

1                   A bill to be entitled  
2           An act relating to homeowners' and condominium  
3           associations; amending s. 20.165, F.S.; redesignating the  
4           Division of Florida Land Sales, Condominiums, and Mobile  
5           Homes as the Division of Florida Land Sales, Condominiums,  
6           Homeowners' Associations, Community Association  
7           Management, and Mobile Homes; amending s. 468.431, F.S.;  
8           providing a definition; amending s. 468.4315, F.S.;  
9           providing that the Regulatory Council of Community  
10          Association Managers shall be within the Division of  
11          Florida Land Sales, Condominiums, Homeowners'  
12          Associations, Community Association Management, and Mobile  
13          Homes; amending s. 468.436, F.S.; providing that community  
14          association managers are subject to disciplinary action  
15          upon a finding by the division; requiring the division to  
16          refer its findings to the Department of Business and  
17          Professional Regulation; providing penalties; amending s.  
18          718.111, F.S.; providing condominium associations  
19          guidelines for the designation of disabled parking;  
20          amending s. 718.112, F.S.; requiring association bylaws to  
21          mandate a specified reserve minimum; amending s. 718.501,  
22          F.S.; providing powers of the division to include  
23          homeowners' associations and community association  
24          management; requiring training of condominium association  
25          board members; requiring notice of violations; providing  
26          criteria for notice, including a response deadline;  
27          amending s. 718.5012, F.S.; providing the ombudsman with  
28          certain powers concerning homeowners' associations;

29 | amending s. 719.104, F.S.; providing that an association  
 30 | or board may not waive its audit for more than 2  
 31 | consecutive years; amending s. 719.1055, F.S.; including  
 32 | cooperative units in rental rights grandfathered clause;  
 33 | creating s. 720.3015, F.S.; providing the division with  
 34 | certain powers and duties relating to homeowners'  
 35 | associations; creating s. 720.3071, F.S.; requiring  
 36 | training of homeowners' association board members;  
 37 | amending ss. 73.073, 190.009, 192.037, 213.053, 215.20,  
 38 | 326.002, 326.006, 380.0651, 455.116, 475.455, 498.005,  
 39 | 498.019, 498.047, 498.049, 509.512, 559.935, 718.103,  
 40 | 718.105, 718.1255, 718.5011, 718.502, 718.504, 718.508,  
 41 | 718.509, 718.608, 719.103, 719.1255, 719.501, 719.502,  
 42 | 719.504, 719.508, 719.608, 720.301, 721.05, 721.07,  
 43 | 721.08, 721.26, 721.28, 721.301, 721.50, 723.003, 723.006,  
 44 | 723.009, and 723.0611, F.S., to conform references;  
 45 | providing an effective date.

46 |

47 | Be It Enacted by the Legislature of the State of Florida:

48 |

49 | Section 1. Paragraph (d) of subsection (2) of section  
 50 | 20.165, Florida Statutes, is amended to read:

51 | 20.165 Department of Business and Professional  
 52 | Regulation.--There is created a Department of Business and  
 53 | Professional Regulation.

54 | (2) The following divisions of the Department of Business  
 55 | and Professional Regulation are established:

56 (d) Division of Florida Land Sales, Condominiums,  
 57 Homeowners' Associations, Community Association Management, and  
 58 Mobile Homes.

59 Section 2. Subsection (5) of section 468.431, Florida  
 60 Statutes, is renumbered as subsection (6), and a new subsection  
 61 (5) is added to said section, to read:

62 468.431 Definitions.--

63 (5) "Division" means the Division of Florida Land Sales,  
 64 Condominiums, Homeowners' Associations, Community Association  
 65 Management, and Mobile Homes of the Department of Business and  
 66 Professional Regulation.

67 Section 3. Subsection (1) of section 468.4315, Florida  
 68 Statutes, is amended to read:

69 468.4315 Regulatory Council of Community Association  
 70 Managers.--

71 (1) The Regulatory Council of Community Association  
 72 Managers is created within the division ~~department~~ and shall  
 73 consist of seven members appointed by the Governor and confirmed  
 74 by the Senate.

75 (a) Five members of the council shall be licensed  
 76 community association managers, one of whom shall be a community  
 77 association manager employed by a timeshare managing entity as  
 78 described in ss. 468.438 and 721.13, who have held an active  
 79 license for 5 years. The remaining two council members shall be  
 80 residents of this state and must not be or ever have been  
 81 connected with the business of community association management.

82 (b) The Governor shall appoint members for terms of 4  
 83 years. Such members shall serve until their successors are

84 appointed. Members' service on the council shall begin upon  
 85 appointment and shall continue until their successors are  
 86 appointed.

87 Section 4. Section 468.436, Florida Statutes, is amended  
 88 to read:

89 468.436 Disciplinary proceedings.--

90 (1) Upon a finding by the division, the following acts  
 91 constitute grounds for which the disciplinary actions in  
 92 subsection (3) may be taken:

93 (a) Violation of any provision of s. 455.227(1).

94 (b)1. Violation of any provision of this part.

95 2. Violation of any lawful order or rule rendered or  
 96 adopted by the department or the council.

97 3. Being convicted of or pleading nolo contendere to a  
 98 felony in any court in the United States.

99 4. Obtaining a license or certification or any other  
 100 order, ruling, or authorization by means of fraud,  
 101 misrepresentation, or concealment of material facts.

102 5. Committing acts of gross misconduct or gross negligence  
 103 in connection with the profession.

104 (2) The council shall specify by rule the acts or  
 105 omissions that constitute a violation of subsection (1).

106 (3) When the division ~~department~~ finds any community  
 107 association manager guilty of any of the grounds set forth in  
 108 subsection (1), it shall refer the matter to the department,  
 109 which may enter an order imposing one or more of the following  
 110 penalties:

111 (a) Denial of an application for licensure.

- 112 (b) Revocation or suspension of a license.
- 113 (c) Imposition of an administrative fine not to exceed
- 114 \$5,000 for each count or separate offense.
- 115 (d) Issuance of a reprimand.
- 116 (e) Placement of the community association manager on
- 117 probation for a period of time and subject to such conditions as
- 118 the department specifies.
- 119 (f) Restriction of the authorized scope of practice by the
- 120 community association manager.
- 121 (4) The department shall reissue the license of a
- 122 disciplined community association manager upon certification by
- 123 the department that the disciplined person has complied with all
- 124 of the terms and conditions set forth in the final order.

125 Section 5. Subsection (15) is added to section 718.111,  
 126 Florida Statutes, to read:

127 718.111 The association.--

128 (15) PARKING SPACES FOR PERSONS WHO HAVE  
 129 DISABILITIES.--Where guest parking is provided, guest parking  
 130 spaces shall be configured and assigned pursuant to s. 553.5041.  
 131 The association may increase the number of guest parking spaces,  
 132 if needed. Residents with disabilities shall not park in a  
 133 disabled guest parking space unless their assigned parking space  
 134 is in use illegally. Resident disabled parking shall be by  
 135 assignment from available spaces by the association, pursuant to  
 136 local fair housing law. When a resident has two vehicles, one  
 137 equipped with a lift, the association shall assign a second  
 138 parking space that satisfies the needs of the vehicle's lift

139 operation, if an additional parking space is available and  
 140 unassigned.

141 Section 6. Paragraph (f) of subsection (2) of section  
 142 718.112, Florida Statutes, is amended to read:

143 718.112 Bylaws.--

144 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the  
 145 following and, if they do not do so, shall be deemed to include  
 146 the following:

147 (f) Annual budget.--

148 1. The proposed annual budget of common expenses shall be  
 149 detailed and shall show the amounts budgeted by accounts and  
 150 expense classifications, including, if applicable, but not  
 151 limited to, those expenses listed in s. 718.504(21). A  
 152 multicondominium association shall adopt a separate budget of  
 153 common expenses for each condominium the association operates  
 154 and shall adopt a separate budget of common expenses for the  
 155 association. In addition, if the association maintains limited  
 156 common elements with the cost to be shared only by those  
 157 entitled to use the limited common elements as provided for in  
 158 s. 718.113(1), the budget or a schedule attached thereto shall  
 159 show amounts budgeted therefor. If, after turnover of control of  
 160 the association to the unit owners, any of the expenses listed  
 161 in s. 718.504(21) are not applicable, they need not be listed.

162 2. In addition to annual operating expenses, the budget  
 163 shall include reserve accounts for capital expenditures and  
 164 deferred maintenance. These accounts shall include, but are not  
 165 limited to, roof replacement, building painting, and pavement  
 166 resurfacing, regardless of the amount of deferred maintenance

167 expense or replacement cost, and for any other item for which  
168 the deferred maintenance expense or replacement cost exceeds  
169 \$10,000. The amount to be reserved shall be computed by means of  
170 a formula which is based upon estimated remaining useful life  
171 and estimated replacement cost or deferred maintenance expense  
172 of each reserve item. The association may adjust replacement  
173 reserve assessments annually to take into account any changes in  
174 estimates or extension of the useful life of a reserve item  
175 caused by deferred maintenance. Reserves shall maintain a  
176 minimum level of at least 10 percent of the yearly operating  
177 budget. This subsection does not apply to an adopted budget in  
178 which the members of an association have determined, by a  
179 majority vote at a duly called meeting of the association, to  
180 provide no reserves or less reserves than required by this  
181 subsection. However, prior to turnover of control of an  
182 association by a developer to unit owners other than a developer  
183 pursuant to s. 718.301, the developer may vote to waive the  
184 reserves or reduce the funding of reserves for the first 2  
185 fiscal years of the association's operation, beginning with the  
186 fiscal year in which the initial declaration is recorded, after  
187 which time reserves may be waived or reduced only upon the vote  
188 of a majority of all nondeveloper voting interests voting in  
189 person or by limited proxy at a duly called meeting of the  
190 association. If a meeting of the unit owners has been called to  
191 determine whether to waive or reduce the funding of reserves,  
192 and no such result is achieved or a quorum is not attained, the  
193 reserves as included in the budget shall go into effect. After

194 the turnover, the developer may vote its voting interest to  
 195 waive or reduce the funding of reserves.

196 3. Reserve funds and any interest accruing thereon shall  
 197 remain in the reserve account or accounts, and shall be used  
 198 only for authorized reserve expenditures unless their use for  
 199 other purposes is approved in advance by a majority vote at a  
 200 duly called meeting of the association. Prior to turnover of  
 201 control of an association by a developer to unit owners other  
 202 than the developer pursuant to s. 718.301, the developer-  
 203 controlled association shall not vote to use reserves for  
 204 purposes other than that for which they were intended without  
 205 the approval of a majority of all nondeveloper voting interests,  
 206 voting in person or by limited proxy at a duly called meeting of  
 207 the association.

208 4. The only voting interests which are eligible to vote on  
 209 questions that involve waiving or reducing the funding of  
 210 reserves, or using existing reserve funds for purposes other  
 211 than purposes for which the reserves were intended, are the  
 212 voting interests of the units subject to assessment to fund the  
 213 reserves in question.

214 Section 7. Section 718.501, Florida Statutes, is amended,  
 215 to read:

216 718.501 Powers and duties of Division of Florida Land  
 217 Sales, Condominiums, Homeowners' Associations, Community  
 218 Association Management, and Mobile Homes.--

219 (1) The Division of Florida Land Sales, Condominiums,  
 220 Homeowners' Associations, Community Association Management, and  
 221 Mobile Homes of the Department of Business and Professional

222 Regulation, referred to as the "division" in this part, in  
223 addition to other powers and duties prescribed by chapter 498,  
224 has the power to enforce and ensure compliance with the  
225 provisions of this chapter and rules promulgated pursuant hereto  
226 relating to the development, construction, sale, lease,  
227 ownership, operation, and management of residential condominium  
228 units. In performing its duties, the division has the following  
229 powers and duties:

230 (a) The division may make necessary public or private  
231 investigations within or outside this state to determine whether  
232 any person or association has violated this chapter or any rule  
233 or order hereunder, to aid in the enforcement of this chapter,  
234 or to aid in the adoption of rules or forms hereunder.

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

239 (c) For the purpose of any investigation under this  
240 chapter, the division director or any officer or employee  
241 designated by the division director may administer oaths or  
242 affirmations, subpoena witnesses and compel their attendance,  
243 take evidence, and require the production of any matter which is  
244 relevant to the investigation, including the existence,  
245 description, nature, custody, condition, and location of any  
246 books, documents, or other tangible things and the identity and  
247 location of persons having knowledge of relevant facts or any  
248 other matter reasonably calculated to lead to the discovery of  
249 material evidence. Upon the failure by a person to obey a

250 subpoena or to answer questions propounded by the investigating  
251 officer and upon reasonable notice to all persons affected  
252 thereby, the division may apply to the circuit court for an  
253 order compelling compliance.

254 (d) Notwithstanding any remedies available to unit owners  
255 and associations, if the division has reasonable cause to  
256 believe that a violation of any provision of this chapter or  
257 rule promulgated pursuant hereto has occurred, the division may  
258 institute enforcement proceedings in its own name against any  
259 developer, association, officer, or member of the board of  
260 administration, or its assignees or agents, as follows:

261 1. The division may permit a person whose conduct or  
262 actions may be under investigation to waive formal proceedings  
263 and enter into a consent proceeding whereby orders, rules, or  
264 letters of censure or warning, whether formal or informal, may  
265 be entered against the person.

266 2. The division may issue an order requiring the  
267 developer, association, officer, or member of the board of  
268 administration, or its assignees or agents, to cease and desist  
269 from the unlawful practice and take such affirmative action as  
270 in the judgment of the division will carry out the purposes of  
271 this chapter. Such affirmative action may include, but is not  
272 limited to, an order requiring a developer to pay moneys  
273 determined to be owed to a condominium association.

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

277 4. The division may impose a civil penalty against a  
278 developer or association, or its assignee or agent, for any  
279 violation of this chapter or a rule promulgated pursuant hereto.  
280 The division may impose a civil penalty individually against any  
281 officer or board member who willfully and knowingly violates a  
282 provision of this chapter, a rule adopted pursuant hereto, or a  
283 final order of the division. The term "willfully and knowingly"  
284 means that the division informed the officer or board member  
285 that his or her action or intended action violates this chapter,  
286 a rule adopted under this chapter, or a final order of the  
287 division and that the officer or board member refused to comply  
288 with the requirements of this chapter, a rule adopted under this  
289 chapter, or a final order of the division. The division, prior  
290 to initiating formal agency action under chapter 120, shall  
291 afford the officer or board member an opportunity to voluntarily  
292 comply with this chapter, a rule adopted under this chapter, or  
293 a final order of the division. An officer or board member who  
294 complies within 10 days is not subject to a civil penalty. A  
295 penalty may be imposed on the basis of each day of continuing  
296 violation, but in no event shall the penalty for any offense  
297 exceed \$5,000. By January 1, 1998, the division shall adopt, by  
298 rule, penalty guidelines applicable to possible violations or to  
299 categories of violations of this chapter or rules adopted by the  
300 division. The guidelines must specify a meaningful range of  
301 civil penalties for each such violation of the statute and rules  
302 and must be based upon the harm caused by the violation, the  
303 repetition of the violation, and upon such other factors deemed  
304 relevant by the division. For example, the division may consider

305 whether the violations were committed by a developer or owner-  
 306 controlled association, the size of the association, and other  
 307 factors. The guidelines must designate the possible mitigating  
 308 or aggravating circumstances that justify a departure from the  
 309 range of penalties provided by the rules. It is the legislative  
 310 intent that minor violations be distinguished from those which  
 311 endanger the health, safety, or welfare of the condominium  
 312 residents or other persons and that such guidelines provide  
 313 reasonable and meaningful notice to the public of likely  
 314 penalties that may be imposed for proscribed conduct. This  
 315 subsection does not limit the ability of the division to  
 316 informally dispose of administrative actions or complaints by  
 317 stipulation, agreed settlement, or consent order. All amounts  
 318 collected shall be deposited with the Chief Financial Officer to  
 319 the credit of the Division of Florida Land Sales, Condominiums,  
 320 Homeowners' Associations, Community Association Management, and  
 321 Mobile Homes Trust Fund. If a developer fails to pay the civil  
 322 penalty, the division shall thereupon issue an order directing  
 323 that such developer cease and desist from further operation  
 324 until such time as the civil penalty is paid or may pursue  
 325 enforcement of the penalty in a court of competent jurisdiction.  
 326 If an association fails to pay the civil penalty, the division  
 327 shall thereupon pursue enforcement in a court of competent  
 328 jurisdiction, and the order imposing the civil penalty or the  
 329 cease and desist order will not become effective until 20 days  
 330 after the date of such order. Any action commenced by the  
 331 division shall be brought in the county in which the division

332 has its executive offices or in the county where the violation  
 333 occurred.

334 (e) The division is authorized to prepare and disseminate  
 335 a prospectus and other information to assist prospective owners,  
 336 purchasers, lessees, and developers of residential condominiums  
 337 in assessing the rights, privileges, and duties pertaining  
 338 thereto.

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

342 (g) The division shall establish procedures for providing  
 343 notice to an association when the division is considering the  
 344 issuance of a declaratory statement with respect to the  
 345 declaration of condominium or any related document governing in  
 346 such condominium community.

347 (h) The division shall furnish each association which pays  
 348 the fees required by paragraph (2)(a) a copy of this act,  
 349 subsequent changes to this act on an annual basis, an amended  
 350 version of this act as it becomes available from the Secretary  
 351 of State's office on a biennial basis, and the rules promulgated  
 352 pursuant thereto on an annual basis.

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

357 (j) The division shall provide training programs for  
 358 condominium association board members and unit owners. Training  
 359 shall be mandatory for newly elected board members and members

360 currently serving on a board who have not previously voluntarily  
 361 attended training.

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

364 (l) The division shall develop a program to certify both  
 365 volunteer and paid mediators to provide mediation of condominium  
 366 disputes. The division shall provide, upon request, a list of  
 367 such mediators to any association, unit owner, or other  
 368 participant in arbitration proceedings under s. 718.1255  
 369 requesting a copy of the list. The division shall include on the  
 370 list of volunteer mediators only the names of persons who have  
 371 received at least 20 hours of training in mediation techniques  
 372 or who have mediated at least 20 disputes. In order to become  
 373 initially certified by the division, paid mediators must be  
 374 certified by the Supreme Court to mediate court cases in either  
 375 county or circuit courts. However, the division may adopt, by  
 376 rule, additional factors for the certification of paid  
 377 mediators, which factors must be related to experience,  
 378 education, or background. Any person initially certified as a  
 379 paid mediator by the division must, in order to continue to be  
 380 certified, comply with the factors or requirements imposed by  
 381 rules adopted by the division.

