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1                                    A bill to be entitled  
2                    An act relating to condominium association complaints  
3                    and investigations; amending s. 20.201, F.S.; creating  
4                    an investigative unit within the Department of Law  
5                    Enforcement to investigate complaints that allege  
6                    criminal activity in connection with a residential  
7                    condominium association; requiring the investigative  
8                    unit to employ specified personnel; providing powers  
9                    of and requirements for the department; amending s.  
10                    718.501, F.S.; requiring the Division of Florida  
11                    Condominiums, Timeshares, and Mobile Homes to forward  
12                    certain complaints to the Department of Law  
13                    Enforcement; requiring the division to review  
14                    complaints within a specified timeframe and take  
15                    specified actions; providing an effective date.

16  
17    Be It Enacted by the Legislature of the State of Florida:  
18

19                    Section 1. Subsection (3) is added to section 20.201,  
20                    Florida Statutes, to read:

21                    20.201 Department of Law Enforcement.—

22                    (3)(a) The Department of Law Enforcement shall establish  
23                    and govern an investigative unit with the sole responsibility of  
24                    investigating complaints that allege criminal activity in  
25                    connection with a residential condominium association, as

26 defined in s. 718.103. The unit must be comprised of at least  
 27 four law enforcement officers certified under chapter 943 to  
 28 investigate such complaints.

29 (b) The department must accept complaints containing  
 30 allegations of criminal activity that are forwarded from the  
 31 Division of Florida Condominiums, Timeshares, and Mobile Homes  
 32 of the Department of Business and Professional Regulation. The  
 33 department has the power to subpoena, audit, and investigate  
 34 such complaints. The department may administer oaths, subpoena  
 35 witnesses, and compel the production of books, papers, or other  
 36 records relevant to investigations it conducts. If, after  
 37 reviewing a complaint, the department finds sufficient evidence  
 38 for criminal prosecution, it must refer the case to the  
 39 appropriate state attorney for prosecution.

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

42 718.501 Authority, responsibility, and duties of Division  
 43 of Florida Condominiums, Timeshares, and Mobile Homes.—

44 (1) The division may enforce and ensure compliance with  
 45 this chapter and rules relating to the development,  
 46 construction, sale, lease, ownership, operation, and management  
 47 of residential condominium units. In performing its duties, the  
 48 division has complete jurisdiction to investigate complaints and  
 49 enforce compliance with respect to associations that are still  
 50 under developer control or the control of a bulk assignee or

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51 bulk buyer pursuant to part VII of this chapter and complaints  
52 against developers, bulk assignees, or bulk buyers involving  
53 improper turnover or failure to turnover, pursuant to s.  
54 718.301. However, after turnover has occurred, the division has  
55 jurisdiction to investigate complaints related only to financial  
56 issues, elections, and the maintenance of and unit owner access  
57 to association records under s. 718.111(12). If the division  
58 receives a complaint alleging criminal activity, whether before  
59 or after turnover of the association, the division must forward  
60 the complaint to the Department of Law Enforcement.

61 (a)1. The division must, within 72 hours after receiving a  
62 complaint, review the complaint and determine whether the  
63 complaint, on its face, alleges any criminal activity. If the  
64 division determines that a complaint contains allegations of  
65 criminal activity the division shall forward the complaint to  
66 the Department of Law Enforcement for investigation. The  
67 division is responsible for investigating all portions of the  
68 complaint that do not allege criminal activity.

69 2. The division may make necessary public or private  
70 investigations within or outside the ~~this~~ state to determine  
71 whether any person has violated this chapter or any rule or  
72 order hereunder, to aid in the enforcement of this chapter, or  
73 to aid in the adoption of rules or forms.

74 3.2. The division may submit any official written report,  
75 worksheet, or other related paper, or a duly certified copy

76 | thereof, compiled, prepared, drafted, or otherwise made by and  
77 | duly authenticated by a financial examiner or analyst to be  
78 | admitted as competent evidence in any hearing in which the  
79 | financial examiner or analyst is available for cross-examination  
80 | and attests under oath that such documents were prepared as a  
81 | result of an examination or inspection conducted pursuant to  
82 | this chapter.

83 |       (b) The division may require or permit any person to file  
84 | a statement in writing, under oath or otherwise, as the division  
85 | determines, as to the facts and circumstances concerning a  
86 | matter to be investigated.

