shall issue an order of registration.
5 The division may, should it deem the application for
6 registration is incomplete or the plan of sale is deceptive or
7 misleading, take such action as authorized by this chapter.

8 (5) The division may adopt, amend, or repeal rules as
9 necessary to carry out the provisions of this section,
10 pursuant to chapter 120.

11 Section 12. Section 498.033, Florida Statutes, is
12 amended to read:

13 498.033 Registration of subdivided lands.--

14 (1) After an order of registration has been issued,
15 the registrant shall comply with all obligations contained in
16 the purchase contract, public offering statement, and
17 registration statement.

18 (2) After an order of registration has been issued, no
19 material change of the offering shall be made unless the
20 registrant first notifies the division in writing and obtains
21 the division's written approval. The approval shall not be
22 unreasonably withheld, and a decision shall be rendered within
23 20 days from the date the division receives adequate
24 information, unless the registrant and the division have
25 agreed in writing to a delay.

26 (3) The subdivider shall furnish the purchaser an
27 agreement for deed in recordable form which may be recorded by
28 the subdivider or purchaser when the refund provision of the
29 contract expires.

30 ~~(4) Unless given a written waiver by the division,~~
31 Each registrant shall provide the division with financial

1 statements, audited by an independent certified public
2 accountant registered in a state or territory of the United
3 States or in the District of Columbia, not later than 5 months
4 after the end of the registrant's fiscal year, unless:-

5 (a) All promised improvements have been completed as
6 of the end of the registrant's fiscal year; and The
7 ~~registrant's financial statements shall be accompanied by the~~
8 ~~underlying data used to prepare the audited financial~~
9 ~~statements relating to the current estimated cost of~~
10 ~~completing the promised improvements, and by the accountant's~~
11 ~~opinion of the statements.~~

12 (b) All registered property is free and clear of any
13 encumbrance or the encumbrance contains a subordination
14 provision that states: "The lien of this document is
15 subordinate to the purchaser's rights and the purchaser shall
16 obtain the legal interest or other interest provided for in
17 the purchase contract or lease, free and clear of the
18 encumbrance, upon the purchaser's compliance with the terms,
19 provisions, and conditions of the purchase contract or lease."

20 ~~If promised improvements are not completed as of the end of~~
21 ~~the registrant's fiscal year, the registrant's financial~~
22 ~~statements shall be accompanied by a certification of the new~~
23 ~~estimate under seal by a licensed professional engineer~~
24 ~~expressing an opinion as to the cost of completing the~~
25 ~~improvements.~~

26 (c) ~~The requirement for filing financial audited~~
27 ~~statements may be waived by the division in writing if all~~
28 ~~promised improvements have been completed; if the property is~~
29 ~~free and clear of any lien, mortgage, or other encumbrance;~~
30 ~~and if the division determines that purchasers will not be~~
31 ~~required to rely upon the financial condition of the~~

1 ~~registrant for the fulfillment of contract obligations. The~~
2 ~~waiver shall be valid for 1 year and may be extended upon a~~
3 ~~showing by the registrant that the qualifying conditions for~~
4 ~~the waiver still exist. If the extension is not applied for~~
5 ~~and granted at least 30 days prior to the end of the 1-year~~
6 ~~period, the registrant shall submit new audited financial~~
7 ~~statements in accordance with the provisions of this chapter.~~

8 (5) If promised improvements are not completed, upon
9 request by the division, the registrant shall provide the
10 division with a current estimate of the cost to complete the
11 promised improvements, certified by a licensed professional
12 engineer.

13 (6)~~(d)~~ If the registrant fails to comply with the
14 provisions of this section ~~subsection~~, the division may ~~shall~~
15 issue a notice to show cause and, upon request, provide for a
16 hearing in accordance with the provisions of chapter 120.

17 (7)~~(5)~~ Each registrant shall comply with the terms of
18 any instrument encumbering subdivided lands, including timely
19 payments for satisfaction of the debts.

20 (8) The division may adopt, amend, or repeal rules as
21 necessary to carry out the provisions of this section,
22 pursuant to chapter 120.

23 Section 13. Section 498.035, Florida Statutes, is
24 amended to read:

25 498.035 Advertising material.--

26 (1) The division, by rule or order, may ~~shall~~ require
27 the filing for approval of advertising material relating to
28 subdivided lands prior to distribution of the material and may
29 charge a fee for the filing pursuant to s. 498.017.

