

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to the Condominium Fraud Investigation
3 Pilot Program; creating s. 16.81, F.S.; creating the
4 Condominium Fraud Investigation Pilot Program within
5 the Department of Legal Affairs in the Office of the
6 Attorney General; providing a purpose for the program;
7 authorizing the department to contract with a private
8 entity to achieve the purpose of the program;
9 requiring the department to hire specified personnel;
10 authorizing a person to submit a complaint to the
11 Office of the Condominium Ombudsman; requiring the
12 ombudsman to review complaints and take specified
13 actions; providing powers of and requirements for the
14 department relating to the pilot program; requiring
15 that the pilot program be funded from the Division of
16 Florida Condominiums, Timeshares, and Mobile Homes
17 Trust Fund; providing for future repeal of the program
18 unless reviewed and saved from repeal by the
19 Legislature; amending s. 718.501, F.S.; requiring the
20 Division of Florida Condominiums, Timeshares, and
21 Mobile Homes to forward complaints received alleging
22 fraud or corruption to the Office of the Condominium
23 Ombudsman; amending s. 718.5012, F.S.; revising the
24 powers of the ombudsman; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 16.81, Florida Statutes, is created to
29 read:

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30 16.81 The Condominium Fraud Investigation Pilot Program.-

31 (1) The Condominium Fraud Investigation Pilot Program is
32 created within the Department of Legal Affairs in the Office of
33 the Attorney General. The purpose of the program is to
34 investigate condominium-related fraud and corruption in Broward,
35 Miami-Dade, and Monroe Counties. The department may contract
36 with a private entity that employs retired law enforcement
37 officers who have subject matter expertise in financial fraud to
38 achieve the purpose of the program. The department shall hire
39 five law enforcement officers certified under chapter 943 to
40 carry out the purpose of the program. If the department does not
41 contract with a private entity, the department must hire three
42 financial investigators, five investigators with previous law
43 enforcement experience, and three clerical employees to staff
44 the program.

45 (2) A person may submit a complaint to the Office of the
46 Condominium Ombudsman. The ombudsman shall review all complaints
47 submitted to the office and determine which complaints to
48 forward to the department for additional analysis and
49 investigation under the program. If a complaint submitted to the
50 office does not contain allegations of fraud or corruption, the
51 ombudsman must forward the complaint to the Division of Florida
52 Condominiums, Timeshares, and Mobile Homes.

53 (3) The department has the power to subpoena, audit, and
54 investigate for the purposes of the program. The department may
55 administer oaths, subpoena witnesses, and compel the production
56 of books, papers, or other records relevant to investigations it
57 conducts. If, after reviewing a complaint under the program, the
58 department finds sufficient evidence for criminal prosecution,

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59 it must refer the case to the appropriate state attorney for
60 prosecution.

61 (4) The program must be funded annually from the Division
62 of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund
63 with funds specifically appropriated in the General
64 Appropriations Act.

65 (5) This section is repealed October 2, 2028, unless
66 reviewed and saved from repeal through reenactment by the
67 Legislature.

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

70 718.501 Authority, responsibility, and duties of Division
71 of Florida Condominiums, Timeshares, and Mobile Homes.—

72 (1) The division may enforce and ensure compliance with
73 this chapter and rules relating to the development,
74 construction, sale, lease, ownership, operation, and management
75 of residential condominium units and complaints related to the
76 procedural completion of milestone inspections under s. 553.899.
77 In performing its duties, the division has complete jurisdiction
78 to investigate complaints and enforce compliance with respect to
79 associations that are still under developer control or the
80 control of a bulk assignee or bulk buyer pursuant to part VII of
81 this chapter and complaints against developers, bulk assignees,
82 or bulk buyers involving improper turnover or failure to
83 turnover, pursuant to s. 718.301. However, after turnover has
84 occurred, the division has jurisdiction to investigate
85 complaints related only to financial issues, elections, and the
86 maintenance of and unit owner access to association records
87 under s. 718.111(12), and the procedural completion of

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88 structural integrity reserve studies under s. 718.112(2)(g). If
89 the division receives a complaint alleging fraud or corruption,
90 the division must forward the complaint to the Office of the
91 Condominium Ombudsman.

92 (a)1. The division may make necessary public or private
93 investigations within or outside this state to determine whether
94 any person has violated this chapter or any rule or order
95 hereunder, to aid in the enforcement of this chapter, or to aid
96 in the adoption of rules or forms.