87 |       (c) For the purpose of any investigation under this  
88 | chapter, the division director or any officer or employee  
89 | designated by the division director may administer oaths or  
90 | affirmations, subpoena witnesses and compel their attendance,  
91 | take evidence, and require the production of any matter which is  
92 | relevant to the investigation, including the existence,  
93 | description, nature, custody, condition, and location of any  
94 | books, documents, or other tangible things and the identity and  
95 | location of persons having knowledge of relevant facts or any  
96 | other matter reasonably calculated to lead to the discovery of  
97 | material evidence. Upon the failure by a person to obey a  
98 | subpoena or to answer questions propounded by the investigating  
99 | officer and upon reasonable notice to all affected persons, the  
100 | division may apply to the circuit court for an order compelling

101 compliance.

102 (d) Notwithstanding any remedies available to unit owners  
103 and associations, if the division has reasonable cause to  
104 believe that a violation of ~~any provision of~~ this chapter or  
105 related rule has occurred, the division may institute  
106 enforcement proceedings in its own name against any developer,  
107 bulk assignee, bulk buyer, association, officer, or member of  
108 the board of administration, or its assignees or agents, as  
109 follows:

110 1. The division may permit a person whose conduct or  
111 actions may be under investigation to waive formal proceedings  
112 and enter into a consent proceeding whereby orders, rules, or  
113 letters of censure or warning, whether formal or informal, may  
114 be entered against the person.

115 2. The division may issue an order requiring the  
116 developer, bulk assignee, bulk buyer, association, developer-  
117 designated officer, or developer-designated member of the board  
118 of administration, developer-designated assignees or agents,  
119 bulk assignee-designated assignees or agents, bulk buyer-  
120 designated assignees or agents, community association manager,  
121 or community association management firm to cease and desist  
122 from the unlawful practice and take such affirmative action as  
123 in the judgment of the division carry out the purposes of this  
124 chapter. If the division finds that a developer, bulk assignee,  
125 bulk buyer, association, officer, or member of the board of

126 administration, or its assignees or agents, is violating or is  
127 about to violate ~~any provision of~~ this chapter, any rule adopted  
128 or order issued by the division, or any written agreement  
129 entered into with the division, and presents an immediate danger  
130 to the public requiring an immediate final order, it may issue  
131 an emergency cease and desist order reciting with particularity  
132 the facts underlying such findings. The emergency cease and  
133 desist order is effective for 90 days. If the division begins  
134 nonemergency cease and desist proceedings, the emergency cease  
135 and desist order remains effective until the conclusion of the  
136 proceedings under ss. 120.569 and 120.57.

137 3. If a developer, bulk assignee, or bulk buyer fails to  
138 pay any restitution determined by the division to be owed, plus  
139 any accrued interest at the highest rate permitted by law,  
140 within 30 days after expiration of any appellate time period of  
141 a final order requiring payment of restitution or the conclusion  
142 of any appeal thereof, whichever is later, the division must  
143 bring an action in circuit or county court on behalf of any  
144 association, class of unit owners, lessees, or purchasers for  
145 restitution, declaratory relief, injunctive relief, or any other  
146 available remedy. The division may also temporarily revoke its  
147 acceptance of the filing for the developer to which the  
148 restitution relates until payment of restitution is made.

149 4. The division may petition the court for appointment of  
150 a receiver or conservator. If appointed, the receiver or

151 conservator may take action to implement the court order to  
152 ensure the performance of the order and to remedy any breach  
153 thereof. In addition to all other means provided by law for the  
154 enforcement of an injunction or temporary restraining order, the  
155 circuit court may impound or sequester the property of a party  
156 defendant, including books, papers, documents, and related  
157 records, and allow the examination and use of the property by  
158 the division and a court-appointed receiver or conservator.

159         5. The division may apply to the circuit court for an  
160 order of restitution whereby the defendant in an action brought  
161 under subparagraph 4. is ordered to make restitution of those  
162 sums shown by the division to have been obtained by the  
163 defendant in violation of this chapter. At the option of the  
164 court, such restitution is payable to the conservator or  
165 receiver appointed under subparagraph 4. or directly to the  
166 persons whose funds or assets were obtained in violation of this  
167 chapter.