382 (m) When a complaint is made, the division shall conduct  
 383 its inquiry with due regard to the interests of the affected  
 384 parties. Within 30 days after receipt of a complaint, the  
 385 division shall acknowledge the complaint in writing and notify  
 386 the complainant whether the complaint is within the jurisdiction  
 387 of the division and whether additional information is needed by

388 the division from the complainant. The division shall conduct  
389 its investigation and shall, within 90 days after receipt of the  
390 original complaint or of timely requested additional  
391 information, take action upon the complaint. However, the  
392 failure to complete the investigation within 90 days does not  
393 prevent the division from continuing the investigation,  
394 accepting or considering evidence obtained or received after 90  
395 days, or taking administrative action if reasonable cause exists  
396 to believe that a violation of this chapter or a rule of the  
397 division has occurred. If an investigation is not completed  
398 within the time limits established in this paragraph, the  
399 division shall, on a monthly basis, notify the complainant in  
400 writing of the status of the investigation. When reporting its  
401 action to the complainant, the division shall inform the  
402 complainant of any right to a hearing pursuant to ss. 120.569  
403 and 120.57.

404 (n) Any condominium owner found to be in violation of this  
405 chapter shall be notified by the department by certified mail,  
406 return receipt requested, at which time the condominium owner  
407 will have 30 days in which to respond in writing.

408 (2)(a) Effective January 1, 1992, each condominium  
409 association which operates more than two units shall pay to the  
410 division an annual fee in the amount of \$4 for each residential  
411 unit in condominiums operated by the association. If the fee is  
412 not paid by March 1, then the association shall be assessed a  
413 penalty of 10 percent of the amount due, and the association  
414 will not have standing to maintain or defend any action in the

415 courts of this state until the amount due, plus any penalty, is  
 416 paid.

417 (b) All fees shall be deposited in the Division of Florida  
 418 Land Sales, Condominiums, Homeowners' Associations, Community  
 419 Association Management, and Mobile Homes Trust Fund as provided  
 420 by law.

421 Section 8. Subsection (10) is added to section 718.5012,  
 422 Florida Statutes, to read:

423 718.5012 Ombudsman; powers and duties.--The ombudsman  
 424 shall have the powers that are necessary to carry out the duties  
 425 of his or her office, including the following specific powers:

426 (10) To monitor and review procedures and disputes  
 427 concerning homeowners' associations.

428 Section 9. Paragraph (b) of subsection (4) of section  
 429 719.104, Florida Statutes, is amended to read:

430 719.104 Cooperatives; access to units; records; financial  
 431 reports; assessments; purchase of leases.--

432 (4) FINANCIAL REPORT.--

433 (b) The division shall adopt rules that may require that  
 434 the association deliver to the unit owners, in lieu of the  
 435 financial report required by this section, a complete set of  
 436 financial statements for the preceding fiscal year. The  
 437 financial statements shall be delivered within 90 days following  
 438 the end of the previous fiscal year or annually on such other  
 439 date as provided in the bylaws. The rules of the division may  
 440 require that the financial statements be compiled, reviewed, or  
 441 audited, and the rules shall take into consideration the  
 442 criteria set forth in s. 719.501(1)(j). The requirement to have

443 the financial statements compiled, reviewed, or audited does not  
 444 apply to associations if a majority of the voting interests of  
 445 the association present at a duly called meeting of the  
 446 association have determined for a fiscal year to waive this  
 447 requirement. In an association in which turnover of control by  
 448 the developer has not occurred, the developer may vote to waive  
 449 the audit requirement for the first 2 years of the operation of  
 450 the association, after which time waiver of an applicable audit  
 451 requirement shall be by a majority of voting interests other  
 452 than the developer. Under no circumstance may an association or  
 453 board waive its audit for more than 2 consecutive years. The  
 454 meeting shall be held prior to the end of the fiscal year, and  
 455 the waiver shall be effective for only one fiscal year. This  
 456 subsection does not apply to a cooperative that consists of 50  
 457 or fewer units.

458 Section 10. Subsection (7) is added to section 719.1055,  
 459 Florida Statutes, to read:

460 719.1055 Amendment of cooperative documents; alteration  
 461 and acquisition of property.--

462 (7) Any amendment restricting cooperative unit owners'  
 463 rights relating to the rental of units applies only to unit  
 464 owners who consent to the amendment and unit owners who purchase  
 465 their units after the effective date of that amendment.

466 Section 11. Section 720.3015, Florida Statutes, is created  
 467 to read:

468 720.3015 Powers and duties of Division of Florida Land  
 469 Sales, Condominiums, Homeowners' Associations, Community  
 470 Association Management, and Mobile Homes.--The Division of

471 Florida Land Sales, Condominiums, Homeowners' Associations,  
 472 Community Association Management, and Mobile Homes of the  
 473 Department of Business and Professional Regulation in addition  
 474 to other powers and duties prescribed by chapter 498, has the  
 475 power to enforce and ensure compliance with the provisions of  
 476 this chapter and rules adopted pursuant hereto relating to  
 477 homeowners' associations as defined in s. 720.301:

478 (1) The division may make necessary public or private  
 479 investigations within or outside this state to determine whether  
 480 any person or association has violated this chapter or any rule  
 481 or order hereunder, to aid in the enforcement of this chapter,  
 482 or to aid in the adoption of rules or forms hereunder.

483 (2) The division may require or permit any person to file  
 484 a statement in writing, under oath or otherwise, as the division  
 485 determines, as to the facts and circumstances concerning a  
 486 matter to be investigated.

487 (3) For the purpose of any investigation under this  
 488 chapter, the division director or any officer or employee  
 489 designated by the division director may administer oaths or  
 490 affirmations, subpoena witnesses and compel their attendance,  
 491 take evidence, and require the production of any matter which is  
 492 relevant to the investigation, including the existence,  
 493 description, nature, custody, condition, and location of any  
 494 books, documents, or other tangible things, and the identity and  
 495 location of persons having knowledge of relevant facts or any  
 496 other matter reasonably calculated to lead to the discovery of  
 497 material evidence. Upon the failure by a person to obey a  
 498 subpoena or to answer questions propounded by the investigating

499 officer and upon reasonable notice to all persons affected  
 500 thereby, the division may apply to the circuit court for an  
 501 order compelling compliance.

502 (4) Notwithstanding any remedies available to homeowners'  
 503 associations, if the division has reasonable cause to believe  
 504 that a violation of any provision of this chapter or rule  
 505 adopted pursuant hereto has occurred, the division may institute  
 506 enforcement proceedings in its own name against any association,  
 507 officer, or member of the board, or its assignees or agents, as  
 508 follows:

509 (a) The division may permit a person whose conduct or  
 510 actions may be under investigation to waive formal proceedings  
 511 and enter into a consent proceeding whereby orders, rules, or  
 512 letters of censure or warning, whether formal or informal, may  
 513 be entered against the person.

514 (b) The division may issue an order requiring the  
 515 homeowners' association to cease and desist from the unlawful  
 516 practice and take such affirmative action as in the judgment of  
 517 the division will carry out the purposes of this chapter.

518 (c) The division may bring an action in circuit court on  
 519 behalf of a class of homeowners, lessees, or purchasers for  
 520 declaratory relief, injunctive relief, or restitution.

521 (d) The division may impose a civil penalty against an  
 522 association, or its assignee or agent, for any violation of this  
 523 chapter or a rule adopted pursuant hereto. The division may  
 524 impose a civil penalty individually against any officer or board  
 525 member who willfully and knowingly violates a provision of this  
 526 chapter, a rule adopted pursuant hereto, or a final order of the

527 division. The term "willfully and knowingly" means that the  
528 division informed the officer or board member that his or her  
529 action or intended action violates this chapter, a rule adopted  
530 under this chapter, or a final order of the division and that  
531 the officer or board member refused to comply with the  
532 requirements of this chapter, a rule adopted under this chapter,  
533 or a final order of the division. The division, prior to  
534 initiating formal agency action under chapter 120, shall afford  
535 the officer or board member an opportunity to voluntarily comply  
536 with this chapter, a rule adopted under this chapter, or a final  
537 order of the division. An officer or board member who complies  
538 within 10 days is not subject to a civil penalty. A penalty may  
539 be imposed on the basis of each day of continuing violation, but  
540 in no event shall the penalty for any offense exceed \$5,000. By  
541 January 1, 2006, the division shall adopt, by rule, penalty  
542 guidelines applicable to possible violations or to categories of  
543 violations of this chapter or rules adopted by the division. The  
544 guidelines must specify a meaningful range of civil penalties  
545 for each such violation of the statute and rules and must be  
546 based upon the harm caused by the violation, the repetition of  
547 the violation, and such other factors deemed relevant by the  
548 division. For example, the division may consider whether the  
549 violations were committed by a association, the size of the  
550 association, and other factors. The guidelines must designate  
551 the possible mitigating or aggravating circumstances that  
552 justify a departure from the range of penalties provided by the  
553 rules. It is the legislative intent that minor violations be  
554 distinguished from those which endanger the health, safety, or

555 welfare of the homeowners' association members or other persons  
 556 and that such guidelines provide reasonable and meaningful  
 557 notice to the public of likely penalties that may be imposed for  
 558 proscribed conduct. This paragraph does not limit the ability of  
 559 the division to informally dispose of administrative actions or  
 560 complaints by stipulation, agreed settlement, or consent order.  
 561 All amounts collected shall be deposited with the Chief  
 562 Financial Officer to the credit of the Division of Florida Land  
 563 Sales, Condominiums, Homeowners' Associations, Community  
 564 Association Management, and Mobile Homes Trust Fund. If an  
 565 association fails to pay the civil penalty, the division shall  
 566 thereupon pursue enforcement in a court of competent  
 567 jurisdiction, and the order imposing the civil penalty or the  
 568 cease and desist order will not become effective until 20 days  
 569 after the date of such order. Any action commenced by the  
 570 division shall be brought in the county in which the division  
 571 has its executive offices or in the county in which the  
 572 violation occurred.

573 (5) The division is authorized to prepare and disseminate  
 574 a prospectus and other information to assist prospective owners,  
 575 purchasers, lessees, and developers of communities with  
 576 homeowners' associations in assessing the rights, privileges,  
 577 and duties pertaining thereto.

578 (6) The division has authority to adopt rules pursuant to  
 579 ss. 120.536(1) and 120.54 to implement and enforce the  
 580 provisions of this chapter.

581 (7) The division shall establish procedures for providing  
 582 notice to an association when the division is considering the

583 issuance of a declaratory statement with respect to the  
584 homeowners' association documents governing such communities.

585 (8) The division shall furnish each association a copy of  
586 this act, subsequent changes to this act on an annual basis, an  
587 amended version of this act as it becomes available from the  
588 Secretary of State's office on a biennial basis, and the rules  
589 adopted pursuant thereto on an annual basis.

590 (9) The division shall annually provide each association  
591 with a summary of declaratory statements and formal legal  
592 opinions relating to the operations of homeowners' associations  
593 which were rendered by the division during the previous year.

594 (10) The division shall provide training programs for  
595 homeowners' association board members. Training shall be  
596 mandatory for newly elected board members and members currently  
597 serving on a board who have not previously voluntarily attended  
598 training.

599 (11) The division shall maintain a toll-free telephone  
600 number accessible to homeowners' association members.

601 (12) The division shall develop a program to certify both  
602 volunteer and paid mediators to provide mediation of homeowners'  
603 association disputes. The division shall provide, upon request,  
604 a list of such mediators to any association, unit owner, or  
605 other participant in arbitration proceedings under s. 718.1255.  
606 The division shall include on the list of volunteer mediators  
607 only the names of persons who have received at least 20 hours of  
608 training in mediation techniques or who have mediated at least  
609 20 disputes. In order to become initially certified by the  
610 division, paid mediators must be certified by the Supreme Court

611 to mediate court cases in either county or circuit courts.  
612 However, the division may adopt, by rule, additional factors for  
613 the certification of paid mediators, which factors must be  
614 related to experience, education, or background. Any person  
615 initially certified as a paid mediator by the division must, in  
616 order to remain certified, comply with the factors or  
617 requirements imposed by rules adopted by the division.

618 (13) When a complaint is made, the division shall conduct  
619 its inquiry with due regard to the interests of the affected  
620 parties. Within 30 days after receipt of a complaint, the  
621 division shall acknowledge the complaint in writing and notify  
622 the complainant whether the complaint is within the jurisdiction  
623 of the division and whether additional information is needed by  
624 the division from the complainant. The division shall conduct  
625 its investigation and shall, within 90 days after receipt of the  
626 original complaint or of timely requested additional  
627 information, take action upon the complaint. However, the  
628 failure to complete the investigation within 90 days does not  
629 prevent the division from continuing the investigation,  
630 accepting or considering evidence obtained or received after 90  
631 days, or taking administrative action if reasonable cause exists  
632 to believe that a violation of this chapter or a rule of the  
633 division has occurred. If an investigation is not completed  
634 within the time limits established in this subsection, the  
635 division shall, on a monthly basis, notify the complainant in  
636 writing of the status of the investigation. When reporting its  
637 action to the complainant, the division shall inform the  
638 complainant of any right to a hearing pursuant to ss. 120.569

639 and 120.57.

640 (14) Any homeowner's association member found to be in  
 641 violation of this chapter shall be notified by the department by  
 642 certified mail, return receipt requested, at which time the  
 643 homeowners' association member will have 30 days in which to  
 644 respond in writing.

645 Section 12. Section 720.3071, Florida Statutes, is created  
 646 to read:

647 720.3071 Board member training.--The division shall  
 648 provide training programs for homeowners' association board  
 649 members and unit owners. Training shall be mandatory for newly  
 650 elected board members and members currently serving on a board  
 651 who have not previously voluntarily attended training.

652 Section 13. Subsection (2) of section 73.073, Florida  
 653 Statutes, is amended to read:

654 73.073 Eminent domain procedure with respect to  
 655 condominium common elements.--

656 (2) With respect to the exercise of eminent domain or a  
 657 negotiated sale for the purchase or taking of a portion of the  
 658 common elements of a condominium, the condemning authority shall  
 659 have the responsibility of contacting the condominium  
 660 association and acquiring the most recent rolls indicating the  
 661 names of the unit owners or contacting the appropriate taxing  
 662 authority to obtain the names of the owners of record on the tax  
 663 rolls. Notification shall thereupon be sent by certified mail,  
 664 return receipt requested, to the unit owners of record of the  
 665 condominium units by the condemning authority indicating the  
 666 intent to purchase or take the required property and requesting

667 a response from the unit owner. The condemning authority shall  
 668 be responsible for the expense of sending notification pursuant  
 669 to this section. Such notice shall, at a minimum, include:

- 670 (a) The name and address of the condemning authority.
- 671 (b) A written or visual description of the property.
- 672 (c) The public purpose for which the property is needed.
- 673 (d) The appraisal value of the property.
- 674 (e) A clear, concise statement relating to the unit  
 675 owner's right to object to the taking or appraisal value and the  
 676 procedures and effects of exercising that right.
- 677 (f) A clear, concise statement relating to the power of  
 678 the association to convey the property on behalf of the unit  
 679 owners if no objection to the taking or appraisal value is  
 680 raised, and the effects of this alternative on the unit owner.

681  
 682 The Division of Florida Land Sales, Condominiums, Homeowners'  
 683 Associations, Community Association Management, and Mobile Homes  
 684 of the Department of Business and Professional Regulation may  
 685 adopt, by rule, a standard form for such notice and may require  
 686 the notice to include any additional relevant information.

687 Section 14. Subsection (2) of section 190.009, Florida  
 688 Statutes, is amended to read:

689 190.009 Disclosure of public financing.--

690 (2) The Division of Florida Land Sales, Condominiums,  
 691 Homeowners' Associations, Community Association Management, and  
 692 Mobile Homes of the Department of Business and Professional  
 693 Regulation shall ensure that disclosures made by developers  
 694 pursuant to chapter 498 meet the requirements of subsection (1).

695 Section 15. Paragraph (e) of subsection (6) of section  
696 192.037, Florida Statutes, is amended to read:

697 192.037 Fee timeshare real property; taxes and  
698 assessments; escrow.--

699 (6)

700 (e) On or before May 1 of each year, a statement of  
701 receipts and disbursements of the escrow account must be filed  
702 with the Division of Florida Land Sales, Condominiums,  
703 Homeowners' Associations, Community Association Management, and  
704 Mobile Homes of the Department of Business and Professional  
705 Regulation, which may enforce this paragraph pursuant to s.  
706 721.26. This statement must appropriately show the amount of  
707 principal and interest in such account.

708 Section 16. Paragraph (i) of subsection (7) of section  
709 213.053, Florida Statutes, is amended to read:

710 213.053 Confidentiality and information sharing.--

711 (7) Notwithstanding any other provision of this section,  
712 the department may provide:

713 (i) Information relative to chapters 212 and 326 to the  
714 Division of Florida Land Sales, Condominiums, Homeowners'  
715 Associations, Community Association Management, and Mobile Homes  
716 of the Department of Business and Professional Regulation in the  
717 conduct of its official duties.

718  
719 Disclosure of information under this subsection shall be  
720 pursuant to a written agreement between the executive director  
721 and the agency. Such agencies, governmental or nongovernmental,  
722 shall be bound by the same requirements of confidentiality as

723 the Department of Revenue. Breach of confidentiality is a  
 724 misdemeanor of the first degree, punishable as provided by s.  
 725 775.082 or s. 775.083.

726 Section 17. Paragraph (d) of subsection (4) of section  
 727 215.20, Florida Statutes, is amended to read:

728 215.20 Certain income and certain trust funds to  
 729 contribute to the General Revenue Fund.--

730 (4) The income of a revenue nature deposited in the  
 731 following described trust funds, by whatever name designated, is  
 732 that from which the appropriations authorized by subsection (3)  
 733 shall be made:

734 (d) Within the Department of Business and Professional  
 735 Regulation:

- 736 1. The Administrative Trust Fund.
- 737 2. The Alcoholic Beverage and Tobacco Trust Fund.
- 738 3. The Cigarette Tax Collection Trust Fund.
- 739 4. The Division of Florida Land Sales, Condominiums,  
 740 Homeowners' Associations, Community Association Management, and  
 741 Mobile Homes Trust Fund.
- 742 5. The Hotel and Restaurant Trust Fund, with the exception  
 743 of those fees collected for the purpose of funding of the  
 744 hospitality education program as stated in s. 509.302.
- 745 6. The Professional Regulation Trust Fund.
- 746 7. The trust funds administered by the Division of Pari-  
 747 mutuel Wagering.