30 ~~(2) Advertising submitted as part of the initial~~
31 ~~registration of land shall be treated as part of the initial~~

1 ~~registration and shall be reviewed for approval in accordance~~
2 ~~with the requirements of this chapter and division rules.~~
3 ~~Advertising submitted subsequently shall be deemed a~~
4 ~~subsequent filing, and the division may require any supporting~~
5 ~~data necessary at that time. The subsequent filing shall be~~
6 ~~approved or disapproved within 10 days after the date of~~
7 ~~filing. If the division fails to do so within 10 days, the~~
8 ~~subdivider may cause to be published all material which has~~
9 ~~been properly filed.~~

10 ~~(3) Any communication in which any subdivider attempts~~
11 ~~to induce, entice, or otherwise influence any purchaser to~~
12 ~~prepay or accelerate payments on the contract shall include~~
13 ~~notice that prepayment will not accelerate the seller's~~
14 ~~obligation to deliver a deed or the time for making~~
15 ~~improvements to the property.~~

16 ~~(2)(4)~~ The division shall ~~may~~ require full disclosure
17 of all pertinent information concerning a vacation or visitor
18 campaign, including the terms and conditions of the campaign
19 and the extent of the subdivider's participation in the
20 campaign. The division shall ~~may~~ further require reasonable
21 assurances that the subdivider or his agent can meet the
22 obligations imposed by the certificate program.

23 ~~(3)(5)~~ "Advertising" shall not include+

24 ~~(a)~~ stockholder communications such as annual reports
25 and interim financial reports, proxy materials, registration
26 statements, securities prospectuses, applications for
27 prospectuses, property reports, offering statements, or other
28 documents required to be delivered to a prospective purchaser
29 by an agency of any other state or the Federal Government+

30 ~~(b)~~ All communications addressed to and relating to
31 the account of any purchaser, except when directed to the sale

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1 ~~of additional lands or the prepayment or acceleration of~~
2 ~~payments on any purchase contract; or~~

3 ~~(c) Press releases or other communications delivered~~
4 ~~to newspapers or other periodicals for general information or~~
5 ~~public relations purposes, for which no charge is made by the~~
6 ~~newspapers or other periodicals for the publication or use of~~
7 ~~any part of the communications.~~

8 ~~(6) The division may establish, by rule, provisions~~
9 ~~for the deletion of advertising material no longer in use.~~

10 ~~(7) Notwithstanding the provisions of chapter 475, a~~
11 ~~subdivider may utilize advertising practices that include~~
12 ~~payment of nonmonetary gifts for referral of prospects for~~
13 ~~sales presentations if all of the following conditions are~~
14 ~~met:~~

15 ~~(a) The person giving the gift does so for a referral~~
16 ~~related to the sale of real property owned by such person;~~

17 ~~(b) The person receiving the gift previously purchased~~
18 ~~or contracted for deed to purchase real property owned by the~~
19 ~~person giving the gift;~~

20 ~~(c) The receipt of the gift is not conditioned upon~~
21 ~~the sale of the real property;~~

22 ~~(d) The fair market value of gifts received by a~~
23 ~~Florida resident for referrals relating to Florida real~~
24 ~~property does not exceed \$250 per year per household; and~~

25 ~~(e) The person referred for a sales presentation~~
26 ~~relating to Florida real property is not a resident of~~
27 ~~Florida.~~

28

29 ~~The division may enact rules requiring an annual report to the~~
30 ~~division by any person giving gifts pursuant to this~~
31 ~~subsection. Such rules may require information regarding the~~

1 ~~nature of the program and information on the total number of~~
2 ~~gifts given during the year and the number of gifts given~~
3 ~~within various categories of value.~~

4 (4) All advertising used in connection with the offer
5 or disposition of subdivided lands shall comply with
6 requirements and standards adopted by the division and the
7 division is hereby authorized to adopt, amend, or repeal rules
8 to carry out the provisions of this section pursuant to
9 chapter 120.

10 Section 14. Section 498.037, Florida Statutes, is
11 amended to read:

12 498.037 Public offering statement.--

13 (1) Any public offering statement shall disclose fully
14 and accurately the physical characteristics of the subdivided
15 lands and shall make known to prospective purchasers all
16 unusual and material circumstances or features affecting those
17 lands.