97 2. The division may submit any official written report,
98 worksheet, or other related paper, or a duly certified copy
99 thereof, compiled, prepared, drafted, or otherwise made by and
100 duly authenticated by a financial examiner or analyst to be
101 admitted as competent evidence in any hearing in which the
102 financial examiner or analyst is available for cross-examination
103 and attests under oath that such documents were prepared as a
104 result of an examination or inspection conducted pursuant to
105 this chapter.

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

110 (c) For the purpose of any investigation under this
111 chapter, the division director or any officer or employee
112 designated by the division director may administer oaths or
113 affirmations, subpoena witnesses and compel their attendance,
114 take evidence, and require the production of any matter which is
115 relevant to the investigation, including the existence,
116 description, nature, custody, condition, and location of any

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117 books, documents, or other tangible things and the identity and
118 location of persons having knowledge of relevant facts or any
119 other matter reasonably calculated to lead to the discovery of
120 material evidence. Upon the failure by a person to obey a
121 subpoena or to answer questions propounded by the investigating
122 officer and upon reasonable notice to all affected persons, the
123 division may apply to the circuit court for an order compelling
124 compliance.

125 (d) Notwithstanding any remedies available to unit owners
126 and associations, if the division has reasonable cause to
127 believe that a violation of any provision of this chapter or
128 related rule has occurred, the division may institute
129 enforcement proceedings in its own name against any developer,
130 bulk assignee, bulk buyer, association, officer, or member of
131 the board of administration, or its assignees or agents, as
132 follows:

133 1. The division may permit a person whose conduct or
134 actions may be under investigation to waive formal proceedings
135 and enter into a consent proceeding whereby orders, rules, or
136 letters of censure or warning, whether formal or informal, may
137 be entered against the person.

138 2. The division may issue an order requiring the developer,
139 bulk assignee, bulk buyer, association, developer-designated
140 officer, or developer-designated member of the board of
141 administration, developer-designated assignees or agents, bulk
142 assignee-designated assignees or agents, bulk buyer-designated
143 assignees or agents, community association manager, or community
144 association management firm to cease and desist from the
145 unlawful practice and take such affirmative action as in the

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146 judgment of the division carry out the purposes of this chapter.
147 If the division finds that a developer, bulk assignee, bulk
148 buyer, association, officer, or member of the board of
149 administration, or its assignees or agents, is violating or is
150 about to violate any provision of this chapter, any rule adopted
151 or order issued by the division, or any written agreement
152 entered into with the division, and presents an immediate danger
153 to the public requiring an immediate final order, it may issue
154 an emergency cease and desist order reciting with particularity
155 the facts underlying such findings. The emergency cease and
156 desist order is effective for 90 days. If the division begins
157 nonemergency cease and desist proceedings, the emergency cease
158 and desist order remains effective until the conclusion of the
159 proceedings under ss. 120.569 and 120.57.

160 3. If a developer, bulk assignee, or bulk buyer fails to
161 pay any restitution determined by the division to be owed, plus
162 any accrued interest at the highest rate permitted by law,
163 within 30 days after expiration of any appellate time period of
164 a final order requiring payment of restitution or the conclusion
165 of any appeal thereof, whichever is later, the division must
166 bring an action in circuit or county court on behalf of any
167 association, class of unit owners, lessees, or purchasers for
168 restitution, declaratory relief, injunctive relief, or any other
169 available remedy. The division may also temporarily revoke its
170 acceptance of the filing for the developer to which the
171 restitution relates until payment of restitution is made.

172 4. The division may petition the court for appointment of a
173 receiver or conservator. If appointed, the receiver or
174 conservator may take action to implement the court order to

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175 ensure the performance of the order and to remedy any breach
176 thereof. In addition to all other means provided by law for the
177 enforcement of an injunction or temporary restraining order, the
178 circuit court may impound or sequester the property of a party
179 defendant, including books, papers, documents, and related
180 records, and allow the examination and use of the property by
181 the division and a court-appointed receiver or conservator.

182 5. The division may apply to the circuit court for an order
183 of restitution whereby the defendant in an action brought under
184 subparagraph 4. is ordered to make restitution of those sums
185 shown by the division to have been obtained by the defendant in
186 violation of this chapter. At the option of the court, such
187 restitution is payable to the conservator or receiver appointed
188 under subparagraph 4. or directly to the persons whose funds or
189 assets were obtained in violation of this chapter.