748  
 749 The enumeration of the foregoing moneys or trust funds shall not  
 750 prohibit the applicability thereto of s. 215.24 should the

751 Governor determine that for the reasons mentioned in s. 215.24  
 752 the money or trust funds should be exempt herefrom, as it is the  
 753 purpose of this law to exempt income from its force and effect  
 754 when, by the operation of this law, federal matching funds or  
 755 contributions or private grants to any trust fund would be lost  
 756 to the state.

757 Section 18. Subsection (2) of section 326.002, Florida  
 758 Statutes, is amended to read:

759 326.002 Definitions.--As used in ss. 326.001-326.006, the  
 760 term:

761 (2) "Division" means the Division of Florida Land Sales,  
 762 Condominiums, Homeowners' Associations, Community Association  
 763 Management, and Mobile Homes of the Department of Business and  
 764 Professional Regulation.

765 Section 19. Paragraph (d) of subsection (2) and subsection  
 766 (3) of section 326.006, Florida Statutes, are amended to read:

767 326.006 Powers and duties of division.--

768 (2) The division has the power to enforce and ensure  
 769 compliance with the provisions of this chapter and rules adopted  
 770 under this chapter relating to the sale and ownership of yachts  
 771 and ships. In performing its duties, the division has the  
 772 following powers and duties:

773 (d) Notwithstanding any remedies available to a yacht or  
 774 ship purchaser, if the division has reasonable cause to believe  
 775 that a violation of any provision of this chapter or rule  
 776 adopted under this chapter has occurred, the division may  
 777 institute enforcement proceedings in its own name against any  
 778 broker or salesperson or any of his or her assignees or agents,

779 or against any unlicensed person or any of his or her assignees  
 780 or agents, as follows:

781 1. The division may permit a person whose conduct or  
 782 actions are under investigation to waive formal proceedings and  
 783 enter into a consent proceeding whereby orders, rules, or  
 784 letters of censure or warning, whether formal or informal, may  
 785 be entered against the person.

786 2. The division may issue an order requiring the broker or  
 787 salesperson or any of his or her assignees or agents, or  
 788 requiring any unlicensed person or any of his or her assignees  
 789 or agents, to cease and desist from the unlawful practice and  
 790 take such affirmative action as in the judgment of the division  
 791 will carry out the purposes of this chapter.

792 3. The division may bring an action in circuit court on  
 793 behalf of a class of yacht or ship purchasers for declaratory  
 794 relief, injunctive relief, or restitution.

795 4. The division may impose a civil penalty against a  
 796 broker or salesperson or any of his or her assignees or agents,  
 797 or against an unlicensed person or any of his or her assignees  
 798 or agents, for any violation of this chapter or a rule adopted  
 799 under this chapter. A penalty may be imposed for each day of  
 800 continuing violation, but in no event may the penalty for any  
 801 offense exceed \$10,000. All amounts collected must be deposited  
 802 with the Chief Financial Officer to the credit of the Division  
 803 of Florida Land Sales, Condominiums, Homeowners' Associations,  
 804 Community Association Management, and Mobile Homes Trust Fund.  
 805 If a broker, salesperson, or unlicensed person working for a  
 806 broker, fails to pay the civil penalty, the division shall

807 thereupon issue an order suspending the broker's license until  
808 such time as the civil penalty is paid or may pursue enforcement  
809 of the penalty in a court of competent jurisdiction. The order  
810 imposing the civil penalty or the order of suspension may not  
811 become effective until 20 days after the date of such order. Any  
812 action commenced by the division must be brought in the county  
813 in which the division has its executive offices or in the county  
814 where the violation occurred.

815 (3) All fees must be deposited in the Division of Florida  
816 Land Sales, Condominiums, Homeowners' Associations, Community  
817 Association Management, and Mobile Homes Trust Fund as provided  
818 by law.

819 Section 20. Paragraph (a) of subsection (4) of section  
820 380.0651, Florida Statutes, is amended to read:

821 380.0651 Statewide guidelines and standards.--

822 (4) Two or more developments, represented by their owners  
823 or developers to be separate developments, shall be aggregated  
824 and treated as a single development under this chapter when they  
825 are determined to be part of a unified plan of development and  
826 are physically proximate to one other.

827 (a) The criteria of two of the following subparagraphs  
828 must be met in order for the state land planning agency to  
829 determine that there is a unified plan of development:

830 1.a. The same person has retained or shared control of the  
831 developments;

832 b. The same person has ownership or a significant legal or  
833 equitable interest in the developments; or

834 c. There is common management of the developments  
 835 controlling the form of physical development or disposition of  
 836 parcels of the development.

837 2. There is a reasonable closeness in time between the  
 838 completion of 80 percent or less of one development and the  
 839 submission to a governmental agency of a master plan or series  
 840 of plans or drawings for the other development which is  
 841 indicative of a common development effort.

842 3. A master plan or series of plans or drawings exists  
 843 covering the developments sought to be aggregated which have  
 844 been submitted to a local general-purpose government, water  
 845 management district, the Florida Department of Environmental  
 846 Protection, or the Division of Florida Land Sales, Condominiums,  
 847 Homeowners' Associations, Community Association Management, and  
 848 Mobile Homes for authorization to commence development. The  
 849 existence or implementation of a utility's master utility plan  
 850 required by the Public Service Commission or general-purpose  
 851 local government or a master drainage plan shall not be the sole  
 852 determinant of the existence of a master plan.

853 4. The voluntary sharing of infrastructure that is  
 854 indicative of a common development effort or is designated  
 855 specifically to accommodate the developments sought to be  
 856 aggregated, except that which was implemented because it was  
 857 required by a local general-purpose government; water management  
 858 district; the Department of Environmental Protection; the  
 859 Division of Florida Land Sales, Condominiums, Homeowners'  
 860 Associations, Community Association Management, and Mobile  
 861 Homes; or the Public Service Commission.

862           5. There is a common advertising scheme or promotional  
863 plan in effect for the developments sought to be aggregated.

864           Section 21. Subsection (5) of section 455.116, Florida  
865 Statutes, is amended to read:

866           455.116 Regulation trust funds.--The following trust funds  
867 shall be placed in the department:

868           (5) Division of Florida Land Sales, Condominiums,  
869 Homeowners' Associations, Community Association Management, and  
870 Mobile Homes Trust Fund.

871           Section 22. Section 475.455, Florida Statutes, is amended  
872 to read:

873           475.455 Exchange of disciplinary information.--The  
874 commission shall inform the Division of Florida Land Sales,  
875 Condominiums, Homeowners' Associations, Community Association  
876 Management, and Mobile Homes of the Department of Business and  
877 Professional Regulation of any disciplinary action the  
878 commission has taken against any of its licensees. The division  
879 shall inform the commission of any disciplinary action the  
880 division has taken against any broker or sales associate  
881 registered with the division.

882           Section 23. Subsection (5) of section 498.005, Florida  
883 Statutes, is amended to read:

884           498.005 Definitions.--As used in this chapter, unless the  
885 context otherwise requires, the term:

886           (5) "Division" means the Division of Florida Land Sales,  
887 Condominiums, Homeowners' Associations, Community Association  
888 Management, and Mobile Homes of the Department of Business and  
889 Professional Regulation.

890 Section 24. Section 498.019, Florida Statutes, is amended  
 891 to read:

892 498.019 Division of Florida Land Sales, Condominiums,  
 893 Homeowners' Associations, Community Association Management, and  
 894 Mobile Homes Trust Fund.--

895 (1) There is created within the State Treasury the  
 896 Division of Florida Land Sales, Condominiums, Homeowners'  
 897 Associations, Community Association Management, and Mobile Homes  
 898 Trust Fund to be used for the administration and operation of  
 899 this chapter, part VIII of chapter 468, and chapters 718, 719,  
 900 720, 721, and 723 by the division.

901 (2) All moneys collected by the division from fees, fines,  
 902 or penalties or from costs awarded to the division by a court  
 903 shall be paid into the Division of Florida Land Sales,  
 904 Condominiums, Homeowners' Associations, Community Association  
 905 Management, and Mobile Homes Trust Fund. The Legislature shall  
 906 appropriate funds from this trust fund sufficient to carry out  
 907 the provisions of this chapter and the provisions of law with  
 908 respect to each category of business covered by this trust fund.  
 909 The division shall maintain separate revenue accounts in the  
 910 trust fund for each of the businesses regulated by the division.  
 911 The division shall provide for the proportionate allocation  
 912 among the accounts of expenses incurred by the division in the  
 913 performance of its duties with respect to each of these  
 914 businesses. As part of its normal budgetary process, the  
 915 division shall prepare an annual report of revenue and allocated  
 916 expenses related to the operation of each of these businesses  
 917 which may be used to determine fees charged by the division.

918 This subsection shall operate pursuant to the provisions of s.  
 919 215.20.

920 Section 25. Paragraph (a) of subsection (8) of section  
 921 498.047, Florida Statutes, is amended to read:

922 498.047 Investigations.--

923 (8)(a) Information held by the Division of Florida Land  
 924 Sales, Condominiums, Homeowners' Associations, Community  
 925 Association Management, and Mobile Homes relative to an  
 926 investigation pursuant to this chapter, including any consumer  
 927 complaint, is confidential and exempt from s. 119.07(1) and s.  
 928 24(a), Art. I of the State Constitution, until 10 days after a  
 929 notice to show cause has been filed by the division, or, in the  
 930 case in which no notice to show cause is filed, the  
 931 investigation is completed or ceases to be active. For purposes  
 932 of this section, an investigation shall be considered "active"  
 933 so long as the division or any law enforcement or administrative  
 934 agency or regulatory organization is proceeding with reasonable  
 935 dispatch and has a reasonable good faith belief that the  
 936 investigation may lead to the filing of an administrative,  
 937 civil, or criminal proceeding or to the denial or conditional  
 938 grant of a license or registration. However, in response to a  
 939 specific inquiry about the registration status of a registered  
 940 or unregistered subdivider, the division may disclose the  
 941 existence and the status of an active investigation. This  
 942 subsection shall not be construed to prohibit disclosure of  
 943 information which is required by law to be filed with the  
 944 division and which, but for the investigation, would be subject  
 945 to s. 119.07(1).

946 Section 26. Subsection (5) of section 498.049, Florida  
 947 Statutes, is amended to read:  
 948 498.049 Suspension; revocation; civil penalties.--  
 949 (5) Each person who materially participates in any offer  
 950 or disposition of any interest in subdivided lands in violation  
 951 of this chapter or relevant rules involving fraud, deception,  
 952 false pretenses, misrepresentation, or false advertising or the  
 953 disposition, concealment, or diversion of any funds or assets of  
 954 any person which adversely affects the interests of a purchaser  
 955 of any interest in subdivided lands, and who directly or  
 956 indirectly controls a subdivider or is a general partner,  
 957 officer, director, agent, or employee of a subdivider shall also  
 958 be liable under this subsection jointly and severally with and  
 959 to the same extent as the subdivider, unless that person did not  
 960 know, and in the exercise of reasonable care could not have  
 961 known, of the existence of the facts creating the alleged  
 962 liability. Among these persons a right of contribution shall  
 963 exist, except that a creditor of a subdivider shall not be  
 964 jointly and severally liable unless the creditor has assumed  
 965 managerial or fiduciary responsibility in a manner related to  
 966 the basis for the liability of the subdivider under this  
 967 subsection. Civil penalties shall be limited to \$10,000 for each  
 968 offense, and all amounts collected shall be deposited with the  
 969 Chief Financial Officer to the credit of the Division of Florida  
 970 Land Sales, Condominiums, Homeowners' Associations, Community  
 971 Association Management, and Mobile Homes Trust Fund. No order  
 972 requiring the payment of a civil penalty shall become effective

973 until 20 days after the date of the order, unless otherwise  
 974 agreed in writing by the person on whom the penalty is imposed.

975 Section 27. Section 509.512, Florida Statutes, is amended  
 976 to read:

977 509.512 Timeshare plan developer and exchange company  
 978 exemption.--Sections 509.501-509.511 do not apply to a developer  
 979 of a timeshare plan or an exchange company approved by the  
 980 Division of Florida Land Sales, Condominiums, Homeowners'  
 981 Associations, Community Association Management, and Mobile Homes  
 982 pursuant to chapter 721, but only to the extent that the  
 983 developer or exchange company engages in conduct regulated under  
 984 chapter 721.

985 Section 28. Paragraph (h) of subsection (1) of section  
 986 559.935, Florida Statutes, is amended to read:

987 559.935 Exemptions.--

988 (1) This part does not apply to:

989 (h) A developer of a timeshare plan or an exchange company  
 990 approved by the Division of Florida Land Sales, Condominiums,  
 991 Homeowners' Associations, Community Association Management, and  
 992 Mobile Homes pursuant to chapter 721, but only to the extent  
 993 that the developer or exchange company engages in conduct  
 994 regulated under chapter 721; or

995 Section 29. Subsection (17) of section 718.103, Florida  
 996 Statutes, is amended to read:

997 718.103 Definitions.--As used in this chapter, the term:

998 (17) "Division" means the Division of Florida Land Sales,  
 999 Condominiums, Homeowners' Associations, Community Association

1000 Management, and Mobile Homes of the Department of Business and  
 1001 Professional Regulation.

1002 Section 30. Paragraph (c) of subsection (4) of section  
 1003 718.105, Florida Statutes, is amended to read:

1004 718.105 Recording of declaration.--

1005 (4)

1006 (c) If the sum of money held by the clerk has not been  
 1007 paid to the developer or association as provided in paragraph  
 1008 (b) by 3 years after the date the declaration was originally  
 1009 recorded, the clerk in his or her discretion may notify, in  
 1010 writing, the registered agent of the association that the sum is  
 1011 still available and the purpose for which it was deposited. If  
 1012 the association does not record the certificate within 90 days  
 1013 after the clerk has given the notice, the clerk may disburse the  
 1014 money to the developer. If the developer cannot be located, the  
 1015 clerk shall disburse the money to the Division of Florida Land  
 1016 Sales, Condominiums, Homeowners' Associations, Community  
 1017 Association Management, and Mobile Homes for deposit in the  
 1018 Division of Florida Land Sales, Condominiums, Homeowners'  
 1019 Associations, Community Association Management, and Mobile Homes  
 1020 Trust Fund.

1021 Section 31. Subsection (4) of section 718.1255, Florida  
 1022 Statutes, is amended to read:

1023 718.1255 Alternative dispute resolution; voluntary  
 1024 mediation; mandatory nonbinding arbitration; legislative  
 1025 findings.--

1026 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF  
 1027 DISPUTES.--The Division of Florida Land Sales, Condominiums,

1028 Homeowners' Associations, Community Association Management, and  
 1029 Mobile Homes of the Department of Business and Professional  
 1030 Regulation shall employ full-time attorneys to act as  
 1031 arbitrators to conduct the arbitration hearings provided by this  
 1032 chapter. The division may also certify attorneys who are not  
 1033 employed by the division to act as arbitrators to conduct the  
 1034 arbitration hearings provided by this section. No person may be  
 1035 employed by the department as a full-time arbitrator unless he  
 1036 or she is a member in good standing of The Florida Bar. The  
 1037 department shall promulgate rules of procedure to govern such  
 1038 arbitration hearings including mediation incident thereto. The  
 1039 decision of an arbitrator shall be final; however, such a  
 1040 decision shall not be deemed final agency action. Nothing in  
 1041 this provision shall be construed to foreclose parties from  
 1042 proceeding in a trial de novo unless the parties have agreed  
 1043 that the arbitration is binding. If such judicial proceedings  
 1044 are initiated, the final decision of the arbitrator shall be  
 1045 admissible in evidence in the trial de novo.

1046 (a) Prior to the institution of court litigation, a party  
 1047 to a dispute shall petition the division for nonbinding  
 1048 arbitration. The petition must be accompanied by a filing fee in  
 1049 the amount of \$50. Filing fees collected under this section must  
 1050 be used to defray the expenses of the alternative dispute  
 1051 resolution program.

1052 (b) The petition must recite, and have attached thereto,  
 1053 supporting proof that the petitioner gave the respondents:

1054 1. Advance written notice of the specific nature of the  
 1055 dispute;

1056           2. A demand for relief, and a reasonable opportunity to  
1057 comply or to provide the relief; and

1058           3. Notice of the intention to file an arbitration petition  
1059 or other legal action in the absence of a resolution of the  
1060 dispute.

1061  
1062 Failure to include the allegations or proof of compliance with  
1063 these prerequisites requires dismissal of the petition without  
1064 prejudice.

1065           (c) Upon receipt, the petition shall be promptly reviewed  
1066 by the division to determine the existence of a dispute and  
1067 compliance with the requirements of paragraphs (a) and (b). If  
1068 emergency relief is required and is not available through  
1069 arbitration, a motion to stay the arbitration may be filed. The  
1070 motion must be accompanied by a verified petition alleging facts  
1071 that, if proven, would support entry of a temporary injunction,  
1072 and if an appropriate motion and supporting papers are filed,  
1073 the division may abate the arbitration pending a court hearing  
1074 and disposition of a motion for temporary injunction.

1075           (d) Upon determination by the division that a dispute  
1076 exists and that the petition substantially meets the  
1077 requirements of paragraphs (a) and (b) and any other applicable  
1078 rules, a copy of the petition shall forthwith be served by the  
1079 division upon all respondents.

1080           (e) Either before or after the filing of the respondents'  
1081 answer to the petition, any party may request that the  
1082 arbitrator refer the case to mediation under this section and  
1083 any rules adopted by the division. Upon receipt of a request for

1084 mediation, the division shall promptly contact the parties to  
1085 determine if there is agreement that mediation would be  
1086 appropriate. If all parties agree, the dispute must be referred  
1087 to mediation. Notwithstanding a lack of an agreement by all  
1088 parties, the arbitrator may refer a dispute to mediation at any  
1089 time.