18 ~~(a)~~ The proposed public offering statement submitted
19 to the division shall be in a form prescribed by its rules and
20 shall include the following information and items, unless
21 otherwise provided by the division:

22 (a)1. The name and principal address of the
23 subdivider.†

24 (b)2. A general description of the subdivided lands,
25 stating the total number of lots, parcels, units, or interests
26 in the offering.†

27 ~~3. A map, which shall be physically separate from the~~
28 ~~public offering statement, but which shall be delivered to the~~
29 ~~purchaser with the public offering statement, indicating the~~
30 ~~location of the lots, parcels, or units being offered within~~

31

1 ~~the subdivision and its location in relation to the~~
2 ~~surrounding area.~~

3 (c)~~4.~~ A statement of the significant terms of any
4 encumbrances, easements, liens, and restrictions, including
5 zoning and other regulations affecting the subdivided lands
6 and each lot, parcel, or unit; a statement of all existing
7 taxes and existing or proposed special taxes or assessments
8 which affect the subdivided lands; the name and office address
9 of each special taxing district in which all or any part of
10 the subdivided lands are located; and, if all or any part of
11 the subdivided lands are located in a community development
12 district established under chapter 190, a copy of the
13 information required by s. 190.009, relating to the public
14 financing and maintenance of improvements to real property
15 undertaken by the community development district.+

16 (d)~~5.~~ A statement of the use for which the property is
17 offered.+

18 (e)~~6.~~ Information concerning improvements, including
19 streets, water supply, levees, drainage control systems,
20 irrigation systems, sewage disposal facilities, and customary
21 utilities, and the estimated cost, date of completion, and
22 responsibility for construction and maintenance of existing
23 and proposed improvements which are referred to in connection
24 with the offering or disposition of any interest in subdivided
25 lands.+

26 (f)~~7.~~ Notice of any local or state land use regulation
27 or plan and of any moratorium, the duration of which is 180
28 days or more, imposed by executive order, law, ordinance,
29 regulation, or proclamation adopted by any governmental body
30 or agency which prohibits or restricts the development or
31 improvement of property which development or improvement would

1 not otherwise be prohibited or restricted by applicable law,
2 and the effect on the proposed use of the property.†

3 (g)8. A statement that the subdivider shall provide
4 the purchaser with a recordable agreement for deed and a
5 statement as to what effect recording of the agreement will
6 have in providing the purchaser with legal protection.† and

7 (h)9. Any additional information required by the
8 division to assure full and fair disclosure to prospective
9 purchasers.

10 ~~(b) If, pursuant to s. 498.027(2), the division~~
11 ~~accepts an alternative to the subdivider's obtaining the~~
12 ~~referenced waivers, approval, or permits, the following~~
13 ~~disclosure shall appear in a prominent place on the cover of~~
14 ~~the Florida public offering statement for the subject~~
15 ~~subdivision: YOU SHOULD BE AWARE THAT THIS SUBDIVISION DOES~~
16 ~~NOT PRESENTLY HAVE ALL THE GOVERNMENT APPROVALS IT NEEDS TO~~
17 ~~COMPLETE CONSTRUCTION, AND, THEREFORE, DELIVERY OF YOUR~~
18 ~~COMPLETED LOT MAY BE DELAYED OR MAY NOT BE POSSIBLE.~~

19 (2)(a) The public offering statement shall not be used
20 for any promotional purposes before registration of the
21 subdivided lands and afterwards only if used in its entirety.
22 No person may advertise or represent that the division
23 approves or recommends the subdivided lands or their
24 disposition.

25 (b) No portion of the public offering statement may be
26 underscored, italicized, or printed in larger, heavier, or
27 different color type than the remainder of the statement
28 ~~unless the division so requires.~~

29 (c) The division may require the subdivider to alter
30 or amend the proposed public offering statement to assure full
31 and fair disclosure to prospective purchasers.

1 (d) The subdivider shall make no change in the
2 substance of the promotional plan or plan of disposition or
3 development of the subdivision after registration until he
4 notifies the division in writing, complies with the
5 requirements of s. 498.033(2), and appropriately amends the
6 public offering statement.

7 (e) A public offering statement is not current unless
8 all amendments are incorporated.

