

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; amending s.
23 718.5012, F.S.; revising the powers of the ombudsman;
24 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, 2027, 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. In performing its duties, the
76 division has complete jurisdiction to investigate complaints and
77 enforce compliance with respect to associations that are still
78 under developer control or the control of a bulk assignee or
79 bulk buyer pursuant to part VII of this chapter and complaints
80 against developers, bulk assignees, or bulk buyers involving
81 improper turnover or failure to turnover, pursuant to s.
82 718.301. However, after turnover has occurred, the division has
83 jurisdiction to investigate complaints related only to financial
84 issues, elections, and the maintenance of and unit owner access
85 to association records under s. 718.111(12). If the division
86 receives a complaint alleging fraud or corruption, the division
87 must forward the complaint to the Office of the Condominium

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88 Ombudsman.

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

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

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

107 (c) For the purpose of any investigation under this
108 chapter, the division director or any officer or employee
109 designated by the division director may administer oaths or
110 affirmations, subpoena witnesses and compel their attendance,
111 take evidence, and require the production of any matter which is
112 relevant to the investigation, including the existence,
113 description, nature, custody, condition, and location of any
114 books, documents, or other tangible things and the identity and
115 location of persons having knowledge of relevant facts or any
116 other matter reasonably calculated to lead to the discovery of

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117 material evidence. Upon the failure by a person to obey a
118 subpoena or to answer questions propounded by the investigating
119 officer and upon reasonable notice to all affected persons, the
120 division may apply to the circuit court for an order compelling
121 compliance.

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

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

135 2. The division may issue an order requiring the developer,
136 bulk assignee, bulk buyer, association, developer-designated
137 officer, or developer-designated member of the board of
138 administration, developer-designated assignees or agents, bulk
139 assignee-designated assignees or agents, bulk buyer-designated
140 assignees or agents, community association manager, or community
141 association management firm to cease and desist from the
142 unlawful practice and take such affirmative action as in the
143 judgment of the division carry out the purposes of this chapter.
144 If the division finds that a developer, bulk assignee, bulk
145 buyer, association, officer, or member of the board of

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

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

169 4. The division may petition the court for appointment of a
170 receiver or conservator. If appointed, the receiver or
171 conservator may take action to implement the court order to
172 ensure the performance of the order and to remedy any breach
173 thereof. In addition to all other means provided by law for the
174 enforcement of an injunction or temporary restraining order, the

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175 circuit court may impound or sequester the property of a party
176 defendant, including books, papers, documents, and related
177 records, and allow the examination and use of the property by
178 the division and a court-appointed receiver or conservator.

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

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

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

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233 Trust Fund. If a developer, bulk assignee, or bulk buyer fails
234 to pay the civil penalty and the amount deemed to be owed to the
235 association, the division shall issue an order directing that
236 such developer, bulk assignee, or bulk buyer cease and desist
237 from further operation until such time as the civil penalty is
238 paid or may pursue enforcement of the penalty in a court of
239 competent jurisdiction. If an association fails to pay the civil
240 penalty, the division shall pursue enforcement in a court of
241 competent jurisdiction, and the order imposing the civil penalty
242 or the cease and desist order is not effective until 20 days
243 after the date of such order. Any action commenced by the
244 division shall be brought in the county in which the division
245 has its executive offices or in the county where the violation
246 occurred.

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

257 8. In addition to subparagraph 6., the division may seek
258 the imposition of a civil penalty through the circuit court for
259 any violation for which the division may issue a notice to show
260 cause under paragraph (r). The civil penalty shall be at least
261 \$500 but no more than \$5,000 for each violation. The court may

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262 also award to the prevailing party court costs and reasonable
263 attorney fees and, if the division prevails, may also award
264 reasonable costs of investigation.

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

269 (f) The division may adopt rules to administer and enforce
270 this chapter.

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

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

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

285 (j) The division shall provide training and educational
286 programs for condominium association board members and unit
287 owners. The training may, in the division's discretion, include
288 web-based electronic media, and live training and seminars in
289 various locations throughout the state. The division may review
290 and approve education and training programs for board members

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291 and unit owners offered by providers and shall maintain a
292 current list of approved programs and providers and make such
293 list available to board members and unit owners in a reasonable
294 and cost-effective manner.

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

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

314 (m) If a complaint is made, the division must conduct its
315 inquiry with due regard for the interests of the affected
316 parties. Within 30 days after receipt of a complaint, the
317 division shall acknowledge the complaint in writing and notify
318 the complainant whether the complaint is within the jurisdiction
319 of the division and whether additional information is needed by

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

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

347 (o) The division may:

348 1. Contract with agencies in this state or other

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349 jurisdictions to perform investigative functions; or

350 2. Accept grants-in-aid from any source.

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

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

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

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

377 Section 3. Subsections (11), (12), and (13) are added to

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378 section 718.5012, Florida Statutes, to read:

379 718.5012 Ombudsman; powers and duties.—The ombudsman shall
380 have the powers that are necessary to carry out the duties of
381 his or her office, including the following specific powers:

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

385 (12) To petition the court to appoint a receiver if the
386 appointment of a receiver is in the best interests of the
387 association or unit owners.

388 (13) To subpoena, audit, and investigate for the purposes
389 of the Condominium Fraud Investigation Pilot Program under s.
390 16.81.

391 Section 4. This act shall take effect October 1, 2022.