1090 (f) Upon referral of a case to mediation, the parties must  
1091 select a mutually acceptable mediator. To assist in the  
1092 selection, the arbitrator shall provide the parties with a list  
1093 of both volunteer and paid mediators that have been certified by  
1094 the division under s. 718.501. If the parties are unable to  
1095 agree on a mediator within the time allowed by the arbitrator,  
1096 the arbitrator shall appoint a mediator from the list of  
1097 certified mediators. If a case is referred to mediation, the  
1098 parties shall attend a mediation conference, as scheduled by the  
1099 parties and the mediator. If any party fails to attend a duly  
1100 noticed mediation conference, without the permission or approval  
1101 of the arbitrator or mediator, the arbitrator must impose  
1102 sanctions against the party, including the striking of any  
1103 pleadings filed, the entry of an order of dismissal or default  
1104 if appropriate, and the award of costs and attorneys' fees  
1105 incurred by the other parties. Unless otherwise agreed to by the  
1106 parties or as provided by order of the arbitrator, a party is  
1107 deemed to have appeared at a mediation conference by the  
1108 physical presence of the party or its representative having full  
1109 authority to settle without further consultation, provided that  
1110 an association may comply by having one or more representatives  
1111 present with full authority to negotiate a settlement and

1112 recommend that the board of administration ratify and approve  
1113 such a settlement within 5 days from the date of the mediation  
1114 conference. The parties shall share equally the expense of  
1115 mediation, unless they agree otherwise.

1116 (g) The purpose of mediation as provided for by this  
1117 section is to present the parties with an opportunity to resolve  
1118 the underlying dispute in good faith, and with a minimum  
1119 expenditure of time and resources.

1120 (h) Mediation proceedings must generally be conducted in  
1121 accordance with the Florida Rules of Civil Procedure, and these  
1122 proceedings are privileged and confidential to the same extent  
1123 as court-ordered mediation. Persons who are not parties to the  
1124 dispute are not allowed to attend the mediation conference  
1125 without the consent of all parties, with the exception of  
1126 counsel for the parties and corporate representatives designated  
1127 to appear for a party. If the mediator declares an impasse after  
1128 a mediation conference has been held, the arbitration proceeding  
1129 terminates, unless all parties agree in writing to continue the  
1130 arbitration proceeding, in which case the arbitrator's decision  
1131 shall be either binding or nonbinding, as agreed upon by the  
1132 parties; in the arbitration proceeding, the arbitrator shall not  
1133 consider any evidence relating to the unsuccessful mediation  
1134 except in a proceeding to impose sanctions for failure to appear  
1135 at the mediation conference. If the parties do not agree to  
1136 continue arbitration, the arbitrator shall enter an order of  
1137 dismissal, and either party may institute a suit in a court of  
1138 competent jurisdiction. The parties may seek to recover any  
1139 costs and attorneys' fees incurred in connection with

1140 arbitration and mediation proceedings under this section as part  
 1141 of the costs and fees that may be recovered by the prevailing  
 1142 party in any subsequent litigation.

1143 (i) Arbitration shall be conducted according to rules  
 1144 promulgated by the division. The filing of a petition for  
 1145 arbitration shall toll the applicable statute of limitations.

1146 (j) At the request of any party to the arbitration, such  
 1147 arbitrator shall issue subpoenas for the attendance of witnesses  
 1148 and the production of books, records, documents, and other  
 1149 evidence and any party on whose behalf a subpoena is issued may  
 1150 apply to the court for orders compelling such attendance and  
 1151 production. Subpoenas shall be served and shall be enforceable  
 1152 in the manner provided by the Florida Rules of Civil Procedure.  
 1153 Discovery may, in the discretion of the arbitrator, be permitted  
 1154 in the manner provided by the Florida Rules of Civil Procedure.  
 1155 Rules adopted by the division may authorize any reasonable  
 1156 sanctions except contempt for a violation of the arbitration  
 1157 procedural rules of the division or for the failure of a party  
 1158 to comply with a reasonable nonfinal order issued by an  
 1159 arbitrator which is not under judicial review.

1160 (k) The arbitration decision shall be presented to the  
 1161 parties in writing. An arbitration decision is final in those  
 1162 disputes in which the parties have agreed to be bound. An  
 1163 arbitration decision is also final if a complaint for a trial de  
 1164 novo is not filed in a court of competent jurisdiction in which  
 1165 the condominium is located within 30 days. The right to file for  
 1166 a trial de novo entitles the parties to file a complaint in the  
 1167 appropriate trial court for a judicial resolution of the

1168 | dispute. The prevailing party in an arbitration proceeding shall  
 1169 | be awarded the costs of the arbitration and reasonable  
 1170 | attorney's fees in an amount determined by the arbitrator. Such  
 1171 | an award shall include the costs and reasonable attorney's fees  
 1172 | incurred in the arbitration proceeding as well as the costs and  
 1173 | reasonable attorney's fees incurred in preparing for and  
 1174 | attending any scheduled mediation.

1175 |         (1) The party who files a complaint for a trial de novo  
 1176 | shall be assessed the other party's arbitration costs, court  
 1177 | costs, and other reasonable costs, including attorney's fees,  
 1178 | investigation expenses, and expenses for expert or other  
 1179 | testimony or evidence incurred after the arbitration hearing if  
 1180 | the judgment upon the trial de novo is not more favorable than  
 1181 | the arbitration decision. If the judgment is more favorable, the  
 1182 | party who filed a complaint for trial de novo shall be awarded  
 1183 | reasonable court costs and attorney's fees.

1184 |         (m) Any party to an arbitration proceeding may enforce an  
 1185 | arbitration award by filing a petition in a court of competent  
 1186 | jurisdiction in which the condominium is located. A petition may  
 1187 | not be granted unless the time for appeal by the filing of a  
 1188 | complaint for trial de novo has expired. If a complaint for a  
 1189 | trial de novo has been filed, a petition may not be granted with  
 1190 | respect to an arbitration award that has been stayed. If the  
 1191 | petition for enforcement is granted, the petitioner shall  
 1192 | recover reasonable attorney's fees and costs incurred in  
 1193 | enforcing the arbitration award. A mediation settlement may also  
 1194 | be enforced through the county or circuit court, as applicable,  
 1195 | and any costs and fees incurred in the enforcement of a

HB 1229

2005

1196 settlement agreement reached at mediation must be awarded to the  
 1197 prevailing party in any enforcement action.

1198 Section 32. Subsection (1) of section 718.5011, Florida  
 1199 Statutes, is amended to read:

1200 718.5011 Ombudsman; appointment; administration.--

1201 (1) There is created an Office of the Condominium  
 1202 Ombudsman, to be located for administrative purposes within the  
 1203 Division of Florida Land Sales, Condominiums, Homeowners'  
 1204 Associations, Community Association Management, and Mobile  
 1205 Homes. The functions of the office shall be funded by the  
 1206 Division of Florida Land Sales, Condominiums, Homeowners'  
 1207 Associations, Community Association Management, and Mobile Homes  
 1208 Trust Fund. The ombudsman shall be a bureau chief of the  
 1209 division, and the office shall be set within the division in the  
 1210 same manner as any other bureau is staffed and funded.

1211 Section 33. Paragraph (a) of subsection (2) of section  
 1212 718.502, Florida Statutes, is amended to read:

1213 718.502 Filing prior to sale or lease.--

1214 (2)(a) Prior to filing as required by subsection (1), and  
 1215 prior to acquiring an ownership, leasehold, or contractual  
 1216 interest in the land upon which the condominium is to be  
 1217 developed, a developer shall not offer a contract for purchase  
 1218 of a unit or lease of a unit for more than 5 years. However, the  
 1219 developer may accept deposits for reservations upon the approval  
 1220 of a fully executed escrow agreement and reservation agreement  
 1221 form properly filed with the Division of Florida Land Sales,  
 1222 Condominiums, Homeowners' Associations, Community Association  
 1223 Management, and Mobile Homes. Each filing of a proposed

1224 reservation program shall be accompanied by a filing fee of  
 1225 \$250. Reservations shall not be taken on a proposed condominium  
 1226 unless the developer has an ownership, leasehold, or contractual  
 1227 interest in the land upon which the condominium is to be  
 1228 developed. The division shall notify the developer within 20  
 1229 days of receipt of the reservation filing of any deficiencies  
 1230 contained therein. Such notification shall not preclude the  
 1231 determination of reservation filing deficiencies at a later  
 1232 date, nor shall it relieve the developer of any responsibility  
 1233 under the law. The escrow agreement and the reservation  
 1234 agreement form shall include a statement of the right of the  
 1235 prospective purchaser to an immediate unqualified refund of the  
 1236 reservation deposit moneys upon written request to the escrow  
 1237 agent by the prospective purchaser or the developer.

1238 Section 34. Section 718.504, Florida Statutes, is amended  
 1239 to read:

1240 718.504 Prospectus or offering circular.--Every developer  
 1241 of a residential condominium which contains more than 20  
 1242 residential units, or which is part of a group of residential  
 1243 condominiums which will be served by property to be used in  
 1244 common by unit owners of more than 20 residential units, shall  
 1245 prepare a prospectus or offering circular and file it with the  
 1246 Division of Florida Land Sales, Condominiums, Homeowners'  
 1247 Associations, Community Association Management, and Mobile Homes  
 1248 prior to entering into an enforceable contract of purchase and  
 1249 sale of any unit or lease of a unit for more than 5 years and  
 1250 shall furnish a copy of the prospectus or offering circular to  
 1251 each buyer. In addition to the prospectus or offering circular,

1252 each buyer shall be furnished a separate page entitled  
1253 "Frequently Asked Questions and Answers," which shall be in  
1254 accordance with a format approved by the division and a copy of  
1255 the financial information required by s. 718.111. This page  
1256 shall, in readable language, inform prospective purchasers  
1257 regarding their voting rights and unit use restrictions,  
1258 including restrictions on the leasing of a unit; shall indicate  
1259 whether and in what amount the unit owners or the association is  
1260 obligated to pay rent or land use fees for recreational or other  
1261 commonly used facilities; shall contain a statement identifying  
1262 that amount of assessment which, pursuant to the budget, would  
1263 be levied upon each unit type, exclusive of any special  
1264 assessments, and which shall further identify the basis upon  
1265 which assessments are levied, whether monthly, quarterly, or  
1266 otherwise; shall state and identify any court cases in which the  
1267 association is currently a party of record in which the  
1268 association may face liability in excess of \$100,000; and which  
1269 shall further state whether membership in a recreational  
1270 facilities association is mandatory, and if so, shall identify  
1271 the fees currently charged per unit type. The division shall by  
1272 rule require such other disclosure as in its judgment will  
1273 assist prospective purchasers. The prospectus or offering  
1274 circular may include more than one condominium, although not all  
1275 such units are being offered for sale as of the date of the  
1276 prospectus or offering circular. The prospectus or offering  
1277 circular must contain the following information:

1278 (1) The front cover or the first page must contain only:

1279 (a) The name of the condominium.

1280 (b) The following statements in conspicuous type:  
 1281 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT  
 1282 MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.  
 1283 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN  
 1284 NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES,  
 1285 ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES  
 1286 MATERIALS.  
 1287 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY  
 1288 STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS  
 1289 PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT  
 1290 REPRESENTATIONS.  
 1291 (2) Summary: The next page must contain all statements  
 1292 required to be in conspicuous type in the prospectus or offering  
 1293 circular.  
 1294 (3) A separate index of the contents and exhibits of the  
 1295 prospectus.  
 1296 (4) Beginning on the first page of the text (not including  
 1297 the summary and index), a description of the condominium,  
 1298 including, but not limited to, the following information:  
 1299 (a) Its name and location.  
 1300 (b) A description of the condominium property, including,  
 1301 without limitation:  
 1302 1. The number of buildings, the number of units in each  
 1303 building, the number of bathrooms and bedrooms in each unit, and  
 1304 the total number of units, if the condominium is not a phase  
 1305 condominium, or the maximum number of buildings that may be  
 1306 contained within the condominium, the minimum and maximum  
 1307 numbers of units in each building, the minimum and maximum

1308 numbers of bathrooms and bedrooms that may be contained in each  
 1309 unit, and the maximum number of units that may be contained  
 1310 within the condominium, if the condominium is a phase  
 1311 condominium.

1312 2. The page in the condominium documents where a copy of  
 1313 the plot plan and survey of the condominium is located.

1314 3. The estimated latest date of completion of  
 1315 constructing, finishing, and equipping. In lieu of a date, the  
 1316 description shall include a statement that the estimated date of  
 1317 completion of the condominium is in the purchase agreement and a  
 1318 reference to the article or paragraph containing that  
 1319 information.

1320 (c) The maximum number of units that will use facilities  
 1321 in common with the condominium. If the maximum number of units  
 1322 will vary, a description of the basis for variation and the  
 1323 minimum amount of dollars per unit to be spent for additional  
 1324 recreational facilities or enlargement of such facilities. If  
 1325 the addition or enlargement of facilities will result in a  
 1326 material increase of a unit owner's maintenance expense or  
 1327 rental expense, if any, the maximum increase and limitations  
 1328 thereon shall be stated.

1329 (5)(a) A statement in conspicuous type describing whether  
 1330 the condominium is created and being sold as fee simple  
 1331 interests or as leasehold interests. If the condominium is  
 1332 created or being sold on a leasehold, the location of the lease  
 1333 in the disclosure materials shall be stated.

1334 (b) If timeshare estates are or may be created with  
 1335 respect to any unit in the condominium, a statement in

1336 conspicuous type stating that timeshare estates are created and  
 1337 being sold in units in the condominium.

1338 (6) A description of the recreational and other commonly  
 1339 used facilities that will be used only by unit owners of the  
 1340 condominium, including, but not limited to, the following:

1341 (a) Each room and its intended purposes, location,  
 1342 approximate floor area, and capacity in numbers of people.

1343 (b) Each swimming pool, as to its general location,  
 1344 approximate size and depths, approximate deck size and capacity,  
 1345 and whether heated.

1346 (c) Additional facilities, as to the number of each  
 1347 facility, its approximate location, approximate size, and  
 1348 approximate capacity.

1349 (d) A general description of the items of personal  
 1350 property and the approximate number of each item of personal  
 1351 property that the developer is committing to furnish for each  
 1352 room or other facility or, in the alternative, a representation  
 1353 as to the minimum amount of expenditure that will be made to  
 1354 purchase the personal property for the facility.

1355 (e) The estimated date when each room or other facility  
 1356 will be available for use by the unit owners.

1357 (f)1. An identification of each room or other facility to  
 1358 be used by unit owners that will not be owned by the unit owners  
 1359 or the association;

1360 2. A reference to the location in the disclosure materials  
 1361 of the lease or other agreements providing for the use of those  
 1362 facilities; and

1363           3. A description of the terms of the lease or other  
 1364 agreements, including the length of the term; the rent payable,  
 1365 directly or indirectly, by each unit owner, and the total rent  
 1366 payable to the lessor, stated in monthly and annual amounts for  
 1367 the entire term of the lease; and a description of any option to  
 1368 purchase the property leased under any such lease, including the  
 1369 time the option may be exercised, the purchase price or how it  
 1370 is to be determined, the manner of payment, and whether the  
 1371 option may be exercised for a unit owner's share or only as to  
 1372 the entire leased property.

1373           (g) A statement as to whether the developer may provide  
 1374 additional facilities not described above; their general  
 1375 locations and types; improvements or changes that may be made;  
 1376 the approximate dollar amount to be expended; and the maximum  
 1377 additional common expense or cost to the individual unit owners  
 1378 that may be charged during the first annual period of operation  
 1379 of the modified or added facilities.

1380  
 1381 Descriptions as to locations, areas, capacities, numbers,  
 1382 volumes, or sizes may be stated as approximations or minimums.

1383           (7) A description of the recreational and other facilities  
 1384 that will be used in common with other condominiums, community  
 1385 associations, or planned developments which require the payment  
 1386 of the maintenance and expenses of such facilities, either  
 1387 directly or indirectly, by the unit owners. The description  
 1388 shall include, but not be limited to, the following:

1389           (a) Each building and facility committed to be built.

1390 (b) Facilities not committed to be built except under  
 1391 certain conditions, and a statement of those conditions or  
 1392 contingencies.

1393 (c) As to each facility committed to be built, or which  
 1394 will be committed to be built upon the happening of one of the  
 1395 conditions in paragraph (b), a statement of whether it will be  
 1396 owned by the unit owners having the use thereof or by an  
 1397 association or other entity which will be controlled by them, or  
 1398 others, and the location in the exhibits of the lease or other  
 1399 document providing for use of those facilities.

1400 (d) The year in which each facility will be available for  
 1401 use by the unit owners or, in the alternative, the maximum  
 1402 number of unit owners in the project at the time each of all of  
 1403 the facilities is committed to be completed.

1404 (e) A general description of the items of personal  
 1405 property, and the approximate number of each item of personal  
 1406 property, that the developer is committing to furnish for each  
 1407 room or other facility or, in the alternative, a representation  
 1408 as to the minimum amount of expenditure that will be made to  
 1409 purchase the personal property for the facility.

1410 (f) If there are leases, a description thereof, including  
 1411 the length of the term, the rent payable, and a description of  
 1412 any option to purchase.

1413  
 1414 Descriptions shall include location, areas, capacities, numbers,  
 1415 volumes, or sizes and may be stated as approximations or  
 1416 minimums.

1417 (8) Recreation lease or associated club membership:

1418 (a) If any recreational facilities or other facilities  
 1419 offered by the developer and available to, or to be used by,  
 1420 unit owners are to be leased or have club membership associated,  
 1421 the following statement in conspicuous type shall be included:  
 1422 THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS  
 1423 CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS  
 1424 CONDOMINIUM. There shall be a reference to the location in the  
 1425 disclosure materials where the recreation lease or club  
 1426 membership is described in detail.

1427 (b) If it is mandatory that unit owners pay a fee, rent,  
 1428 dues, or other charges under a recreational facilities lease or  
 1429 club membership for the use of facilities, there shall be in  
 1430 conspicuous type the applicable statement:

1431 1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS  
 1432 MANDATORY FOR UNIT OWNERS; or

1433 2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP,  
 1434 TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

1435 3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE  
 1436 COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,  
 1437 REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES  
 1438 LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

1439 4. A similar statement of the nature of the organization  
 1440 or the manner in which the use rights are created, and that unit  
 1441 owners are required to pay.

1442  
 1443 Immediately following the applicable statement, the location in  
 1444 the disclosure materials where the development is described in  
 1445 detail shall be stated.

1446 (c) If the developer, or any other person other than the  
 1447 unit owners and other persons having use rights in the  
 1448 facilities, reserves, or is entitled to receive, any rent, fee,  
 1449 or other payment for the use of the facilities, then there shall  
 1450 be the following statement in conspicuous type: THE UNIT OWNERS  
 1451 OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR  
 1452 RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately  
 1453 following this statement, the location in the disclosure  
 1454 materials where the rent or land use fees are described in  
 1455 detail shall be stated.