9 (3) The division may limit the amount and format of
10 the promotional materials that are presented ~~submitted~~ to a
11 prospective purchaser along with the public offering
12 statement.

13 (4) The division may adopt, amend, or repeal rules as
14 necessary to carry out the provisions of this section pursuant
15 to chapter 120.

16 Section 15. Subsections (1) and (5) of section
17 498.039, Florida Statutes, are amended, and subsection (11) is
18 added to said section, to read:

19 498.039 Certain assurances or trust and escrow
20 accounts required; reports required.--

21 (1) The division shall require each registrant
22 offering property subject to an ~~any~~ ~~lien, mortgage, or other~~
23 encumbrance to establish and maintain an ~~a~~ ~~trust or~~ escrow
24 account with an escrow agent in a financial institution unless
25 the encumbrance contains a subordination provision that states
26 as follows: "The lien of this document is subordinate to the
27 purchaser's rights and the purchaser shall obtain the legal
28 interest or other interest provided for in the purchase
29 contract or lease, free and clear of the encumbrance, upon the
30 purchaser's compliance with the terms, provisions, and
31

1 conditions of the purchase contract or lease.~~in an~~
2 ~~acceptable manner if the division determines that:~~
3 ~~(a) The encumbering instrument contains release~~
4 ~~clauses which are inadequate under the rules of the division;~~
5 ~~or~~
6 ~~(b) The encumbering instrument does not provide that~~
7 ~~the secured creditor's rights are subordinate to the~~
8 ~~purchaser's rights and does not provide that the purchaser can~~
9 ~~obtain legal title or other interest provided for in the~~
10 ~~purchase contract or lease, free and clear of the encumbrance,~~
11 ~~upon compliance with the terms and conditions of the purchase~~
12 ~~contract or lease.~~
13
14 ~~This subsection shall not apply to registrations containing~~
15 ~~encumbering instruments approved prior to June 27, 1976,~~
16 ~~unless additional subdivided lands covered by the encumbering~~
17 ~~instruments are filed for registration under this chapter.~~
18 (5) The division shall require each registrant
19 offering property in which all promised improvements have not
20 been completed to establish reasonable assurances to ensure
21 that all obligations imposed by the offering will be
22 fulfilled. ~~The division may require each registrant to~~
23 ~~establish and maintain trust or escrow accounts in a financial~~
24 ~~institution in an acceptable manner or provide an alternative~~
25 ~~form of acceptable assurance if the promised improvements to~~
26 ~~subdivided lands are not complete and paid for at the time of~~
27 ~~registration.~~
28 (11) The division may adopt, amend, or repeal rules as
29 necessary to carry out the provisions of this section pursuant
30 to chapter 120.
31

1 Section 16. Section 498.041, Florida Statutes, is
2 amended to read:

3 498.041 Annual renewal; termination of registration.--

4 (1) Each registrant shall annually renew each order of
5 registration it holds ~~as an active registration until the~~
6 ~~subdivision qualifies for inactive registration, or the~~
7 registration is revoked or terminated by the division. The
8 annual renewal shall include:

9 (a) The annual renewal fee prescribed in s. 498.017.†

10 (b) An annual report in the form prescribed by the
11 rules of the division~~† and~~

12 ~~(c) The name, license number, and address of any real~~
13 ~~estate salesman or broker in the State of Florida who was~~
14 ~~employed during the past year, or who is expected to be~~
15 ~~employed during the coming year, as an agent of the registrant~~
16 ~~to offer or dispose of registered subdivided lands.~~

17
18 This subsection does not limit or reduce the obligation of
19 each registrant to submit to the division a notification of
20 all material changes, pursuant to s. 498.033(2).

