

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Smith offered the following:

2  
3 **Amendment (with title amendment)**

4 On page 15, between line(s) 22 and 23,  
5 insert:

6 Section 5. Paragraph (d) of subsection (1) of section  
7 718.501, Florida Statutes, is amended to read:

8 718.501 Powers and duties of Division of Florida Land  
9 Sales, Condominiums, and Mobile Homes.--

10 (1) The Division of Florida Land Sales, Condominiums, and  
11 Mobile Homes of the Department of Business and Professional  
12 Regulation, referred to as the "division" in this part, in  
13 addition to other powers and duties prescribed by chapter 498,  
14 has the power to enforce and ensure compliance with the  
15 provisions of this chapter and rules promulgated pursuant hereto  
16 relating to the development, construction, sale, lease,

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17 ownership, operation, and management of residential condominium  
18 units. In performing its duties, the division has the following  
19 powers and duties:

20 (d) Notwithstanding any remedies available to unit owners  
21 and associations, if the division has reasonable cause to  
22 believe that a violation of any provision of this chapter or  
23 rule promulgated pursuant hereto has occurred, the division may  
24 institute enforcement proceedings in its own name against any  
25 developer, association, officer, or member of the board of  
26 administration, or its assignees or agents, as follows:

27 1. The division may permit a person whose conduct or  
28 actions may be under investigation to waive formal proceedings  
29 and enter into a consent proceeding whereby orders, rules, or  
30 letters of censure or warning, whether formal or informal, may  
31 be entered against the person.

32 2. The division may issue an order requiring the  
33 developer, association, officer, or member of the board of  
34 administration, or its assignees or agents, to cease and desist  
35 from the unlawful practice and take such affirmative action as  
36 in the judgment of the division will carry out the purposes of  
37 this chapter. Such affirmative action may include, but is not  
38 limited to, an order requiring a developer to pay moneys  
39 determined to be owed to a condominium association.

40 3. The division may bring an action in circuit court on  
41 behalf of a class of unit owners, lessees, or purchasers for  
42 declaratory relief, injunctive relief, or restitution.

43 4. The division may impose a civil penalty against a  
44 developer or association, or its assignee or agent, for any

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45 violation of this chapter or a rule promulgated pursuant hereto.  
46 The division may impose a civil penalty individually against any  
47 officer or board member who willfully and knowingly violates a  
48 provision of this chapter, a rule adopted pursuant hereto, or a  
49 final order of the division. The term "willfully and knowingly"  
50 means that the division informed the officer or board member  
51 that his or her action or intended action violates this chapter,  
52 a rule adopted under this chapter, or a final order of the  
53 division and that the officer or board member refused to comply  
54 with the requirements of this chapter, a rule adopted under this  
55 chapter, or a final order of the division. The division, prior  
56 to initiating formal agency action under chapter 120, shall  
57 afford the officer or board member an opportunity to voluntarily  
58 comply with this chapter, a rule adopted under this chapter, or  
59 a final order of the division. An officer or board member who  
60 complies within 10 days is not subject to a civil penalty. A  
61 penalty may be imposed on the basis of each day of continuing  
62 violation, but in no event shall the penalty for any offense  
63 exceed \$5,000. By January 1, 1998, the division shall adopt, by  
64 rule, penalty guidelines applicable to possible violations or to  
65 categories of violations of this chapter or rules adopted by the  
66 division. The guidelines must specify a meaningful range of  
67 civil penalties for each such violation of the statute and rules  
68 and must be based upon the harm caused by the violation, the  
69 repetition of the violation, and upon such other factors deemed  
70 relevant by the division. For example, the division may consider  
71 whether the violations were committed by a developer or owner-  
72 controlled association, the size of the association, and other

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73 factors. The guidelines must designate the possible mitigating  
74 or aggravating circumstances that justify a departure from the  
75 range of penalties provided by the rules. It is the legislative  
76 intent that minor violations be distinguished from those which  
77 endanger the health, safety, or welfare of the condominium  
78 residents or other persons and that such guidelines provide  
79 reasonable and meaningful notice to the public of likely  
80 penalties that may be imposed for proscribed conduct. This  
81 subsection does not limit the ability of the division to  
82 informally dispose of administrative actions or complaints by  
83 stipulation, agreed settlement, or consent order. All amounts  
84 collected shall be deposited with the Chief Financial Officer to  
85 the credit of the Division of Florida Land Sales, Condominiums,  
86 and Mobile Homes Trust Fund. If a developer fails to pay the  
87 civil penalty, the division shall thereupon issue an order  
88 directing that such developer cease and desist from further  
89 operation until such time as the civil penalty is paid or may  
90 pursue enforcement of the penalty in a court of competent  
91 jurisdiction. If an association fails to pay the civil penalty,  
92 the division shall thereupon pursue enforcement in a court of  
93 competent jurisdiction, and the order imposing the civil penalty  
94 or the cease and desist order will not become effective until 20  
95 days after the date of such order. Any action commenced by the  
96 division shall be brought in the county in which the division  
97 has its executive offices or in the county where the violation  
98 occurred. In addition to the powers set forth in this  
99 subparagraph, the division shall have the authority to appoint a  
100 receiver in those communities where the division's investigation

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101 | has resulted in a finding that a board of directors has failed  
102 | to maintain, repair, and replace the common elements to the  
103 | extent the health, safety, and welfare of the residents is  
104 | endangered.

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106 | ===== T I T L E A M E N D M E N T =====

107 |       On page 1, line(s) 17, after the semicolon,  
108 | insert: amending s. 718.501, F.S.; authorizing the Division of  
109 | Florida Land Sales, Condominiums, and Mobile Homes to appoint a  
110 | receiver in certain communities which have failed to maintain,  
111 | repair, and replace common elements for certain purposes;