1456 (d) If, in any recreation format, whether leasehold, club,  
 1457 or other, any person other than the association has the right to  
 1458 a lien on the units to secure the payment of assessments, rent,  
 1459 or other exactions, there shall appear a statement in  
 1460 conspicuous type in substantially the following form:

1461 1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO  
 1462 SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE  
 1463 RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE  
 1464 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

1465 2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO  
 1466 SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE  
 1467 FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL  
 1468 OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE  
 1469 THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

1470  
 1471 Immediately following the applicable statement, the location in  
 1472 the disclosure materials where the lien or lien right is  
 1473 described in detail shall be stated.

1474 (9) If the developer or any other person has the right to  
1475 increase or add to the recreational facilities at any time after  
1476 the establishment of the condominium whose unit owners have use  
1477 rights therein, without the consent of the unit owners or  
1478 associations being required, there shall appear a statement in  
1479 conspicuous type in substantially the following form:

1480 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT  
1481 OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this  
1482 statement, the location in the disclosure materials where such  
1483 reserved rights are described shall be stated.

1484 (10) A statement of whether the developer's plan includes  
1485 a program of leasing units rather than selling them, or leasing  
1486 units and selling them subject to such leases. If so, there  
1487 shall be a description of the plan, including the number and  
1488 identification of the units and the provisions and term of the  
1489 proposed leases, and a statement in boldfaced type that: THE  
1490 UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

1491 (11) The arrangements for management of the association  
1492 and maintenance and operation of the condominium property and of  
1493 other property that will serve the unit owners of the  
1494 condominium property, and a description of the management  
1495 contract and all other contracts for these purposes having a  
1496 term in excess of 1 year, including the following:

1497 (a) The names of contracting parties.

1498 (b) The term of the contract.

1499 (c) The nature of the services included.

1500 (d) The compensation, stated on a monthly and annual  
1501 basis, and provisions for increases in the compensation.

1502 (e) A reference to the volumes and pages of the  
 1503 condominium documents and of the exhibits containing copies of  
 1504 such contracts.

1505  
 1506 Copies of all described contracts shall be attached as exhibits.  
 1507 If there is a contract for the management of the condominium  
 1508 property, then a statement in conspicuous type in substantially  
 1509 the following form shall appear, identifying the proposed or  
 1510 existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR  
 1511 THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE  
 1512 CONTRACT MANAGER). Immediately following this statement, the  
 1513 location in the disclosure materials of the contract for  
 1514 management of the condominium property shall be stated.

1515 (12) If the developer or any other person or persons other  
 1516 than the unit owners has the right to retain control of the  
 1517 board of administration of the association for a period of time  
 1518 which can exceed 1 year after the closing of the sale of a  
 1519 majority of the units in that condominium to persons other than  
 1520 successors or alternate developers, then a statement in  
 1521 conspicuous type in substantially the following form shall be  
 1522 included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO  
 1523 RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS  
 1524 HAVE BEEN SOLD. Immediately following this statement, the  
 1525 location in the disclosure materials where this right to control  
 1526 is described in detail shall be stated.

1527 (13) If there are any restrictions upon the sale,  
 1528 transfer, conveyance, or leasing of a unit, then a statement in  
 1529 conspicuous type in substantially the following form shall be

1530 included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR  
 1531 CONTROLLED. Immediately following this statement, the location  
 1532 in the disclosure materials where the restriction, limitation,  
 1533 or control on the sale, lease, or transfer of units is described  
 1534 in detail shall be stated.

1535 (14) If the condominium is part of a phase project, the  
 1536 following information shall be stated:

1537 (a) A statement in conspicuous type in substantially the  
 1538 following form: THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND  
 1539 UNITS MAY BE ADDED TO THIS CONDOMINIUM. Immediately following  
 1540 this statement, the location in the disclosure materials where  
 1541 the phasing is described shall be stated.

1542 (b) A summary of the provisions of the declaration which  
 1543 provide for the phasing.

1544 (c) A statement as to whether or not residential buildings  
 1545 and units which are added to the condominium may be  
 1546 substantially different from the residential buildings and units  
 1547 originally in the condominium. If the added residential  
 1548 buildings and units may be substantially different, there shall  
 1549 be a general description of the extent to which such added  
 1550 residential buildings and units may differ, and a statement in  
 1551 conspicuous type in substantially the following form shall be  
 1552 included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM  
 1553 MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND  
 1554 UNITS IN THE CONDOMINIUM. Immediately following this statement,  
 1555 the location in the disclosure materials where the extent to  
 1556 which added residential buildings and units may substantially  
 1557 differ is described shall be stated.

1558 (d) A statement of the maximum number of buildings  
 1559 containing units, the maximum and minimum numbers of units in  
 1560 each building, the maximum number of units, and the minimum and  
 1561 maximum square footage of the units that may be contained within  
 1562 each parcel of land which may be added to the condominium.

1563 (15) If a condominium created on or after July 1, 2000, is  
 1564 or may become part of a multicondominium, the following  
 1565 information must be provided:

1566 (a) A statement in conspicuous type in substantially the  
 1567 following form: THIS CONDOMINIUM IS (MAY BE) PART OF A  
 1568 MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL  
 1569 (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately following  
 1570 this statement, the location in the prospectus or offering  
 1571 circular and its exhibits where the multicondominium aspects of  
 1572 the offering are described must be stated.

1573 (b) A summary of the provisions in the declaration,  
 1574 articles of incorporation, and bylaws which establish and  
 1575 provide for the operation of the multicondominium, including a  
 1576 statement as to whether unit owners in the condominium will have  
 1577 the right to use recreational or other facilities located or  
 1578 planned to be located in other condominiums operated by the same  
 1579 association, and the manner of sharing the common expenses  
 1580 related to such facilities.

1581 (c) A statement of the minimum and maximum number of  
 1582 condominiums, and the minimum and maximum number of units in  
 1583 each of those condominiums, which will or may be operated by the  
 1584 association, and the latest date by which the exact number will  
 1585 be finally determined.

1586 (d) A statement as to whether any of the condominiums in  
 1587 the multicondominium may include units intended to be used for  
 1588 nonresidential purposes and the purpose or purposes permitted  
 1589 for such use.

1590 (e) A general description of the location and approximate  
 1591 acreage of any land on which any additional condominiums to be  
 1592 operated by the association may be located.

1593 (16) If the condominium is created by conversion of  
 1594 existing improvements, the following information shall be  
 1595 stated:

1596 (a) The information required by s. 718.616.

1597 (b) A caveat that there are no express warranties unless  
 1598 they are stated in writing by the developer.

1599 (17) A summary of the restrictions, if any, to be imposed  
 1600 on units concerning the use of any of the condominium property,  
 1601 including statements as to whether there are restrictions upon  
 1602 children and pets, and reference to the volumes and pages of the  
 1603 condominium documents where such restrictions are found, or if  
 1604 such restrictions are contained elsewhere, then a copy of the  
 1605 documents containing the restrictions shall be attached as an  
 1606 exhibit.

1607 (18) If there is any land that is offered by the developer  
 1608 for use by the unit owners and that is neither owned by them nor  
 1609 leased to them, the association, or any entity controlled by  
 1610 unit owners and other persons having the use rights to such  
 1611 land, a statement shall be made as to how such land will serve  
 1612 the condominium. If any part of such land will serve the  
 1613 condominium, the statement shall describe the land and the

1614 nature and term of service, and the declaration or other  
 1615 instrument creating such servitude shall be included as an  
 1616 exhibit.

1617 (19) The manner in which utility and other services,  
 1618 including, but not limited to, sewage and waste disposal, water  
 1619 supply, and storm drainage, will be provided and the person or  
 1620 entity furnishing them.

1621 (20) An explanation of the manner in which the  
 1622 apportionment of common expenses and ownership of the common  
 1623 elements has been determined.

1624 (21) An estimated operating budget for the condominium and  
 1625 the association, and a schedule of the unit owner's expenses  
 1626 shall be attached as an exhibit and shall contain the following  
 1627 information:

1628 (a) The estimated monthly and annual expenses of the  
 1629 condominium and the association that are collected from unit  
 1630 owners by assessments.

1631 (b) The estimated monthly and annual expenses of each unit  
 1632 owner for a unit, other than common expenses paid by all unit  
 1633 owners, payable by the unit owner to persons or entities other  
 1634 than the association, as well as to the association, including  
 1635 fees assessed pursuant to s. 718.113(1) for maintenance of  
 1636 limited common elements where such costs are shared only by  
 1637 those entitled to use the limited common element, and the total  
 1638 estimated monthly and annual expense. There may be excluded from  
 1639 this estimate expenses which are not provided for or  
 1640 contemplated by the condominium documents, including, but not  
 1641 limited to, the costs of private telephone; maintenance of the

1642 interior of condominium units, which is not the obligation of  
 1643 the association; maid or janitorial services privately  
 1644 contracted for by the unit owners; utility bills billed directly  
 1645 to each unit owner for utility services to his or her unit;  
 1646 insurance premiums other than those incurred for policies  
 1647 obtained by the condominium; and similar personal expenses of  
 1648 the unit owner. A unit owner's estimated payments for  
 1649 assessments shall also be stated in the estimated amounts for  
 1650 the times when they will be due.

1651 (c) The estimated items of expenses of the condominium and  
 1652 the association, except as excluded under paragraph (b),  
 1653 including, but not limited to, the following items, which shall  
 1654 be stated either as an association expense collectible by  
 1655 assessments or as unit owners' expenses payable to persons other  
 1656 than the association:

- 1657 1. Expenses for the association and condominium:
- 1658 a. Administration of the association.
- 1659 b. Management fees.
- 1660 c. Maintenance.
- 1661 d. Rent for recreational and other commonly used
- 1662 facilities.
- 1663 e. Taxes upon association property.
- 1664 f. Taxes upon leased areas.
- 1665 g. Insurance.
- 1666 h. Security provisions.
- 1667 i. Other expenses.
- 1668 j. Operating capital.
- 1669 k. Reserves.

1670           1. Fees payable to the division.  
 1671           2. Expenses for a unit owner:  
 1672           a. Rent for the unit, if subject to a lease.  
 1673           b. Rent payable by the unit owner directly to the lessor  
 1674 or agent under any recreational lease or lease for the use of  
 1675 commonly used facilities, which use and payment is a mandatory  
 1676 condition of ownership and is not included in the common expense  
 1677 or assessments for common maintenance paid by the unit owners to  
 1678 the association.  
 1679           (d) The estimated amounts shall be stated for a period of  
 1680 at least 12 months and may distinguish between the period prior  
 1681 to the time unit owners other than the developer elect a  
 1682 majority of the board of administration and the period after  
 1683 that date.  
 1684           (22) A schedule of estimated closing expenses to be paid  
 1685 by a buyer or lessee of a unit and a statement of whether title  
 1686 opinion or title insurance policy is available to the buyer and,  
 1687 if so, at whose expense.  
 1688           (23) The identity of the developer and the chief operating  
 1689 officer or principal directing the creation and sale of the  
 1690 condominium and a statement of its and his or her experience in  
 1691 this field.  
 1692           (24) Copies of the following, to the extent they are  
 1693 applicable, shall be included as exhibits:  
 1694           (a) The declaration of condominium, or the proposed  
 1695 declaration if the declaration has not been recorded.  
 1696           (b) The articles of incorporation creating the  
 1697 association.

- 1698           (c) The bylaws of the association.
- 1699           (d) The ground lease or other underlying lease of the
- 1700           condominium.
- 1701           (e) The management agreement and all maintenance and other
- 1702           contracts for management of the association and operation of the
- 1703           condominium and facilities used by the unit owners having a
- 1704           service term in excess of 1 year.
- 1705           (f) The estimated operating budget for the condominium and
- 1706           the required schedule of unit owners' expenses.
- 1707           (g) A copy of the floor plan of the unit and the plot plan
- 1708           showing the location of the residential buildings and the
- 1709           recreation and other common areas.
- 1710           (h) The lease of recreational and other facilities that
- 1711           will be used only by unit owners of the subject condominium.
- 1712           (i) The lease of facilities used by owners and others.
- 1713           (j) The form of unit lease, if the offer is of a
- 1714           leasehold.
- 1715           (k) A declaration of servitude of properties serving the
- 1716           condominium but not owned by unit owners or leased to them or
- 1717           the association.
- 1718           (l) The statement of condition of the existing building or
- 1719           buildings, if the offering is of units in an operation being
- 1720           converted to condominium ownership.
- 1721           (m) The statement of inspection for termite damage and
- 1722           treatment of the existing improvements, if the condominium is a
- 1723           conversion.
- 1724           (n) The form of agreement for sale or lease of units.

1725 (o) A copy of the agreement for escrow of payments made to  
 1726 the developer prior to closing.

1727 (p) A copy of the documents containing any restrictions on  
 1728 use of the property required by subsection (17).

1729 (25) Any prospectus or offering circular complying, prior  
 1730 to the effective date of this act, with the provisions of former  
 1731 ss. 711.69 and 711.802 may continue to be used without amendment  
 1732 or may be amended to comply with the provisions of this chapter.

1733 (26) A brief narrative description of the location and  
 1734 effect of all existing and intended easements located or to be  
 1735 located on the condominium property other than those described  
 1736 in the declaration.

1737 (27) If the developer is required by state or local  
 1738 authorities to obtain acceptance or approval of any dock or  
 1739 marina facilities intended to serve the condominium, a copy of  
 1740 any such acceptance or approval acquired by the time of filing  
 1741 with the division under s. 718.502(1) or a statement that such  
 1742 acceptance or approval has not been acquired or received.

1743 (28) Evidence demonstrating that the developer has an  
 1744 ownership, leasehold, or contractual interest in the land upon  
 1745 which the condominium is to be developed.

1746 Section 35. Section 718.508, Florida Statutes, is amended  
 1747 to read:

1748 718.508 Regulation by Division of Hotels and  
 1749 Restaurants.--In addition to the authority, regulation, or  
 1750 control exercised by the Division of Florida Land Sales,  
 1751 Condominiums, Homeowners' Associations, Community Association  
 1752 Management, and Mobile Homes pursuant to this act with respect

HB 1229

2005

1753 to condominiums, buildings included in a condominium property  
 1754 shall be subject to the authority, regulation, or control of the  
 1755 Division of Hotels and Restaurants of the Department of Business  
 1756 and Professional Regulation, to the extent provided for in  
 1757 chapter 399.

1758 Section 36. Section 718.509, Florida Statutes, is amended  
 1759 to read:

1760 718.509 Division of Florida Land Sales, Condominiums,  
 1761 Homeowners' Associations, Community Association Management, and  
 1762 Mobile Homes Trust Fund.--All funds collected by the division  
 1763 and any amount paid for a fee or penalty under this chapter  
 1764 shall be deposited in the State Treasury to the credit of the  
 1765 Division of Florida Land Sales, Condominiums, Homeowners'  
 1766 Associations, Community Association Management, and Mobile Homes  
 1767 Trust Fund created by s. 498.019.

1768 Section 37. Paragraph (a) of subsection (2) of section  
 1769 718.608, Florida Statutes, is amended to read:

1770 718.608 Notice of intended conversion; time of delivery;  
 1771 content.--

1772 (2)(a) Each notice of intended conversion shall be dated  
 1773 and in writing. The notice shall contain the following  
 1774 statement, with the phrases of the following statement which  
 1775 appear in upper case printed in conspicuous type:

1776  
 1777 These apartments are being converted to condominium by  
 1778 (name of developer) , the developer.

1779 1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF  
 1780 YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL  
 1781 AGREEMENT AS FOLLOWS:

1782 a. If you have continuously been a resident of these  
 1783 apartments during the last 180 days and your rental agreement  
 1784 expires during the next 270 days, you may extend your rental  
 1785 agreement for up to 270 days after the date of this notice.

1786 b. If you have not been a continuous resident of these  
 1787 apartments for the last 180 days and your rental agreement  
 1788 expires during the next 180 days, you may extend your rental  
 1789 agreement for up to 180 days after the date of this notice.

1790 c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU  
 1791 MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE  
 1792 DATE OF THIS NOTICE.

1793 2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS,  
 1794 you may extend your rental agreement for up to 45 days after the  
 1795 date of this notice while you decide whether to extend your  
 1796 rental agreement as explained above. To do so, you must notify  
 1797 the developer in writing. You will then have the full 45 days to  
 1798 decide whether to extend your rental agreement as explained  
 1799 above.

1800 3. During the extension of your rental agreement you will  
 1801 be charged the same rent that you are now paying.

1802 4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION  
 1803 OF THE RENTAL AGREEMENT AS FOLLOWS:

1804 a. If your rental agreement began or was extended or  
 1805 renewed after May 1, 1980, and your rental agreement, including  
 1806 extensions and renewals, has an unexpired term of 180 days or

1807 less, you may cancel your rental agreement upon 30 days' written  
 1808 notice and move. Also, upon 30 days' written notice, you may  
 1809 cancel any extension of the rental agreement.

1810 b. If your rental agreement was not begun or was not  
 1811 extended or renewed after May 1, 1980, you may not cancel the  
 1812 rental agreement without the consent of the developer. If your  
 1813 rental agreement, including extensions and renewals, has an  
 1814 unexpired term of 180 days or less, you may, however, upon 30  
 1815 days' written notice cancel any extension of the rental  
 1816 agreement.

1817 5. All notices must be given in writing and sent by mail,  
 1818 return receipt requested, or delivered in person to the  
 1819 developer at this address: (name and address of developer) .

1820 6. If you have continuously been a resident of these  
 1821 apartments during the last 180 days:

1822 a. You have the right to purchase your apartment and will  
 1823 have 45 days to decide whether to purchase. If you do not buy  
 1824 the unit at that price and the unit is later offered at a lower  
 1825 price, you will have the opportunity to buy the unit at the  
 1826 lower price. However, in all events your right to purchase the  
 1827 unit ends when the rental agreement or any extension of the  
 1828 rental agreement ends or when you waive this right in writing.

1829 b. Within 90 days you will be provided purchase  
 1830 information relating to your apartment, including the price of  
 1831 your unit and the condition of the building. If you do not  
 1832 receive this information within 90 days, your rental agreement  
 1833 and any extension will be extended 1 day for each day over 90  
 1834 days until you are given the purchase information. If you do not

HB 1229

2005

1835 want this rental agreement extension, you must notify the  
 1836 developer in writing.

1837 7. If you have any questions regarding this conversion or  
 1838 the Condominium Act, you may contact the developer or the state  
 1839 agency which regulates condominiums: The Division of Florida  
 1840 Land Sales, Condominiums, Homeowners' Associations, Community  
 1841 Association Management, and Mobile Homes, (Tallahassee address  
 1842 and telephone number of division).