21 (2) Each registrant shall renew all its existing
22 registrations based on the first letter of the registrant's
23 name pursuant to the following schedule:

24	25	26	27	28	29	30	31
	First Letter						Due Date
	A and B.....						January 31
	C.....						February 28
	D and E.....						March 31
	F and G.....						April 30
	H and I.....						May 31

1 J and K.....June 30
2 L and M.....July 31
3 N and O.....August 31
4 P.....September 30
5 Q and R.....October 31
6 S.....November 30
7 T through Z.....December 31
8 (3) A registration may be terminated upon application
9 if, at the time of application for termination, all of the
10 following conditions are met:
11 (a) All current renewal fees and annual reports have
12 been submitted to the division.
13 (b) All improvements to the subdivided lands as
14 provided in the offering have been completed.
15 (c) Provision in a manner acceptable to the division
16 has been made for the perpetual maintenance of all
17 improvements to the subdivided lands to the extent required by
18 the offering.
19 (d) No administrative orders are pending with any
20 state or federal governmental agency to suspend or revoke any
21 registration of the subdivided lands subject to the
22 application for termination.
23 (e) Each contract purchaser has received title to the
24 property purchased as so provided for in the offering, free
25 and clear of any liens and encumbrances, except for any
26 mortgage given by the purchaser. The registrant must provide
27 the division with an affidavit, executed by an authorized
28 representative of the registrant, verifying the subdivided
29 lands sold have been deeded to each purchaser in fulfillment
30 of the registrant's offering.
31

1 (4) If, at the time of application for termination,
2 title has not been delivered to all purchasers from whom
3 unpaid balances are due pursuant to agreements for deed, the
4 termination shall be deemed a material change. In such event,
5 the registrant must comply with paragraphs (a) through (e) of
6 subsection (3) and either paragraph (a) or paragraph (b):

7 (a) The registrant shall convey title to all such
8 purchasers by general or statutory warranty deed, or in the
9 manner provided for in the contract, receiving from each said
10 purchaser a purchase money mortgage and note, or retaining a
11 vendor's lien in the amount of the unpaid balance due pursuant
12 to the agreement for deed. In such event, the registrant
13 shall:

14 1. Record said conveyance and deliver to the division,
15 prior to the entry of an order of termination, an affidavit
16 listing the name of each purchaser and the clerk's file number
17 of official record book and page number of each recorded deed;
18 however, if the registrant was not obligated to record these
19 conveyances, their dates of delivery may be provided in place
20 of official recording information. Said affidavit shall also
21 include an affirmative statement that the property conveyed to
22 each purchaser is the same as the buyer agreed to purchase.

23 2. If the registrant elects to convey title subject to
24 a vendor's lien rather than a purchase money mortgage, the
25 conveyance shall include the following statement: "This
26 conveyance is subject to a vendor's lien in favor of (name of
27 grantor), with a principal balance outstanding of \$ _____.
28 This vendor's lien is payable at the rate of \$ _____ per
29 month, including a period of _____ months from this date. Upon
30 payment in full of this vendor's lien, the grantor shall
31 record upon the public records a satisfaction of this vendor's

1 lien and mail to the grantee the original recorded
2 satisfaction of vendor's lien."

3 (b) The registrant may prepare and execute general or
4 statutory warranty deeds or other conveyance as provided for
5 in the contracts, for all purchasers, in recordable form and
6 deliver such conveyances to a trustee. The registrant may
7 also record and deliver a single general warranty deed to the
8 trustee conveying legal title to all lots subject to
9 outstanding agreements for deed. The trustee and the
10 registrant shall enter into an irrevocable trust agreement
11 properly certified and delivered to the division which shall
12 include, but not be limited to, the following:

13 1. A statement that the trustee shall hold physical
14 possession of said conveyances of property until they are
15 delivered or the property is conveyed to the purchaser.

16 2. The name and address of the grantee in each
17 conveyance, and the legal description of the property to be
18 conveyed.

19 3. An undertaking by the registrant to notify the
20 trustee within 10 days after receipt of final payments from a
21 purchaser that full payment has been made for the particular
22 lot or lots purchased.

23 4. An undertaking that the trustee shall deliver each
24 conveyance to the grantee named therein or agree to prepare a
25 conveyance from the trustee to the purchaser upon receipt of
26 notice by the trustee that the balance owed by the purchaser
27 pursuant to the agreement for deed has been paid in full.
28 Said undertaking shall also provide that if the registrant
29 fails to give such notice to the trustee when it is due, the
30 trustee may deliver said conveyance to the grantee upon the
31 presentation to the trustee by the purchaser or the grantee of

1 proof that the balance owed by the purchaser has been paid in
2 full.

3 5. An undertaking by the trustee that a conveyance
4 will be redelivered to the registrant only after proof has
5 been presented to the trustee that the recorded interest of
6 the grantee has been legally terminated in the public records
7 by a final judgment of foreclosure, final judgment quieting
8 title, quit claim deed, or otherwise.