190 6. The division may impose a civil penalty against a
191 developer, bulk assignee, or bulk buyer, or association, or its
192 assignee or agent, for any violation of this chapter or related
193 rule. The division may impose a civil penalty individually
194 against an officer or board member who willfully and knowingly
195 violates this chapter, an adopted rule, or a final order of the
196 division; may order the removal of such individual as an officer
197 or from the board of administration or as an officer of the
198 association; and may prohibit such individual from serving as an
199 officer or on the board of a community association for a period
200 of time. The term "willfully and knowingly" means that the
201 division informed the officer or board member that his or her
202 action or intended action violates this chapter, a rule adopted
203 under this chapter, or a final order of the division and that

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204 the officer or board member refused to comply with the
205 requirements of this chapter, a rule adopted under this chapter,
206 or a final order of the division. The division, before
207 initiating formal agency action under chapter 120, must afford
208 the officer or board member an opportunity to voluntarily
209 comply, and an officer or board member who complies within 10
210 days is not subject to a civil penalty. A penalty may be imposed
211 on the basis of each day of continuing violation, but the
212 penalty for any offense may not exceed \$5,000. The division
213 shall adopt, by rule, penalty guidelines applicable to possible
214 violations or to categories of violations of this chapter or
215 rules adopted by the division. The guidelines must specify a
216 meaningful range of civil penalties for each such violation of
217 the statute and rules and must be based upon the harm caused by
218 the violation, upon the repetition of the violation, and upon
219 such other factors deemed relevant by the division. For example,
220 the division may consider whether the violations were committed
221 by a developer, bulk assignee, or bulk buyer, or owner-
222 controlled association, the size of the association, and other
223 factors. The guidelines must designate the possible mitigating
224 or aggravating circumstances that justify a departure from the
225 range of penalties provided by the rules. It is the legislative
226 intent that minor violations be distinguished from those which
227 endanger the health, safety, or welfare of the condominium
228 residents or other persons and that such guidelines provide
229 reasonable and meaningful notice to the public of likely
230 penalties that may be imposed for proscribed conduct. This
231 subsection does not limit the ability of the division to
232 informally dispose of administrative actions or complaints by

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233 stipulation, agreed settlement, or consent order. All amounts
234 collected shall be deposited with the Chief Financial Officer to
235 the credit of the Division of Florida Condominiums, Timeshares,
236 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
237 bulk buyer fails to pay the civil penalty and the amount deemed
238 to be owed to the association, the division shall issue an order
239 directing that such developer, bulk assignee, or bulk buyer
240 cease and desist from further operation until such time as the
241 civil penalty is paid or may pursue enforcement of the penalty
242 in a court of competent jurisdiction. If an association fails to
243 pay the civil penalty, the division shall pursue enforcement in
244 a court of competent jurisdiction, and the order imposing the
245 civil penalty or the cease and desist order is not effective
246 until 20 days after the date of such order. Any action commenced
247 by the division shall be brought in the county in which the
248 division has its executive offices or in the county where the
249 violation occurred.

250 7. If a unit owner presents the division with proof that
251 the unit owner has requested access to official records in
252 writing by certified mail, and that after 10 days the unit owner
253 again made the same request for access to official records in
254 writing by certified mail, and that more than 10 days has
255 elapsed since the second request and the association has still
256 failed or refused to provide access to official records as
257 required by this chapter, the division shall issue a subpoena
258 requiring production of the requested records where the records
259 are kept pursuant to s. 718.112.

260 8. In addition to subparagraph 6., the division may seek
261 the imposition of a civil penalty through the circuit court for

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262 any violation for which the division may issue a notice to show
263 cause under paragraph (r). The civil penalty shall be at least
264 \$500 but no more than \$5,000 for each violation. The court may
265 also award to the prevailing party court costs and reasonable
266 attorney fees and, if the division prevails, may also award
267 reasonable costs of investigation.

268 (e) The division may prepare and disseminate a prospectus
269 and other information to assist prospective owners, purchasers,
270 lessees, and developers of residential condominiums in assessing
271 the rights, privileges, and duties pertaining thereto.

272 (f) The division may adopt rules to administer and enforce
273 this chapter.

274 (g) The division shall establish procedures for providing
275 notice to an association and the developer, bulk assignee, or
276 bulk buyer during the period in which the developer, bulk
277 assignee, or bulk buyer controls the association if the division
278 is considering the issuance of a declaratory statement with
279 respect to the declaration of condominium or any related
280 document governing such condominium community.

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

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

288 (j) The division shall provide training and educational
289 programs for condominium association board members and unit
290 owners. The training may, in the division's discretion, include

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291 web-based electronic media and live training and seminars in
292 various locations throughout the state. The division may review
293 and approve education and training programs for board members
294 and unit owners offered by providers and shall maintain a
295 current list of approved programs and providers and make such
296 list available to board members and unit owners in a reasonable
297 and cost-effective manner.