1843 Section 38. Subsection (17) of section 719.103, Florida  
 1844 Statutes, is amended to read:

1845 719.103 Definitions.--As used in this chapter:

1846 (17) "Division" means the Division of Florida Land Sales,  
 1847 Condominiums, Homeowners' Associations, Community Association  
 1848 Management, and Mobile Homes of the Department of Business and  
 1849 Professional Regulation.

1850 Section 39. Section 719.1255, Florida Statutes, is amended  
 1851 to read:

1852 719.1255 Alternative resolution of disputes.--The Division  
 1853 of Florida Land Sales, Condominiums, Homeowners' Associations,  
 1854 Community Association Management, and Mobile Homes of the  
 1855 Department of Business and Professional Regulation shall provide  
 1856 for alternative dispute resolution in accordance with s.  
 1857 718.1255.

1858 Section 40. Section 719.501, Florida Statutes, is amended  
 1859 to read:

1860 719.501 Powers and duties of Division of Florida Land  
 1861 Sales, Condominiums, Homeowners' Associations, Community  
 1862 Association Management, and Mobile Homes.--

1863           (1) The Division of Florida Land Sales, Condominiums,  
 1864 Homeowners' Associations, Community Association Management, and  
 1865 Mobile Homes of the Department of Business and Professional  
 1866 Regulation, referred to as the "division" in this part, in  
 1867 addition to other powers and duties prescribed by chapter 498,  
 1868 has the power to enforce and ensure compliance with the  
 1869 provisions of this chapter and rules promulgated pursuant hereto  
 1870 relating to the development, construction, sale, lease,  
 1871 ownership, operation, and management of residential cooperative  
 1872 units. In performing its duties, the division shall have the  
 1873 following powers and duties:

1874           (a) The division may make necessary public or private  
 1875 investigations within or outside this state to determine whether  
 1876 any person has violated this chapter or any rule or order  
 1877 hereunder, to aid in the enforcement of this chapter, or to aid  
 1878 in the adoption of rules or forms hereunder.

1879           (b) The division may require or permit any person to file  
 1880 a statement in writing, under oath or otherwise, as the division  
 1881 determines, as to the facts and circumstances concerning a  
 1882 matter to be investigated.

1883           (c) For the purpose of any investigation under this  
 1884 chapter, the division director or any officer or employee  
 1885 designated by the division director may administer oaths or  
 1886 affirmations, subpoena witnesses and compel their attendance,  
 1887 take evidence, and require the production of any matter which is  
 1888 relevant to the investigation, including the existence,  
 1889 description, nature, custody, condition, and location of any  
 1890 books, documents, or other tangible things and the identity and

1891 location of persons having knowledge of relevant facts or any  
 1892 other matter reasonably calculated to lead to the discovery of  
 1893 material evidence. Upon failure by a person to obey a subpoena  
 1894 or to answer questions propounded by the investigating officer  
 1895 and upon reasonable notice to all persons affected thereby, the  
 1896 division may apply to the circuit court for an order compelling  
 1897 compliance.

1898 (d) Notwithstanding any remedies available to unit owners  
 1899 and associations, if the division has reasonable cause to  
 1900 believe that a violation of any provision of this chapter or  
 1901 rule promulgated pursuant hereto has occurred, the division may  
 1902 institute enforcement proceedings in its own name against a  
 1903 developer, association, officer, or member of the board, or its  
 1904 assignees or agents, as follows:

1905 1. The division may permit a person whose conduct or  
 1906 actions may be under investigation to waive formal proceedings  
 1907 and enter into a consent proceeding whereby orders, rules, or  
 1908 letters of censure or warning, whether formal or informal, may  
 1909 be entered against the person.

1910 2. The division may issue an order requiring the  
 1911 developer, association, officer, or member of the board, or its  
 1912 assignees or agents, to cease and desist from the unlawful  
 1913 practice and take such affirmative action as in the judgment of  
 1914 the division will carry out the purposes of this chapter. Such  
 1915 affirmative action may include, but is not limited to, an order  
 1916 requiring a developer to pay moneys determined to be owed to a  
 1917 condominium association.

1918           3. The division may bring an action in circuit court on  
 1919 behalf of a class of unit owners, lessees, or purchasers for  
 1920 declaratory relief, injunctive relief, or restitution.

1921           4. The division may impose a civil penalty against a  
 1922 developer or association, or its assignees or agents, for any  
 1923 violation of this chapter or a rule promulgated pursuant hereto.  
 1924 The division may impose a civil penalty individually against any  
 1925 officer or board member who willfully and knowingly violates a  
 1926 provision of this chapter, a rule adopted pursuant to this  
 1927 chapter, or a final order of the division. The term "willfully  
 1928 and knowingly" means that the division informed the officer or  
 1929 board member that his or her action or intended action violates  
 1930 this chapter, a rule adopted under this chapter, or a final  
 1931 order of the division, and that the officer or board member  
 1932 refused to comply with the requirements of this chapter, a rule  
 1933 adopted under this chapter, or a final order of the division.  
 1934 The division, prior to initiating formal agency action under  
 1935 chapter 120, shall afford the officer or board member an  
 1936 opportunity to voluntarily comply with this chapter, a rule  
 1937 adopted under this chapter, or a final order of the division. An  
 1938 officer or board member who complies within 10 days is not  
 1939 subject to a civil penalty. A penalty may be imposed on the  
 1940 basis of each day of continuing violation, but in no event shall  
 1941 the penalty for any offense exceed \$5,000. By January 1, 1998,  
 1942 the division shall adopt, by rule, penalty guidelines applicable  
 1943 to possible violations or to categories of violations of this  
 1944 chapter or rules adopted by the division. The guidelines must  
 1945 specify a meaningful range of civil penalties for each such

1946 violation of the statute and rules and must be based upon the  
 1947 harm caused by the violation, the repetition of the violation,  
 1948 and upon such other factors deemed relevant by the division. For  
 1949 example, the division may consider whether the violations were  
 1950 committed by a developer or owner-controlled association, the  
 1951 size of the association, and other factors. The guidelines must  
 1952 designate the possible mitigating or aggravating circumstances  
 1953 that justify a departure from the range of penalties provided by  
 1954 the rules. It is the legislative intent that minor violations be  
 1955 distinguished from those which endanger the health, safety, or  
 1956 welfare of the cooperative residents or other persons and that  
 1957 such guidelines provide reasonable and meaningful notice to the  
 1958 public of likely penalties that may be imposed for proscribed  
 1959 conduct. This subsection does not limit the ability of the  
 1960 division to informally dispose of administrative actions or  
 1961 complaints by stipulation, agreed settlement, or consent order.  
 1962 All amounts collected shall be deposited with the Chief  
 1963 Financial Officer to the credit of the Division of Florida Land  
 1964 Sales, Condominiums, Homeowners' Associations, Community  
 1965 Association Management, and Mobile Homes Trust Fund. If a  
 1966 developer fails to pay the civil penalty, the division shall  
 1967 thereupon issue an order directing that such developer cease and  
 1968 desist from further operation until such time as the civil  
 1969 penalty is paid or may pursue enforcement of the penalty in a  
 1970 court of competent jurisdiction. If an association fails to pay  
 1971 the civil penalty, the division shall thereupon pursue  
 1972 enforcement in a court of competent jurisdiction, and the order  
 1973 imposing the civil penalty or the cease and desist order shall

1974 not become effective until 20 days after the date of such order.  
 1975 Any action commenced by the division shall be brought in the  
 1976 county in which the division has its executive offices or in the  
 1977 county where the violation occurred.

1978 (e) The division is authorized to prepare and disseminate  
 1979 a prospectus and other information to assist prospective owners,  
 1980 purchasers, lessees, and developers of residential cooperatives  
 1981 in assessing the rights, privileges, and duties pertaining  
 1982 thereto.

1983 (f) The division has authority to adopt rules pursuant to  
 1984 ss. 120.536(1) and 120.54 to implement and enforce the  
 1985 provisions of this chapter.

1986 (g) The division shall establish procedures for providing  
 1987 notice to an association when the division is considering the  
 1988 issuance of a declaratory statement with respect to the  
 1989 cooperative documents governing such cooperative community.

1990 (h) The division shall furnish each association which pays  
 1991 the fees required by paragraph (2)(a) a copy of this act,  
 1992 subsequent changes to this act on an annual basis, an amended  
 1993 version of this act as it becomes available from the Secretary  
 1994 of State's office on a biennial basis, and the rules promulgated  
 1995 pursuant thereto on an annual basis.

1996 (i) The division shall annually provide each association  
 1997 with a summary of declaratory statements and formal legal  
 1998 opinions relating to the operations of cooperatives which were  
 1999 rendered by the division during the previous year.

2000 (j) The division shall adopt uniform accounting  
 2001 principles, policies, and standards to be used by all

2002 associations in the preparation and presentation of all  
2003 financial statements required by this chapter. The principles,  
2004 policies, and standards shall take into consideration the size  
2005 of the association and the total revenue collected by the  
2006 association.

2007 (k) The division shall provide training programs for  
2008 cooperative association board members and unit owners.

2009 (l) The division shall maintain a toll-free telephone  
2010 number accessible to cooperative unit owners.

2011 (m) When a complaint is made to the division, the division  
2012 shall conduct its inquiry with reasonable dispatch and with due  
2013 regard to the interests of the affected parties. Within 30 days  
2014 after receipt of a complaint, the division shall acknowledge the  
2015 complaint in writing and notify the complainant whether the  
2016 complaint is within the jurisdiction of the division and whether  
2017 additional information is needed by the division from the  
2018 complainant. The division shall conduct its investigation and  
2019 shall, within 90 days after receipt of the original complaint or  
2020 timely requested additional information, take action upon the  
2021 complaint. However, the failure to complete the investigation  
2022 within 90 days does not prevent the division from continuing the  
2023 investigation, accepting or considering evidence obtained or  
2024 received after 90 days, or taking administrative action if  
2025 reasonable cause exists to believe that a violation of this  
2026 chapter or a rule of the division has occurred. If an  
2027 investigation is not completed within the time limits  
2028 established in this paragraph, the division shall, on a monthly  
2029 basis, notify the complainant in writing of the status of the

HB 1229

2005

2030 investigation. When reporting its action to the complainant, the  
 2031 division shall inform the complainant of any right to a hearing  
 2032 pursuant to ss. 120.569 and 120.57.

2033 (n) The division shall develop a program to certify both  
 2034 volunteer and paid mediators to provide mediation of cooperative  
 2035 disputes. The division shall provide, upon request, a list of  
 2036 such mediators to any association, unit owner, or other  
 2037 participant in arbitration proceedings under s. 718.1255  
 2038 requesting a copy of the list. The division shall include on the  
 2039 list of voluntary mediators only persons who have received at  
 2040 least 20 hours of training in mediation techniques or have  
 2041 mediated at least 20 disputes. In order to become initially  
 2042 certified by the division, paid mediators must be certified by  
 2043 the Supreme Court to mediate court cases in either county or  
 2044 circuit courts. However, the division may adopt, by rule,  
 2045 additional factors for the certification of paid mediators,  
 2046 which factors must be related to experience, education, or  
 2047 background. Any person initially certified as a paid mediator by  
 2048 the division must, in order to continue to be certified, comply  
 2049 with the factors or requirements imposed by rules adopted by the  
 2050 division.

2051 (2)(a) Each cooperative association shall pay to the  
 2052 division, on or before January 1 of each year, an annual fee in  
 2053 the amount of \$4 for each residential unit in cooperatives  
 2054 operated by the association. If the fee is not paid by March 1,  
 2055 then the association shall be assessed a penalty of 10 percent  
 2056 of the amount due, and the association shall not have the

2057 standing to maintain or defend any action in the courts of this  
 2058 state until the amount due is paid.

2059 (b) All fees shall be deposited in the Division of Florida  
 2060 Land Sales, Condominiums, Homeowners' Associations, Community  
 2061 Association Management, and Mobile Homes Trust Fund as provided  
 2062 by law.

2063 Section 41. Paragraph (a) of subsection (2) of section  
 2064 719.502, Florida Statutes, is amended to read:

2065 719.502 Filing prior to sale or lease.--

2066 (2)(a) Prior to filing as required by subsection (1), and  
 2067 prior to acquiring an ownership, leasehold, or contractual  
 2068 interest in the land upon which the cooperative is to be  
 2069 developed, a developer shall not offer a contract for purchase  
 2070 or lease of a unit for more than 5 years. However, the developer  
 2071 may accept deposits for reservations upon the approval of a  
 2072 fully executed escrow agreement and reservation agreement form  
 2073 properly filed with the Division of Florida Land Sales,  
 2074 Condominiums, Homeowners' Associations, Community Association  
 2075 Management, and Mobile Homes. Each filing of a proposed  
 2076 reservation program shall be accompanied by a filing fee of  
 2077 \$250. Reservations shall not be taken on a proposed cooperative  
 2078 unless the developer has an ownership, leasehold, or contractual  
 2079 interest in the land upon which the cooperative is to be  
 2080 developed. The division shall notify the developer within 20  
 2081 days of receipt of the reservation filing of any deficiencies  
 2082 contained therein. Such notification shall not preclude the  
 2083 determination of reservation filing deficiencies at a later  
 2084 date, nor shall it relieve the developer of any responsibility

2085 | under the law. The escrow agreement and the reservation  
 2086 | agreement form shall include a statement of the right of the  
 2087 | prospective purchaser to an immediate unqualified refund of the  
 2088 | reservation deposit moneys upon written request to the escrow  
 2089 | agent by the prospective purchaser or the developer.

2090 |       Section 42. Section 719.504, Florida Statutes, is amended  
 2091 | to read:

2092 |       719.504 Prospectus or offering circular.--Every developer  
 2093 | of a residential cooperative which contains more than 20  
 2094 | residential units, or which is part of a group of residential  
 2095 | cooperatives which will be served by property to be used in  
 2096 | common by unit owners of more than 20 residential units, shall  
 2097 | prepare a prospectus or offering circular and file it with the  
 2098 | Division of Florida Land Sales, Condominiums, Homeowners'  
 2099 | Associations, Community Association Management, and Mobile Homes  
 2100 | prior to entering into an enforceable contract of purchase and  
 2101 | sale of any unit or lease of a unit for more than 5 years and  
 2102 | shall furnish a copy of the prospectus or offering circular to  
 2103 | each buyer. In addition to the prospectus or offering circular,  
 2104 | each buyer shall be furnished a separate page entitled  
 2105 | "Frequently Asked Questions and Answers," which must be in  
 2106 | accordance with a format approved by the division. This page  
 2107 | must, in readable language: inform prospective purchasers  
 2108 | regarding their voting rights and unit use restrictions,  
 2109 | including restrictions on the leasing of a unit; indicate  
 2110 | whether and in what amount the unit owners or the association is  
 2111 | obligated to pay rent or land use fees for recreational or other  
 2112 | commonly used facilities; contain a statement identifying that

2113 amount of assessment which, pursuant to the budget, would be  
 2114 levied upon each unit type, exclusive of any special  
 2115 assessments, and which identifies the basis upon which  
 2116 assessments are levied, whether monthly, quarterly, or  
 2117 otherwise; state and identify any court cases in which the  
 2118 association is currently a party of record in which the  
 2119 association may face liability in excess of \$100,000; and state  
 2120 whether membership in a recreational facilities association is  
 2121 mandatory and, if so, identify the fees currently charged per  
 2122 unit type. The division shall by rule require such other  
 2123 disclosure as in its judgment will assist prospective  
 2124 purchasers. The prospectus or offering circular may include more  
 2125 than one cooperative, although not all such units are being  
 2126 offered for sale as of the date of the prospectus or offering  
 2127 circular. The prospectus or offering circular must contain the  
 2128 following information:

2129 (1) The front cover or the first page must contain only:

2130 (a) The name of the cooperative.

2131 (b) The following statements in conspicuous type:

2132 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT  
 2133 MATTERS TO BE CONSIDERED IN ACQUIRING A COOPERATIVE UNIT.

2134 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN  
 2135 NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES,  
 2136 ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES  
 2137 MATERIALS.

2138 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY  
 2139 STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS

2140 PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT  
2141 REPRESENTATIONS.

2142 (2) Summary: The next page must contain all statements  
2143 required to be in conspicuous type in the prospectus or offering  
2144 circular.

2145 (3) A separate index of the contents and exhibits of the  
2146 prospectus.

2147 (4) Beginning on the first page of the text (not including  
2148 the summary and index), a description of the cooperative,  
2149 including, but not limited to, the following information:

2150 (a) Its name and location.

2151 (b) A description of the cooperative property, including,  
2152 without limitation:

2153 1. The number of buildings, the number of units in each  
2154 building, the number of bathrooms and bedrooms in each unit, and  
2155 the total number of units, if the cooperative is not a phase  
2156 cooperative; or, if the cooperative is a phase cooperative, the  
2157 maximum number of buildings that may be contained within the  
2158 cooperative, the minimum and maximum number of units in each  
2159 building, the minimum and maximum number of bathrooms and  
2160 bedrooms that may be contained in each unit, and the maximum  
2161 number of units that may be contained within the cooperative.

2162 2. The page in the cooperative documents where a copy of  
2163 the survey and plot plan of the cooperative is located.

2164 3. The estimated latest date of completion of  
2165 constructing, finishing, and equipping. In lieu of a date, a  
2166 statement that the estimated date of completion of the

2167 cooperative is in the purchase agreement and a reference to the  
 2168 article or paragraph containing that information.

2169 (c) The maximum number of units that will use facilities  
 2170 in common with the cooperative. If the maximum number of units  
 2171 will vary, a description of the basis for variation and the  
 2172 minimum amount of dollars per unit to be spent for additional  
 2173 recreational facilities or enlargement of such facilities. If  
 2174 the addition or enlargement of facilities will result in a  
 2175 material increase of a unit owner's maintenance expense or  
 2176 rental expense, if any, the maximum increase and limitations  
 2177 thereon shall be stated.

2178 (5)(a) A statement in conspicuous type describing whether  
 2179 the cooperative is created and being sold as fee simple  
 2180 interests or as leasehold interests. If the cooperative is  
 2181 created or being sold on a leasehold, the location of the lease  
 2182 in the disclosure materials shall be stated.

2183 (b) If timeshare estates are or may be created with  
 2184 respect to any unit in the cooperative, a statement in  
 2185 conspicuous type stating that timeshare estates are created and  
 2186 being sold in such specified units in the cooperative.