9 6. An undertaking by the registrant that the trust
10 agreement shall be recorded in the public records of the
11 county in which the subdivided lands are located.

12 7. An undertaking by the trustee to notify the
13 division when all of the subject deeds have been delivered to
14 grantees or redelivered to the developer.

15 (5) A registrant who has been granted an order of
16 termination pursuant to paragraph (4)(b) with regard to a
17 subdivision shall not be required to comply with the reporting
18 provisions of this chapter or file annual renewals. However,
19 until each purchaser has received a deed in fulfillment of his
20 or her purchase contract, the registrant shall remain subject
21 to the jurisdiction of the division, the provisions of this
22 chapter, and administrative rules promulgated thereunder,
23 notwithstanding the entry of an order of termination.

24 (6) If the division subsequently finds that the order
25 of termination was granted upon false information or, as a
26 matter of law, that the registrant was not entitled to an
27 order of termination, the order may be revoked by the division
28 after due notice to the registrant.

29 (7) A pending application for termination shall not
30 relieve the registrant from the obligation to renew a
31 registration annually and pay the annual renewal fee, unless

1 an order of termination is entered prior to the first day of
2 that annual renewal period.

3 (8) The division may also enter an order terminating a
4 registration:

5 (a) If no dispositions of interests in subdivided
6 lands in a registration have occurred, or any made have been
7 legally rescinded, and the registrant will not offer or
8 dispose of the property in a manner subject to the
9 registration requirements of this chapter. The registrant may
10 petition for termination pursuant to this paragraph without
11 regard to the provisions of this section. The petition shall
12 include the following:

13 1. A petition for termination under this paragraph,
14 signed by the registrant, stating the registrant's name and
15 the division's reference number assigned to the order of
16 registration.

17 2. An affidavit executed by each individual
18 registrant, by the chief executive officer of an incorporated
19 registrant, by a general partner if the registrant is a
20 partnership, or by each participant if the registrant is a
21 joint venture, which verifies the following information:

22 a. No interests have been disposed of in the
23 subdivided lands subject to the registration; or

24 b. All dispositions of interests in the subject
25 subdivided lands have been legally rescinded.

26 (b) Notwithstanding the requirements of this section,
27 the division may approve an application for termination of
28 registration if, in the discretion of the division, the
29 circumstances are such that no affirmative action to enforce
30 the requirements of this section is needed to protect
31 purchasers or the public interest.

1 Section 17. Subsection (5) of section 498.047, Florida
2 Statutes, is amended, and subsections (6) and (7) are added to
3 said section, to read:

4 498.047 Investigations.--

5 (5)(a) Except as otherwise provided by this section,
6 information relative to an investigation by the division
7 pursuant to this chapter, including any consumer complaint, is
8 confidential and exempt from s. 119.07(1) until 10 days after
9 a notice to show cause has been filed by the division, or, in
10 the case in which no notice to show cause is filed, the
11 investigation is completed or ceases to be active. For
12 purposes of this section, an investigation shall be considered
13 "active" so long as the division or any law enforcement or
14 administrative agency or regulatory organization is proceeding
15 with reasonable dispatch and has a reasonable good faith
16 belief that the investigation may lead to the filing of an
17 administrative, civil, or criminal proceeding or to the denial
18 or conditional grant of a license, registration, or permit.
19 However, in response to a specific inquiry about the
20 registration status of a registered or unregistered
21 subdivider, the division may disclose the existence and the
22 status of an active investigation. This section shall not be
23 construed to prohibit disclosure of information which is
24 required by law to be filed with the division and which, but
25 for the investigation, would be subject to s. 119.07(1).

26 (b) Except as necessary for the division to enforce
27 the provisions of this chapter, a consumer complaint and other
28 information relative to an investigation shall remain
29 confidential and exempt from s. 119.07(1) after the filing of
30 a notice to show cause or the investigation is completed or
31 ceases to be active to the extent disclosure would:

1 1. Jeopardize the integrity of another active
2 investigation.

3 2. Reveal the name, address, telephone number, social
4 security number, or any other identifying number or
5 information of any purchaser or account holder, or social
6 security number or any account number of a complainant.

7 3. Reveal a trade secret as defined in s. 688.002.

