

Select Year:

The 2008 Florida Statutes

[Title XL](#)
REAL AND PERSONAL PROPERTY

[Chapter 719](#)
COOPERATIVES

[View Entire Chapter](#)

719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.--

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units. In performing its duties, the division shall have the following powers and duties:

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

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

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

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

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

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

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

4. The division may impose a civil penalty against a developer or association, or its assignees or agents, for any violation of this chapter or related rule. The division may impose a civil penalty individually against any officer or board member who willfully and knowingly violates a provision of this chapter, a rule adopted pursuant to this chapter, or a final order of the division. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division, and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, prior to initiating formal agency action under chapter 120, shall afford the officer or board member an opportunity to voluntarily comply with this chapter, a rule adopted under this chapter, or a final order of the division. An officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the cooperative residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order shall not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective

owners, purchasers, lessees, and developers of residential cooperatives in assessing the rights, privileges, and duties pertaining thereto.

(f) The division has authority to adopt rules pursuant to ss. [120.536\(1\)](#) and [120.54](#) to implement and enforce the provisions of this chapter.

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

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

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

(j) The division shall adopt uniform accounting principles, policies, and standards to be used by all associations in the preparation and presentation of all financial statements required by this chapter. The principles, policies, and standards shall take into consideration the size of the association and the total revenue collected by the association.

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

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

(m) When a complaint is made to the division, the division shall conduct its inquiry with reasonable dispatch and with due regard to the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule of the division has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. [120.569](#) and [120.57](#).

(n) The division shall develop a program to certify both volunteer and paid mediators to provide

mediation of cooperative disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. [718.1255](#) requesting a copy of the list. The division shall include on the list of voluntary mediators only persons who have received at least 20 hours of training in mediation techniques or have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which factors must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements imposed by rules adopted by the division.

(2)(a) Each cooperative association shall pay to the division, on or before January 1 of each year, an annual fee in the amount of \$4 for each residential unit in cooperatives operated by the association. If the fee is not paid by March 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association shall not have the standing to maintain or defend any action in the courts of this state until the amount due is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

History.--s. 2, ch. 76-222; s. 1, ch. 77-174; s. 4, ch. 78-323; s. 33, ch. 79-4; s. 11, ch. 79-284; s. 6, ch. 81-172; s. 14, ch. 81-185; s. 479, ch. 81-259; s. 35, ch. 83-85; s. 155, ch. 83-216; s. 11, ch. 85-60; s. 32, ch. 86-175; s. 21, ch. 87-102; s. 28, ch. 92-49; s. 238, ch. 94-218; s. 300, ch. 96-410; s. 1776, ch. 97-102; s. 5, ch. 97-301; s. 222, ch. 98-200; s. 1892, ch. 2003-261; s. 57, ch. 2008-240.