2187 (6) A description of the recreational and other common  
 2188 areas that will be used only by unit owners of the cooperative,  
 2189 including, but not limited to, the following:

2190 (a) Each room and its intended purposes, location,  
 2191 approximate floor area, and capacity in numbers of people.

2192 (b) Each swimming pool, as to its general location,  
 2193 approximate size and depths, approximate deck size and capacity,  
 2194 and whether heated.

2195 (c) Additional facilities, as to the number of each  
 2196 facility, its approximate location, approximate size, and  
 2197 approximate capacity.

2198 (d) A general description of the items of personal  
 2199 property and the approximate number of each item of personal  
 2200 property that the developer is committing to furnish for each  
 2201 room or other facility or, in the alternative, a representation  
 2202 as to the minimum amount of expenditure that will be made to  
 2203 purchase the personal property for the facility.

2204 (e) The estimated date when each room or other facility  
 2205 will be available for use by the unit owners.

2206 (f)1. An identification of each room or other facility to  
 2207 be used by unit owners that will not be owned by the unit owners  
 2208 or the association;

2209 2. A reference to the location in the disclosure materials  
 2210 of the lease or other agreements providing for the use of those  
 2211 facilities; and

2212 3. A description of the terms of the lease or other  
 2213 agreements, including the length of the term; the rent payable,  
 2214 directly or indirectly, by each unit owner, and the total rent  
 2215 payable to the lessor, stated in monthly and annual amounts for  
 2216 the entire term of the lease; and a description of any option to  
 2217 purchase the property leased under any such lease, including the  
 2218 time the option may be exercised, the purchase price or how it  
 2219 is to be determined, the manner of payment, and whether the  
 2220 option may be exercised for a unit owner's share or only as to  
 2221 the entire leased property.

2222 (g) A statement as to whether the developer may provide  
 2223 additional facilities not described above, their general  
 2224 locations and types, improvements or changes that may be made,  
 2225 the approximate dollar amount to be expended, and the maximum  
 2226 additional common expense or cost to the individual unit owners  
 2227 that may be charged during the first annual period of operation  
 2228 of the modified or added facilities.

2229  
 2230 Descriptions as to locations, areas, capacities, numbers,  
 2231 volumes, or sizes may be stated as approximations or minimums.

2232 (7) A description of the recreational and other facilities  
 2233 that will be used in common with other cooperatives, community  
 2234 associations, or planned developments which require the payment  
 2235 of the maintenance and expenses of such facilities, either  
 2236 directly or indirectly, by the unit owners. The description  
 2237 shall include, but not be limited to, the following:

2238 (a) Each building and facility committed to be built.

2239 (b) Facilities not committed to be built except under  
 2240 certain conditions, and a statement of those conditions or  
 2241 contingencies.

2242 (c) As to each facility committed to be built, or which  
 2243 will be committed to be built upon the happening of one of the  
 2244 conditions in paragraph (b), a statement of whether it will be  
 2245 owned by the unit owners having the use thereof or by an  
 2246 association or other entity which will be controlled by them, or  
 2247 others, and the location in the exhibits of the lease or other  
 2248 document providing for use of those facilities.

2249 (d) The year in which each facility will be available for  
 2250 use by the unit owners or, in the alternative, the maximum  
 2251 number of unit owners in the project at the time each of all of  
 2252 the facilities is committed to be completed.

2253 (e) A general description of the items of personal  
 2254 property, and the approximate number of each item of personal  
 2255 property, that the developer is committing to furnish for each  
 2256 room or other facility or, in the alternative, a representation  
 2257 as to the minimum amount of expenditure that will be made to  
 2258 purchase the personal property for the facility.

2259 (f) If there are leases, a description thereof, including  
 2260 the length of the term, the rent payable, and a description of  
 2261 any option to purchase.

2262  
 2263 Descriptions shall include location, areas, capacities, numbers,  
 2264 volumes, or sizes and may be stated as approximations or  
 2265 minimums.

2266 (8) Recreation lease or associated club membership:

2267 (a) If any recreational facilities or other common areas  
 2268 offered by the developer and available to, or to be used by,  
 2269 unit owners are to be leased or have club membership associated,  
 2270 the following statement in conspicuous type shall be included:  
 2271 THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS  
 2272 COOPERATIVE; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS  
 2273 COOPERATIVE. There shall be a reference to the location in the  
 2274 disclosure materials where the recreation lease or club  
 2275 membership is described in detail.

2276 (b) If it is mandatory that unit owners pay a fee, rent,  
 2277 dues, or other charges under a recreational facilities lease or  
 2278 club membership for the use of facilities, there shall be in  
 2279 conspicuous type the applicable statement:

2280 1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS  
 2281 MANDATORY FOR UNIT OWNERS; or

2282 2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP,  
 2283 TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

2284 3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE  
 2285 COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,  
 2286 REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES  
 2287 LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

2288 4. A similar statement of the nature of the organization  
 2289 or manner in which the use rights are created, and that unit  
 2290 owners are required to pay.

2291  
 2292 Immediately following the applicable statement, the location in  
 2293 the disclosure materials where the development is described in  
 2294 detail shall be stated.

2295 (c) If the developer, or any other person other than the  
 2296 unit owners and other persons having use rights in the  
 2297 facilities, reserves, or is entitled to receive, any rent, fee,  
 2298 or other payment for the use of the facilities, then there shall  
 2299 be the following statement in conspicuous type: THE UNIT OWNERS  
 2300 OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR  
 2301 RECREATIONAL OR OTHER COMMON AREAS. Immediately following this  
 2302 statement, the location in the disclosure materials where the  
 2303 rent or land use fees are described in detail shall be stated.

2304 (d) If, in any recreation format, whether leasehold, club,  
 2305 or other, any person other than the association has the right to  
 2306 a lien on the units to secure the payment of assessments, rent,  
 2307 or other exactions, there shall appear a statement in  
 2308 conspicuous type in substantially the following form:

2309 1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO  
 2310 SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE  
 2311 RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE  
 2312 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2313 2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO  
 2314 SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE  
 2315 FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL  
 2316 OR COMMONLY USED AREAS. THE UNIT OWNER'S FAILURE TO MAKE THESE  
 2317 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

2318  
 2319 Immediately following the applicable statement, the location in  
 2320 the disclosure materials where the lien or lien right is  
 2321 described in detail shall be stated.

2322 (9) If the developer or any other person has the right to  
 2323 increase or add to the recreational facilities at any time after  
 2324 the establishment of the cooperative whose unit owners have use  
 2325 rights therein, without the consent of the unit owners or  
 2326 associations being required, there shall appear a statement in  
 2327 conspicuous type in substantially the following form:

2328 RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT  
 2329 OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this  
 2330 statement, the location in the disclosure materials where such  
 2331 reserved rights are described shall be stated.

2332 (10) A statement of whether the developer's plan includes  
 2333 a program of leasing units rather than selling them, or leasing  
 2334 units and selling them subject to such leases. If so, there  
 2335 shall be a description of the plan, including the number and  
 2336 identification of the units and the provisions and term of the  
 2337 proposed leases, and a statement in boldfaced type that: THE  
 2338 UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

2339 (11) The arrangements for management of the association  
 2340 and maintenance and operation of the cooperative property and of  
 2341 other property that will serve the unit owners of the  
 2342 cooperative property, and a description of the management  
 2343 contract and all other contracts for these purposes having a  
 2344 term in excess of 1 year, including the following:

- 2345 (a) The names of contracting parties.
- 2346 (b) The term of the contract.
- 2347 (c) The nature of the services included.
- 2348 (d) The compensation, stated on a monthly and annual  
 2349 basis, and provisions for increases in the compensation.
- 2350 (e) A reference to the volumes and pages of the  
 2351 cooperative documents and of the exhibits containing copies of  
 2352 such contracts.

2353  
 2354 Copies of all described contracts shall be attached as exhibits.  
 2355 If there is a contract for the management of the cooperative  
 2356 property, then a statement in conspicuous type in substantially  
 2357 the following form shall appear, identifying the proposed or  
 2358 existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR  
 2359 THE MANAGEMENT OF THE COOPERATIVE PROPERTY WITH (NAME OF THE

2360 CONTRACT MANAGER). Immediately following this statement, the  
 2361 location in the disclosure materials of the contract for  
 2362 management of the cooperative property shall be stated.

2363 (12) If the developer or any other person or persons other  
 2364 than the unit owners has the right to retain control of the  
 2365 board of administration of the association for a period of time  
 2366 which can exceed 1 year after the closing of the sale of a  
 2367 majority of the units in that cooperative to persons other than  
 2368 successors or alternate developers, then a statement in  
 2369 conspicuous type in substantially the following form shall be  
 2370 included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO  
 2371 RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS  
 2372 HAVE BEEN SOLD. Immediately following this statement, the  
 2373 location in the disclosure materials where this right to control  
 2374 is described in detail shall be stated.

2375 (13) If there are any restrictions upon the sale,  
 2376 transfer, conveyance, or leasing of a unit, then a statement in  
 2377 conspicuous type in substantially the following form shall be  
 2378 included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR  
 2379 CONTROLLED. Immediately following this statement, the location  
 2380 in the disclosure materials where the restriction, limitation,  
 2381 or control on the sale, lease, or transfer of units is described  
 2382 in detail shall be stated.

2383 (14) If the cooperative is part of a phase project, the  
 2384 following shall be stated:

2385 (a) A statement in conspicuous type in substantially the  
 2386 following form shall be included: THIS IS A PHASE COOPERATIVE.  
 2387 ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS COOPERATIVE.

2388 Immediately following this statement, the location in the  
 2389 disclosure materials where the phasing is described shall be  
 2390 stated.

2391 (b) A summary of the provisions of the declaration  
 2392 providing for the phasing.

2393 (c) A statement as to whether or not residential buildings  
 2394 and units which are added to the cooperative may be  
 2395 substantially different from the residential buildings and units  
 2396 originally in the cooperative, and, if the added residential  
 2397 buildings and units may be substantially different, there shall  
 2398 be a general description of the extent to which such added  
 2399 residential buildings and units may differ, and a statement in  
 2400 conspicuous type in substantially the following form shall be  
 2401 included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE COOPERATIVE  
 2402 MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND  
 2403 UNITS IN THE COOPERATIVE. Immediately following this statement,  
 2404 the location in the disclosure materials where the extent to  
 2405 which added residential buildings and units may substantially  
 2406 differ is described shall be stated.

2407 (d) A statement of the maximum number of buildings  
 2408 containing units, the maximum and minimum number of units in  
 2409 each building, the maximum number of units, and the minimum and  
 2410 maximum square footage of the units that may be contained within  
 2411 each parcel of land which may be added to the cooperative.

2412 (15) If the cooperative is created by conversion of  
 2413 existing improvements, the following information shall be  
 2414 stated:

2415 (a) The information required by s. 719.616.

HB 1229

2005

2416 (b) A caveat that there are no express warranties unless  
2417 they are stated in writing by the developer.

2418 (16) A summary of the restrictions, if any, to be imposed  
2419 on units concerning the use of any of the cooperative property,  
2420 including statements as to whether there are restrictions upon  
2421 children and pets, and reference to the volumes and pages of the  
2422 cooperative documents where such restrictions are found, or if  
2423 such restrictions are contained elsewhere, then a copy of the  
2424 documents containing the restrictions shall be attached as an  
2425 exhibit.

2426 (17) If there is any land that is offered by the developer  
2427 for use by the unit owners and that is neither owned by them nor  
2428 leased to them, the association, or any entity controlled by  
2429 unit owners and other persons having the use rights to such  
2430 land, a statement shall be made as to how such land will serve  
2431 the cooperative. If any part of such land will serve the  
2432 cooperative, the statement shall describe the land and the  
2433 nature and term of service, and the cooperative documents or  
2434 other instrument creating such servitude shall be included as an  
2435 exhibit.

2436 (18) The manner in which utility and other services,  
2437 including, but not limited to, sewage and waste disposal, water  
2438 supply, and storm drainage, will be provided and the person or  
2439 entity furnishing them.

2440 (19) An explanation of the manner in which the  
2441 apportionment of common expenses and ownership of the common  
2442 areas have been determined.

2443           (20) An estimated operating budget for the cooperative and  
2444 the association, and a schedule of the unit owner's expenses  
2445 shall be attached as an exhibit and shall contain the following  
2446 information:

2447           (a) The estimated monthly and annual expenses of the  
2448 cooperative and the association that are collected from unit  
2449 owners by assessments.

2450           (b) The estimated monthly and annual expenses of each unit  
2451 owner for a unit, other than assessments payable to the  
2452 association, payable by the unit owner to persons or entities  
2453 other than the association, and the total estimated monthly and  
2454 annual expense. There may be excluded from this estimate  
2455 expenses that are personal to unit owners, which are not  
2456 uniformly incurred by all unit owners, or which are not provided  
2457 for or contemplated by the cooperative documents, including, but  
2458 not limited to, the costs of private telephone; maintenance of  
2459 the interior of cooperative units, which is not the obligation  
2460 of the association; maid or janitorial services privately  
2461 contracted for by the unit owners; utility bills billed directly  
2462 to each unit owner for utility services to his or her unit;  
2463 insurance premiums other than those incurred for policies  
2464 obtained by the cooperative; and similar personal expenses of  
2465 the unit owner. A unit owner's estimated payments for  
2466 assessments shall also be stated in the estimated amounts for  
2467 the times when they will be due.

2468           (c) The estimated items of expenses of the cooperative and  
2469 the association, except as excluded under paragraph (b),  
2470 including, but not limited to, the following items, which shall

2471 | be stated either as an association expense collectible by  
 2472 | assessments or as unit owners' expenses payable to persons other  
 2473 | than the association:

- 2474 |       1. Expenses for the association and cooperative:
- 2475 |       a. Administration of the association.
- 2476 |       b. Management fees.
- 2477 |       c. Maintenance.
- 2478 |       d. Rent for recreational and other commonly used areas.
- 2479 |       e. Taxes upon association property.
- 2480 |       f. Taxes upon leased areas.
- 2481 |       g. Insurance.
- 2482 |       h. Security provisions.
- 2483 |       i. Other expenses.
- 2484 |       j. Operating capital.
- 2485 |       k. Reserves.
- 2486 |       l. Fee payable to the division.
- 2487 |       2. Expenses for a unit owner:
- 2488 |       a. Rent for the unit, if subject to a lease.
- 2489 |       b. Rent payable by the unit owner directly to the lessor  
 2490 | or agent under any recreational lease or lease for the use of  
 2491 | commonly used areas, which use and payment are a mandatory  
 2492 | condition of ownership and are not included in the common  
 2493 | expense or assessments for common maintenance paid by the unit  
 2494 | owners to the association.

2495 |       (d) The estimated amounts shall be stated for a period of  
 2496 | at least 12 months and may distinguish between the period prior  
 2497 | to the time unit owners other than the developer elect a

2498 majority of the board of administration and the period after  
 2499 that date.

2500 (21) A schedule of estimated closing expenses to be paid  
 2501 by a buyer or lessee of a unit and a statement of whether title  
 2502 opinion or title insurance policy is available to the buyer and,  
 2503 if so, at whose expense.

2504 (22) The identity of the developer and the chief operating  
 2505 officer or principal directing the creation and sale of the  
 2506 cooperative and a statement of its and his or her experience in  
 2507 this field.

2508 (23) Copies of the following, to the extent they are  
 2509 applicable, shall be included as exhibits:

2510 (a) The cooperative documents, or the proposed cooperative  
 2511 documents if the documents have not been recorded.

2512 (b) The articles of incorporation creating the  
 2513 association.

2514 (c) The bylaws of the association.

2515 (d) The ground lease or other underlying lease of the  
 2516 cooperative.

2517 (e) The management agreement and all maintenance and other  
 2518 contracts for management of the association and operation of the  
 2519 cooperative and facilities used by the unit owners having a  
 2520 service term in excess of 1 year.

2521 (f) The estimated operating budget for the cooperative and  
 2522 the required schedule of unit owners' expenses.

2523 (g) A copy of the floor plan of the unit and the plot plan  
 2524 showing the location of the residential buildings and the  
 2525 recreation and other common areas.

2526 (h) The lease of recreational and other facilities that  
 2527 will be used only by unit owners of the subject cooperative.

2528 (i) The lease of facilities used by owners and others.

2529 (j) The form of unit lease, if the offer is of a  
 2530 leasehold.

2531 (k) A declaration of servitude of properties serving the  
 2532 cooperative but not owned by unit owners or leased to them or  
 2533 the association.

2534 (l) The statement of condition of the existing building or  
 2535 buildings, if the offering is of units in an operation being  
 2536 converted to cooperative ownership.

2537 (m) The statement of inspection for termite damage and  
 2538 treatment of the existing improvements, if the cooperative is a  
 2539 conversion.

2540 (n) The form of agreement for sale or lease of units.

2541 (o) A copy of the agreement for escrow of payments made to  
 2542 the developer prior to closing.

2543 (p) A copy of the documents containing any restrictions on  
 2544 use of the property required by subsection (16).

2545 (24) Any prospectus or offering circular complying with  
 2546 the provisions of former ss. 711.69 and 711.802 may continue to  
 2547 be used without amendment, or may be amended to comply with the  
 2548 provisions of this chapter.

2549 (25) A brief narrative description of the location and  
 2550 effect of all existing and intended easements located or to be  
 2551 located on the cooperative property other than those in the  
 2552 declaration.

2553 (26) If the developer is required by state or local  
 2554 authorities to obtain acceptance or approval of any dock or  
 2555 marina facility intended to serve the cooperative, a copy of  
 2556 such acceptance or approval acquired by the time of filing with  
 2557 the division pursuant to s. 719.502 or a statement that such  
 2558 acceptance has not been acquired or received.

2559 (27) Evidence demonstrating that the developer has an  
 2560 ownership, leasehold, or contractual interest in the land upon  
 2561 which the cooperative is to be developed.

2562 Section 43. Section 719.508, Florida Statutes, is amended  
 2563 to read:

2564 719.508 Regulation by Division of Hotels and  
 2565 Restaurants.--In addition to the authority, regulation, or  
 2566 control exercised by the Division of Florida Land Sales,  
 2567 Condominiums, Homeowners' Associations, Community Association  
 2568 Management, and Mobile Homes pursuant to this act with respect  
 2569 to cooperatives, buildings included in a cooperative property  
 2570 shall be subject to the authority, regulation, or control of the  
 2571 Division of Hotels and Restaurants of the Department of Business  
 2572 and Professional Regulation, to the extent provided for in  
 2573 chapters 399 and 509.