8 (c) Nothing in this section shall be construed to
9 prohibit the division from providing information to any law
10 enforcement or administrative agency or regulatory
11 organization. Any law enforcement or administrative agency or
12 regulatory organization receiving confidential information in
13 connection with its official duties shall maintain the
14 confidentiality of the information so long as it would
15 otherwise be confidential.

16 (d) If information subject to this subsection is
17 offered in evidence in any administrative, civil, or criminal
18 proceeding, the presiding officer may, in his or her
19 discretion, prevent the disclosure of information which would
20 be confidential pursuant to paragraph (b).

21 (e) A privilege against civil liability is granted to
22 persons who furnish information or evidence to the division,
23 unless such persons act in bad faith or with malice in
24 providing such information as evidence.

25 (f) Unless otherwise ordered by a court of competent
26 jurisdiction, nothing shall prohibit a complainant,
27 respondent, or any witness from disclosing the existence of an
28 investigation or other proceeding under this section.

29 (6) In any hearing in which a financial
30 examiner/analyst acting under authority of this chapter is
31 available for cross-examination, any official written report,

1 worksheet, or other related paper, or a duly certified copy
2 thereof, compiled, prepared, drafted, or otherwise made by the
3 financial examiner/analyst, after being duly authenticated by
4 the financial examiner/analyst, may be admitted as competent
5 evidence upon the oath of the financial examiner/analyst that
6 the report, worksheet, or related paper was prepared as a
7 result of an examination conducted pursuant to the authority
8 of this chapter.

9 (7) The division may adopt, amend, or repeal rules as
10 necessary to carry out the provisions of this section pursuant
11 to chapter 120.~~For the purpose of any investigation or~~
12 ~~proceeding under this chapter involving a person whose books~~
13 ~~or records are maintained outside of the state, that person~~
14 ~~shall either:~~

15 ~~(a) Deliver the original books or records, together~~
16 ~~with any other documents requested by the division, to the~~
17 ~~designated office of the division in this state; or~~

18 ~~(b) Pay all documented expenses incurred by the~~
19 ~~division in conducting the investigation or proceeding at the~~
20 ~~location of the books or records.~~

21 Section 18. Subsections (8) and (9) are added to
22 section 498.059, Florida Statutes, to read:

23 498.059 Penalties.--A person is guilty of a felony of
24 the third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084, if he willfully:

26 (8) Makes any material misrepresentation or conceals
27 any material fact in any written communication with the
28 division.

29 (9) Fails to comply with the provisions of this act
30 concerning deposits of funds into trust or escrow accounts, or
31 withdrawal of funds from trust or escrow accounts. The

1 failure to place funds in trust or escrow accounts established
2 pursuant to this act after receipt by the subdivider of such
3 funds is prima facie evidence of an intentional and purposeful
4 violation of this act.

5 Section 19. This act shall take effect October 1,
6 1997.

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568-121-97

HOUSE SUMMARY

Revises the provisions of the Florida Uniform Land Sales Practices Law to:

- 1. Revise definitions.
- 2. Revise language with respect to the general powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation to authorize the division to apply to the circuit court for orders of restitution and to seek the imposition of civil penalties under certain circumstances.
- 3. Revise language with respect to described fees.
- 4. Provide that it is unlawful, and a violation of the act for a person to dispose of, conceal, or divert any funds or assets of any person so as to substantially and adversely affect the interest of a purchaser.
- 5. Revise language with respect to prohibitions on dispositions of subdivided lands.
- 6. Revise language with respect to reservations.
- 7. Revise language with respect to exemptions under the act.
- 8. Revise provisions concerning application for registration.
- 9. Delete a provision requiring the entering of an order of registration of described lands.
- 10. Provide for the effective date of described registrations.
- 11. Revise language with respect to the registration of described subdivided lands.
- 12. Revise provisions relating to advertising materials.
- 13. Revise provisions relating to the public offering statement.
- 14. Revise language with respect to required trust and escrow accounts.
- 15. Provide for the termination of registration.
- 16. Revise provisions with respect to investigations.
- 17. Provide a third degree felony penalty for making any material misrepresentation or concealing any material fact in any written communication with the division and for failing to comply with the provisions of the act concerning the deposit of funds into trust or escrow accounts or the withdrawal of funds from trust or escrow accounts.

See bill for details.