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

300 (l) The division shall develop a program to certify both
301 volunteer and paid mediators to provide mediation of condominium
302 disputes. The division shall provide, upon request, a list of
303 such mediators to any association, unit owner, or other
304 participant in alternative dispute resolution proceedings under
305 s. 718.1255 requesting a copy of the list. The division shall
306 include on the list of volunteer mediators only the names of
307 persons who have received at least 20 hours of training in
308 mediation techniques or who have mediated at least 20 disputes.
309 In order to become initially certified by the division, paid
310 mediators must be certified by the Supreme Court to mediate
311 court cases in county or circuit courts. However, the division
312 may adopt, by rule, additional factors for the certification of
313 paid mediators, which must be related to experience, education,
314 or background. Any person initially certified as a paid mediator
315 by the division must, in order to continue to be certified,
316 comply with the factors or requirements adopted by rule.

317 (m) If a complaint is made, the division must conduct its
318 inquiry with due regard for the interests of the affected
319 parties. Within 30 days after receipt of a complaint, the

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320 division shall acknowledge the complaint in writing and notify
321 the complainant whether the complaint is within the jurisdiction
322 of the division and whether additional information is needed by
323 the division from the complainant. The division shall conduct
324 its investigation and, within 90 days after receipt of the
325 original complaint or of timely requested additional
326 information, take action upon the complaint. However, the
327 failure to complete the investigation within 90 days does not
328 prevent the division from continuing the investigation,
329 accepting or considering evidence obtained or received after 90
330 days, or taking administrative action if reasonable cause exists
331 to believe that a violation of this chapter or a rule has
332 occurred. If an investigation is not completed within the time
333 limits established in this paragraph, the division shall, on a
334 monthly basis, notify the complainant in writing of the status
335 of the investigation. When reporting its action to the
336 complainant, the division shall inform the complainant of any
337 right to a hearing under ss. 120.569 and 120.57. The division
338 may adopt rules regarding the submission of a complaint against
339 an association.

340 (n) Condominium association directors, officers, and
341 employees; condominium developers; bulk assignees, bulk buyers,
342 and community association managers; and community association
343 management firms have an ongoing duty to reasonably cooperate
344 with the division in any investigation under this section. The
345 division shall refer to local law enforcement authorities any
346 person whom the division believes has altered, destroyed,
347 concealed, or removed any record, document, or thing required to
348 be kept or maintained by this chapter with the purpose to impair

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349 its verity or availability in the department's investigation.

350 (o) The division may:

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

354 (p) The division shall cooperate with similar agencies in
355 other jurisdictions to establish uniform filing procedures and
356 forms, public offering statements, advertising standards, and
357 rules and common administrative practices.

358 (q) The division shall consider notice to a developer, bulk
359 assignee, or bulk buyer to be complete when it is delivered to
360 the address of the developer, bulk assignee, or bulk buyer
361 currently on file with the division.

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

365 (s) The division shall submit to the Governor, the
366 President of the Senate, the Speaker of the House of
367 Representatives, and the chairs of the legislative
368 appropriations committees an annual report that includes, but
369 need not be limited to, the number of training programs provided
370 for condominium association board members and unit owners, the
371 number of complaints received by type, the number and percent of
372 complaints acknowledged in writing within 30 days and the number
373 and percent of investigations acted upon within 90 days in
374 accordance with paragraph (m), and the number of investigations
375 exceeding the 90-day requirement. The annual report must also
376 include an evaluation of the division's core business processes
377 and make recommendations for improvements, including statutory

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378 changes. The report shall be submitted by September 30 following
379 the end of the fiscal year.

380 Section 3. Subsections (11), (12), and (13) are added to
381 section 718.5012, Florida Statutes, to read:

382 718.5012 Ombudsman; powers and duties.—The ombudsman shall
383 have the powers that are necessary to carry out the duties of
384 his or her office, including the following specific powers:

385 (11) To void an election if the ombudsman determines that a
386 violation of this chapter has occurred relating to a condominium
387 association election.

388 (12) To petition the court to appoint a receiver if the
389 appointment of a receiver is in the best interests of the
390 association or unit owners.

391 (13) To subpoena, audit, and investigate for the purposes
392 of the Condominium Fraud Investigation Pilot Program under s.
393 16.81.

394 Section 4. This act shall take effect October 1, 2023.