2574 Section 44. Paragraph (a) of subsection (2) of section  
 2575 719.608, Florida Statutes, is amended to read:

2576 719.608 Notice of intended conversion; time of delivery;  
 2577 content.--

2578 (2)(a) Each notice of intended conversion shall be dated  
 2579 and in writing. The notice shall contain the following

2580 statement, with the phrases of the following statement which  
 2581 appear in upper case printed in conspicuous type:

2582  
 2583           These apartments are being converted to cooperative by  
 2584 (name of developer) , the developer.

2585           1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF  
 2586 YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL  
 2587 AGREEMENT AS FOLLOWS:

2588           a. If you have continuously been a resident of these  
 2589 apartments during the last 180 days and your rental agreement  
 2590 expires during the next 270 days, you may extend your rental  
 2591 agreement for up to 270 days after the date of this notice.

2592           b. If you have not been a continuous resident of these  
 2593 apartments for the last 180 days and your rental agreement  
 2594 expires during the next 180 days, you may extend your rental  
 2595 agreement for up to 180 days after the date of this notice.

2596           c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU  
 2597 MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE  
 2598 DATE OF THIS NOTICE.

2599           2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS,  
 2600 you may extend your rental agreement for up to 45 days after the  
 2601 date of this notice while you decide whether to extend your  
 2602 rental agreement as explained above. To do so, you must notify  
 2603 the developer in writing. You will then have the full 45 days to  
 2604 decide whether to extend your rental agreement as explained  
 2605 above.

2606           3. During the extension of your rental agreement you will  
 2607 be charged the same rent that you are now paying.

2608 4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION  
2609 OF THE RENTAL AGREEMENT AS FOLLOWS:

2610 a. If your rental agreement began or was extended or  
2611 renewed after May 1, 1980, and your rental agreement, including  
2612 extensions and renewals, has an unexpired term of 180 days or  
2613 less, you may cancel your rental agreement upon 30 days' written  
2614 notice and move. Also, upon 30 days' written notice, you may  
2615 cancel any extension of the rental agreement.

2616 b. If your rental agreement was not begun or was not  
2617 extended or renewed after May 1, 1980, you may not cancel the  
2618 rental agreement without the consent of the developer. If your  
2619 rental agreement, including extensions and renewals, has an  
2620 unexpired term of 180 days or less, you may, however, upon 30  
2621 days' written notice cancel any extension of the rental  
2622 agreement.

2623 5. All notices must be given in writing and sent by mail,  
2624 return receipt requested, or delivered in person to the  
2625 developer at this address: (name and address of developer) .

2626 6. If you have continuously been a resident of these  
2627 apartments during the last 180 days:

2628 a. You have the right to purchase your apartment and will  
2629 have 45 days to decide whether to purchase. If you do not buy  
2630 the unit at that price and the unit is later offered at a lower  
2631 price, you will have the opportunity to buy the unit at the  
2632 lower price. However, in all events your right to purchase the  
2633 unit ends when the rental agreement or any extension of the  
2634 rental agreement ends or when you waive this right in writing.

2635           b. Within 90 days you will be provided purchase  
 2636 information relating to your apartment, including the price of  
 2637 your unit and the condition of the building. If you do not  
 2638 receive this information within 90 days, your rental agreement  
 2639 and any extension will be extended 1 day for each day over 90  
 2640 days until you are given the purchase information. If you do not  
 2641 want this rental agreement extension, you must notify the  
 2642 developer in writing.

2643           7. If you have any questions regarding this conversion or  
 2644 the Cooperative Act, you may contact the developer or the state  
 2645 agency which regulates cooperatives: The Division of Florida  
 2646 Land Sales, Condominiums, Homeowners' Associations, Community  
 2647 Association Management, and Mobile Homes, (Tallahassee address  
 2648 and telephone number of division).

2649           Section 45. Subsection (7) of section 720.301, Florida  
 2650 Statutes, is amended to read:

2651           720.301 Definitions.--As used in this chapter, the term:

2652           (7) "Division" means the Division of Florida Land Sales,  
 2653 Condominiums, Homeowners' Associations, Community Association  
 2654 Management, and Mobile Homes in the Department of Business and  
 2655 Professional Regulation.

2656           Section 46. Subsection (11) of section 721.05, Florida  
 2657 Statutes, is amended to read:

2658           721.05 Definitions.--As used in this chapter, the term:

2659           (11) "Division" means the Division of Florida Land Sales,  
 2660 Condominiums, Homeowners' Associations, Community Association  
 2661 Management, and Mobile Homes of the Department of Business and  
 2662 Professional Regulation.

2663 Section 47. Paragraph (d) of subsection (2) of section  
 2664 721.07, Florida Statutes, is amended to read:  
 2665 721.07 Public offering statement.--Prior to offering any  
 2666 timeshare plan, the developer must submit a filed public  
 2667 offering statement to the division for approval as prescribed by  
 2668 s. 721.03, s. 721.55, or this section. Until the division  
 2669 approves such filing, any contract regarding the sale of that  
 2670 timeshare plan is subject to cancellation by the purchaser  
 2671 pursuant to s. 721.10.

2672 (2)

2673 (d) A developer shall have the authority to deliver to  
 2674 purchasers any purchaser public offering statement that is not  
 2675 yet approved by the division, provided that the following shall  
 2676 apply:

2677 1. At the time the developer delivers an unapproved  
 2678 purchaser public offering statement to a purchaser pursuant to  
 2679 this paragraph, the developer shall deliver a fully completed  
 2680 and executed copy of the purchase contract required by s. 721.06  
 2681 that contains the following statement in conspicuous type in  
 2682 substantially the following form which shall replace the  
 2683 statements required by s. 721.06(1)(g):

2684  
 2685 The developer is delivering to you a public offering statement  
 2686 that has been filed with but not yet approved by the Division of  
 2687 Florida Land Sales, Condominiums, Homeowners' Associations,  
 2688 Community Association Management, and Mobile Homes. Any  
 2689 revisions to the unapproved public offering statement you have  
 2690 received must be delivered to you, but only if the revisions

2691 materially alter or modify the offering in a manner adverse to  
2692 you. After the division approves the public offering statement,  
2693 you will receive notice of the approval from the developer and  
2694 the required revisions, if any.

2695  
2696 Your statutory right to cancel this transaction without any  
2697 penalty or obligation expires 10 calendar days after the date  
2698 you signed your purchase contract or the date on which you  
2699 receive the last of all documents required to be given to you  
2700 pursuant to section 721.07(6), Florida Statutes, or 10 calendar  
2701 days after you receive revisions required to be delivered to  
2702 you, if any, whichever is later. If you decide to cancel this  
2703 contract, you must notify the seller in writing of your intent  
2704 to cancel. Your notice of cancellation shall be effective upon  
2705 the date sent and shall be sent to (Name of Seller) at  
2706 (Address of Seller) . Any attempt to obtain a waiver of your  
2707 cancellation right is void and of no effect. While you may  
2708 execute all closing documents in advance, the closing, as  
2709 evidenced by delivery of the deed or other document, before  
2710 expiration of your 10-day cancellation period, is prohibited.

2711  
2712 2. After receipt of approval from the division and prior  
2713 to closing, if any revisions made to the documents contained in  
2714 the purchaser public offering statement materially alter or  
2715 modify the offering in a manner adverse to a purchaser, the  
2716 developer shall send the purchaser such revisions together with  
2717 a notice containing a statement in conspicuous type in  
2718 substantially the following form:

2719  
 2720 The unapproved public offering statement previously delivered to  
 2721 you, together with the enclosed revisions, has been approved by  
 2722 the Division of Florida Land Sales, Condominiums, Homeowners'  
 2723 Associations, Community Association Management, and Mobile  
 2724 Homes. Accordingly, your cancellation right expires 10 calendar  
 2725 days after you sign your purchase contract or 10 calendar days  
 2726 after you receive these revisions, whichever is later. If you  
 2727 have any questions regarding your cancellation rights, you may  
 2728 contact the division at [insert division's current address].

2729  
 2730 3. After receipt of approval from the division and prior  
 2731 to closing, if no revisions have been made to the documents  
 2732 contained in the unapproved purchaser public offering statement,  
 2733 or if such revisions do not materially alter or modify the  
 2734 offering in a manner adverse to a purchaser, the developer shall  
 2735 send the purchaser a notice containing a statement in  
 2736 conspicuous type in substantially the following form:

2737  
 2738 The unapproved public offering statement previously delivered to  
 2739 you has been approved by the Division of Florida Land Sales,  
 2740 Condominiums, Homeowners' Associations, Community Association  
 2741 Management, and Mobile Homes. Revisions made to the unapproved  
 2742 public offering statement, if any, are either not required to be  
 2743 delivered to you or are not deemed by the developer, in its  
 2744 opinion, to materially alter or modify the offering in a manner  
 2745 that is adverse to you. Accordingly, your cancellation right  
 2746 expired 10 days after you signed your purchase contract. A

2747 complete copy of the approved public offering statement is  
 2748 available through the managing entity for inspection as part of  
 2749 the books and records of the plan. If you have any questions  
 2750 regarding your cancellation rights, you may contact the division  
 2751 at [insert division's current address].

2752 Section 48. Subsection (8) of section 721.08, Florida  
 2753 Statutes, is amended to read:

2754 721.08 Escrow accounts; nondisturbance instruments;  
 2755 alternate security arrangements; transfer of legal title.--

2756 (8) An escrow agent holding escrowed funds pursuant to  
 2757 this chapter that have not been claimed for a period of 5 years  
 2758 after the date of deposit shall make at least one reasonable  
 2759 attempt to deliver such unclaimed funds to the purchaser who  
 2760 submitted such funds to escrow. In making such attempt, an  
 2761 escrow agent is entitled to rely on a purchaser's last known  
 2762 address as set forth in the books and records of the escrow  
 2763 agent and is not required to conduct any further search for the  
 2764 purchaser. If an escrow agent's attempt to deliver unclaimed  
 2765 funds to any purchaser is unsuccessful, the escrow agent may  
 2766 deliver such unclaimed funds to the division and the division  
 2767 shall deposit such unclaimed funds in the Division of Florida  
 2768 Land Sales, Condominiums, Homeowners' Associations, Community  
 2769 Association Management, and Mobile Homes Trust Fund, 30 days  
 2770 after giving notice in a publication of general circulation in  
 2771 the county in which the timeshare property containing the  
 2772 purchaser's timeshare interest is located. The purchaser may  
 2773 claim the same at any time prior to the delivery of such funds  
 2774 to the division. After delivery of such funds to the division,

2775 the purchaser shall have no more rights to the unclaimed funds.  
 2776 The escrow agent shall not be liable for any claims from any  
 2777 party arising out of the escrow agent's delivery of the  
 2778 unclaimed funds to the division pursuant to this section.

2779 Section 49. Paragraph (e) of subsection (5) of section  
 2780 721.26, Florida Statutes, is amended to read:

2781 721.26 Regulation by division.--The division has the power  
 2782 to enforce and ensure compliance with the provisions of this  
 2783 chapter, except for parts III and IV, using the powers provided  
 2784 in this chapter, as well as the powers prescribed in chapters  
 2785 498, 718, and 719. In performing its duties, the division shall  
 2786 have the following powers and duties:

2787 (5) Notwithstanding any remedies available to purchasers,  
 2788 if the division has reasonable cause to believe that a violation  
 2789 of this chapter, or of any division rule or order promulgated or  
 2790 issued pursuant to this chapter, has occurred, the division may  
 2791 institute enforcement proceedings in its own name against any  
 2792 regulated party, as such term is defined in this subsection:

2793 (e)1. The division may impose a penalty against any  
 2794 regulated party for a violation of this chapter or any rule  
 2795 adopted thereunder. A penalty may be imposed on the basis of  
 2796 each day of continuing violation, but in no event may the  
 2797 penalty for any offense exceed \$10,000. All accounts collected  
 2798 shall be deposited with the Chief Financial Officer to the  
 2799 credit of the Division of Florida Land Sales, Condominiums,  
 2800 Homeowners' Associations, Community Association Management, and  
 2801 Mobile Homes Trust Fund.

HB 1229

2005

2802           2.a. If a regulated party fails to pay a penalty, the  
 2803 division shall thereupon issue an order directing that such  
 2804 regulated party cease and desist from further operation until  
 2805 such time as the penalty is paid; or the division may pursue  
 2806 enforcement of the penalty in a court of competent jurisdiction.

2807           b. If an owners' association or managing entity fails to  
 2808 pay a civil penalty, the division may pursue enforcement in a  
 2809 court of competent jurisdiction.

2810           Section 50. Section 721.28, Florida Statutes, is amended  
 2811 to read:

2812           721.28 Division of Florida Land Sales, Condominiums,  
 2813 Homeowners' Associations, Community Association Management, and  
 2814 Mobile Homes Trust Fund.--All funds collected by the division  
 2815 and any amounts paid as fees or penalties under this chapter  
 2816 shall be deposited in the State Treasury to the credit of the  
 2817 Division of Florida Land Sales, Condominiums, Homeowners'  
 2818 Associations, Community Association Management, and Mobile Homes  
 2819 Trust Fund created by s. 498.019.

2820           Section 51. Paragraph (c) of subsection (1) of section  
 2821 721.301, Florida Statutes, is amended to read:

2822           721.301 Florida Timesharing, Vacation Club, and  
 2823 Hospitality Program.--

2824           (1)

2825           (c) The director may designate funds from the Division of  
 2826 Florida Land Sales, Condominiums, Homeowners' Associations,  
 2827 Community Association Management, and Mobile Homes Trust Fund,  
 2828 not to exceed \$50,000 annually, to support the projects and  
 2829 proposals undertaken pursuant to paragraph (b). All state trust

2830 funds to be expended pursuant to this section must be matched  
 2831 equally with private moneys and shall comprise no more than half  
 2832 of the total moneys expended annually.

2833 Section 52. Section 721.50, Florida Statutes, is amended  
 2834 to read:

2835 721.50 Short title.--This part may be cited as the  
 2836 "McAllister Act" in recognition and appreciation for the years  
 2837 of extraordinary and insightful contributions by Mr. Bryan C.  
 2838 McAllister, Examinations Supervisor, Division of Florida Land  
 2839 Sales, Condominiums, Homeowners' Associations, Community  
 2840 Association Management, and Mobile Homes.

2841 Section 53. Subsection (1) of section 723.003, Florida  
 2842 Statutes, is amended to read:

2843 723.003 Definitions.--As used in this chapter, the  
 2844 following words and terms have the following meanings unless  
 2845 clearly indicated otherwise:

2846 (1) The term "division" means the Division of Florida Land  
 2847 Sales, Condominiums, Homeowners' Associations, Community  
 2848 Association Management, and Mobile Homes of the Department of  
 2849 Business and Professional Regulation.

2850 Section 54. Paragraph (e) of subsection (5) of section  
 2851 723.006, Florida Statutes, is amended to read:

2852 723.006 Powers and duties of division.--In performing its  
 2853 duties, the division has the following powers and duties:

2854 (5) Notwithstanding any remedies available to mobile home  
 2855 owners, mobile home park owners, and homeowners' associations,  
 2856 if the division has reasonable cause to believe that a violation  
 2857 of any provision of this chapter or any rule promulgated

2858 | pursuant hereto has occurred, the division may institute  
 2859 | enforcement proceedings in its own name against a developer,  
 2860 | mobile home park owner, or homeowners' association, or its  
 2861 | assignee or agent, as follows:

2862 |       (e)1. The division may impose a civil penalty against a  
 2863 | mobile home park owner or homeowners' association, or its  
 2864 | assignee or agent, for any violation of this chapter, a properly  
 2865 | promulgated park rule or regulation, or a rule or regulation  
 2866 | promulgated pursuant hereto. A penalty may be imposed on the  
 2867 | basis of each separate violation and, if the violation is a  
 2868 | continuing one, for each day of continuing violation, but in no  
 2869 | event may the penalty for each separate violation or for each  
 2870 | day of continuing violation exceed \$5,000. All amounts collected  
 2871 | shall be deposited with the Chief Financial Officer to the  
 2872 | credit of the Division of Florida Land Sales, Condominiums,  
 2873 | Homeowners' Associations, Community Association Management, and  
 2874 | Mobile Homes Trust Fund.

2875 |       2. If a violator fails to pay the civil penalty, the  
 2876 | division shall thereupon issue an order directing that such  
 2877 | violator cease and desist from further violation until such time  
 2878 | as the civil penalty is paid or may pursue enforcement of the  
 2879 | penalty in a court of competent jurisdiction. If a homeowners'  
 2880 | association fails to pay the civil penalty, the division shall  
 2881 | thereupon pursue enforcement in a court of competent  
 2882 | jurisdiction, and the order imposing the civil penalty or the  
 2883 | cease and desist order shall not become effective until 20 days  
 2884 | after the date of such order. Any action commenced by the

2885 | division shall be brought in the county in which the division  
 2886 | has its executive offices or in which the violation occurred.

2887 |       Section 55. Section 723.009, Florida Statutes, is amended  
 2888 | to read:

2889 |       723.009 Division of Florida Land Sales, Condominiums,  
 2890 | Homeowners' Associations, Community Association Management, and  
 2891 | Mobile Homes Trust Fund.--All proceeds from the fees, penalties,  
 2892 | and fines imposed pursuant to this chapter shall be deposited  
 2893 | into the Division of Florida Land Sales, Condominiums,  
 2894 | Homeowners' Associations, Community Association Management, and  
 2895 | Mobile Homes Trust Fund created by s. 498.019. Moneys in this  
 2896 | fund, as appropriated by the Legislature pursuant to chapter  
 2897 | 216, may be used to defray the expenses incurred by the division  
 2898 | in administering the provisions of this chapter.

2899 |       Section 56. Paragraph (c) of subsection (2) of section  
 2900 | 723.0611, Florida Statutes, is amended to read:

2901 |       723.0611 Florida Mobile Home Relocation Corporation.--

2902 |       (2)

2903 |       (c) There shall be no liability on the part of, and no  
 2904 | cause of action of any nature shall arise against, agents or  
 2905 | employees of the corporation, members of the board of directors  
 2906 | of the corporation, or representatives of the Division of  
 2907 | Florida Land Sales, Condominiums, Homeowners' Associations,  
 2908 | Community Association Management, and Mobile Homes for any act  
 2909 | or omission of the board of directors in the performance of  
 2910 | their powers and duties under this section, unless such act or  
 2911 | omission by such person is in intentional disregard of the  
 2912 | rights of the claimant.

HB 1229

2005

2913

Section 57. This act shall take effect July 1, 2005.