168         6. The division may impose a civil penalty against a  
169 developer, bulk assignee, or bulk buyer, or association, or its  
170 assignee or agent, for any violation of this chapter or related  
171 rule. The division may impose a civil penalty individually  
172 against an officer or board member who willfully and knowingly  
173 violates this chapter, an adopted rule, or a final order of the  
174 division; may order the removal of such individual as an officer  
175 or from the board of administration or as an officer of the

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176 association; and may prohibit such individual from serving as an  
177 officer or on the board of a community association for a period  
178 of time. The term "willfully and knowingly" means that the  
179 division informed the officer or board member that his or her  
180 action or intended action violates this chapter, a rule adopted  
181 under this chapter, or a final order of the division and that  
182 the officer or board member refused to comply with the  
183 requirements of this chapter, a rule adopted under this chapter,  
184 or a final order of the division. The division, before  
185 initiating formal agency action under chapter 120, must afford  
186 the officer or board member an opportunity to voluntarily  
187 comply, and an officer or board member who complies within 10  
188 days is not subject to a civil penalty. A penalty may be imposed  
189 on the basis of each day of continuing violation, but the  
190 penalty for any offense may not exceed \$5,000. The division  
191 shall adopt, by rule, penalty guidelines applicable to possible  
192 violations or to categories of violations of this chapter or  
193 rules adopted by the division. The guidelines must specify a  
194 meaningful range of civil penalties for each such violation of  
195 the statute and rules and must be based upon the harm caused by  
196 the violation, the repetition of the violation, and upon such  
197 other factors deemed relevant by the division. For example, the  
198 division may consider whether the violations were committed by a  
199 developer, bulk assignee, or bulk buyer, or owner-controlled  
200 association, the size of the association, and other factors. The



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201 guidelines must designate the possible mitigating or aggravating  
202 circumstances that justify a departure from the range of  
203 penalties provided by the rules. It is the legislative intent  
204 that minor violations be distinguished from those which endanger  
205 the health, safety, or welfare of the condominium residents or  
206 other persons and that such guidelines provide reasonable and  
207 meaningful notice to the public of likely penalties that may be  
208 imposed for proscribed conduct. This subsection does not limit  
209 the ability of the division to informally dispose of  
210 administrative actions or complaints by stipulation, agreed  
211 settlement, or consent order. All amounts collected shall be  
212 deposited with the Chief Financial Officer to the credit of the  
213 Division of Florida Condominiums, Timeshares, and Mobile Homes  
214 Trust Fund. If a developer, bulk assignee, or bulk buyer fails  
215 to pay the civil penalty and the amount deemed to be owed to the  
216 association, the division shall issue an order directing that  
217 such developer, bulk assignee, or bulk buyer cease and desist  
218 from further operation until such time as the civil penalty is  
219 paid or may pursue enforcement of the penalty in a court of  
220 competent jurisdiction. If an association fails to pay the civil  
221 penalty, the division shall pursue enforcement in a court of  
222 competent jurisdiction, and the order imposing the civil penalty  
223 or the cease and desist order is not effective until 20 days  
224 after the date of such order. Any action commenced by the  
225 division shall be brought in the county in which the division

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226 | has its executive offices or in the county where the violation  
227 | occurred.

228 |       7. If a unit owner presents the division with proof that  
229 | the unit owner has requested access to official records in  
230 | writing by certified mail, and that after 10 days the unit owner  
231 | again made the same request for access to official records in  
232 | writing by certified mail, and that more than 10 days has  
233 | elapsed since the second request and the association has still  
234 | failed or refused to provide access to official records as  
235 | required by this chapter, the division shall issue a subpoena  
236 | requiring production of the requested records where the records  
237 | are kept pursuant to s. 718.112.

238 |       8. In addition to subparagraph 6., the division may seek  
239 | the imposition of a civil penalty through the circuit court for  
240 | any violation for which the division may issue a notice to show  
241 | cause under paragraph (r). The civil penalty shall be at least  
242 | \$500 but no more than \$5,000 for each violation. The court may  
243 | also award to the prevailing party court costs and reasonable  
244 | attorney fees and, if the division prevails, may also award  
245 | reasonable costs of investigation.

246 |       (e) The division may prepare and disseminate a prospectus  
247 | and other information to assist prospective owners, purchasers,  
248 | lessees, and developers of residential condominiums in assessing  
249 | the rights, privileges, and duties pertaining thereto.

250 |       (f) The division may adopt rules to administer and enforce

251 | this chapter.

252 |       (g) The division shall establish procedures for providing  
253 | notice to an association and the developer, bulk assignee, or  
254 | bulk buyer during the period in which the developer, bulk  
255 | assignee, or bulk buyer controls the association if the division  
256 | is considering the issuance of a declaratory statement with  
257 | respect to the declaration of condominium or any related  
258 | document governing such condominium community.

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

262 |       (i) The division shall annually provide each association  
263 | with a summary of declaratory statements and formal legal  
264 | opinions relating to the operations of condominiums which were  
265 | rendered by the division during the previous year.

266 |       (j) The division shall provide training and educational  
267 | programs for condominium association board members and unit  
268 | owners. The training may, in the division's discretion, include  
269 | web-based electronic media, and live training and seminars in  
270 | various locations throughout the state. The division may review  
271 | and approve education and training programs for board members  
272 | and unit owners offered by providers and shall maintain a  
273 | current list of approved programs and providers and make such  
274 | list available to board members and unit owners in a reasonable  
275 | and cost-effective manner.

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

278 (l) The division shall develop a program to certify both  
 279 volunteer and paid mediators to provide mediation of condominium  
 280 disputes. The division shall provide, upon request, a list of  
 281 such mediators to any association, unit owner, or other  
 282 participant in alternative dispute resolution proceedings under  
 283 s. 718.1255 requesting a copy of the list. The division shall  
 284 include on the list of volunteer mediators only the names of  
 285 persons who have received at least 20 hours of training in  
 286 mediation techniques or who have mediated at least 20 disputes.  
 287 In order to become initially certified by the division, paid  
 288 mediators must be certified by the Supreme Court to mediate  
 289 court cases in county or circuit courts. However, the division  
 290 may adopt, by rule, additional factors for the certification of  
 291 paid mediators, which must be related to experience, education,  
 292 or background. Any person initially certified as a paid mediator  
 293 by the division must, in order to continue to be certified,  
 294 comply with the factors or requirements adopted by rule.

295 (m) If a complaint is made, the division must conduct its  
 296 inquiry with due regard for the interests of the affected  
 297 parties. Within 30 days after receipt of a complaint, the  
 298 division shall acknowledge the complaint in writing and notify  
 299 the complainant whether the complaint is within the jurisdiction  
 300 of the division and whether additional information is needed by

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301 the division from the complainant. The division shall conduct  
302 its investigation and, within 90 days after receipt of the  
303 original complaint or of timely requested additional  
304 information, take action upon the complaint. However, the  
305 failure to complete the investigation within 90 days does not  
306 prevent the division from continuing the investigation,  
307 accepting or considering evidence obtained or received after 90  
308 days, or taking administrative action if reasonable cause exists  
309 to believe that a violation of this chapter or a rule has  
310 occurred. If an investigation is not completed within the time  
311 limits established in this paragraph, the division shall, on a  
312 monthly basis, notify the complainant in writing of the status  
313 of the investigation. When reporting its action to the  
314 complainant, the division shall inform the complainant of any  
315 right to a hearing under ss. 120.569 and 120.57. The division  
316 may adopt rules regarding the submission of a complaint against  
317 an association.

318 (n) Condominium association directors, officers, and  
319 employees; condominium developers; bulk assignees, bulk buyers,  
320 and community association managers; and community association  
321 management firms have an ongoing duty to reasonably cooperate  
322 with the division in any investigation under this section. The  
323 division shall refer to local law enforcement authorities any  
324 person whom the division believes has altered, destroyed,  
325 concealed, or removed any record, document, or thing required to

326 | be kept or maintained by this chapter with the purpose to impair  
327 | its verity or availability in the department's investigation.

328 |       (o) The division may:

329 |           1. Contract with agencies in the ~~this~~ state or other  
330 | jurisdictions to perform investigative functions; or

331 |           2. Accept grants-in-aid from any source.

332 |       (p) The division shall cooperate with similar agencies in  
333 | other jurisdictions to establish uniform filing procedures and  
334 | forms, public offering statements, advertising standards, and  
335 | rules and common administrative practices.

336 |       (q) The division shall consider notice to a developer,  
337 | bulk assignee, or bulk buyer to be complete when it is delivered  
338 | to the address of the developer, bulk assignee, or bulk buyer  
339 | currently on file with the division.

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

343 |       (s) The division shall submit to the Governor, the  
344 | President of the Senate, the Speaker of the House of  
345 | Representatives, and the chairs of the legislative  
346 | appropriations committees an annual report that includes, but  
347 | need not be limited to, the number of training programs provided  
348 | for condominium association board members and unit owners, the  
349 | number of complaints received by type, the number and percent of  
350 | complaints acknowledged in writing within 30 days and the number

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351 and percent of investigations acted upon within 90 days in  
352 accordance with paragraph (m), and the number of investigations  
353 exceeding the 90-day requirement. The annual report must also  
354 include an evaluation of the division's core business processes  
355 and make recommendations for improvements, including statutory  
356 changes. The report shall be submitted by September 30 following  
357 the end of the fiscal year.

358 Section 3. This act shall take effect October 1, 2022.