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Report No. 10-03

## DBPR Increased Unlicensed Construction Enforcement Efforts; Electronic Submission Could Improve Complaint Processing

### *at a glance*

Consistent with recommendations in our 2008 report, the Department of Business and Professional Regulation has improved efforts to address unlicensed construction activity. However, the department has not developed procedures to allow consumers to file complaints electronically; other agencies have successfully implemented such systems. Construction Industry Licensing Board officials have not modified board penalties for serious complaints such as financial mismanagement or abandonment. As anticipated, the Florida Homeowners' Construction Recovery Fund has experienced significant funding shortfalls that have affected payments to homeowners.

### Scope

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Business and Professional Regulation (DBPR) in response to a 2008 OPPAGA report that examined the department's process for handling construction complaints.<sup>1</sup>

<sup>1</sup> *Several Steps Could Be Taken to Improve the Construction*

### Background

The Department of Business and Professional Regulation and the Construction Industry Licensing Board regulate Florida's construction industry with the goal of protecting public health, safety, and welfare by licensing contractors. State law requires that certain construction professionals obtain a license, meet minimal standards, complete annual continuing education requirements, and renew licenses biennially.<sup>2</sup>

The board approves or denies licensing applications and continuing education courses. Licensing and renewal fees are deposited into the Professional Regulation Trust Fund to pay for board expenses. In Fiscal Year 2008-09, the board had \$15.1 million in revenues and expenditures of \$11.6 million.

*Complaint Process and Increase Homeowner Protection*, OPPAGA [Report No. 08-21](#), April 2008.

<sup>2</sup> Construction licenses fall into two groups; Division I includes general, building, and residential contractors while the remaining construction professions fall into Division II. The department's Division of Professions processes license applications and prepares licensing documents for final approval or denial by the board. The department's Division of Regulation acts as the enforcement authority for professional boards and investigates consumer complaints.

The board carries out enforcement activities, including reviewing disciplinary cases to determine whether contractors should be disciplined and assessing fines or other penalties (e.g., license suspensions or revocations) when it determines contractors have violated board rules or Florida statutes. The board also reviews and decides claims made to the Florida Homeowners' Construction Recovery Fund, which the Legislature established to compensate homeowners who suffer actual damages resulting in a violation of Florida statute.

Our 2008 report noted that the department typically closed complaints filed against construction contractors within 112 days in Fiscal Year 2006-07, although some cases took much longer to close. We also identified several concerns.

- Unlicensed individuals often provided investigators with inaccurate information thereby reducing the effectiveness of enforcement efforts.
- The department was receiving a significant increase in serious complaint allegations such as financial mismanagement and abandonment.<sup>3</sup> It was questionable whether the minimum fine available to the department (\$1,500) was sufficient to deter and respond to these cases.
- It took consumers an average of 494 days to receive compensation from the Florida Homeowners' Construction Recovery Fund, which enables homeowners to recover a portion of their losses suffered due to the actions of a licensed contractor. While the recovery fund had sufficient revenues to pay claims in Fiscal Year 2007-08, fund revenues were expected to decline and potentially not be sufficient to pay claims in the future.

To address these concerns, we recommended that the department develop procedures to

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<sup>3</sup> Financial mismanagement can take many forms but may involve using funds from one project to pay for costs associated with a different project. Abandonment occurs when a contractor fails to do any work on a project for 90 days.

facilitate electronic complaint submission and consider enhanced penalties for first-time offenses involving serious allegations such as financial mismanagement. In addition, we recommended that the department increase the participation of local law enforcement in its enforcement of unlicensed activity, and take additional steps to collect administrative fines.

We also recommended that the Legislature consider establishing a funding stream for the Florida Homeowners' Construction Recovery Fund that is less dependent on construction industry activity levels.

## Current Status

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Consistent with our recommendations, the department has taken steps to improve unlicensed activity enforcement. However, department officials maintain that electronic complaint submission would hinder efforts to process complaints in a timely manner. Regarding disciplinary guidelines, board officials reported that current guidelines establish sufficient disciplinary penalties. As anticipated, the Florida Homeowners' Construction Recovery Fund has experienced significant funding shortfalls that have affected claims payment to aggrieved homeowners.

The department has taken several steps to improve unlicensed activity enforcement. The Unlicensed Activity Office enforces provisions against unlicensed practice across the many professions the department regulates, including construction. Department officials report that they have taken several steps to improve prosecution of unlicensed activity cases. The department reorganized the office, adding two law clerks and reassigning the duties of one senior attorney to increase the timely prosecution of unlicensed activity cases. The department also worked to improve cooperation with the state attorneys in the prosecution of criminal cases. In May 2009 department officials met with all the state attorneys and subsequently partnered with

them to train prosecution staff on construction, building code, and unlicensed activity.<sup>4</sup>

The department also has increased the use of regional sweeps and stings and the participation of law enforcement at these events.<sup>5</sup> In Fiscal Year 2008-09, the department conducted 352 construction-related sweeps and 20 sting operations, compared to 144 sweeps and 4 stings in Fiscal Year 2006-07. Law enforcement participated in 28 sweeps and 19 stings in Fiscal Year 2008-09 and made 367 arrests.

The department asserts that electronic complaint submission is not feasible. Department officials report that the new electronic document management system has reduced the time to process complaints by improving the transfer of documents within the department. In addition, department management tracks complaints that are approaching 180 days and monitors them until completion.

However, the department has not implemented an electronic complaint submission process and its existing system cannot accept supporting documents along with an electronic complaint. In addition, officials believe that the typical consumer does not have the technology necessary to attach documents to an electronic complaint and are concerned that an electronic system would result in duplicate complaints, both electronic and paper-based.

However, other Florida state agencies have successfully implemented electronic complaint systems. For example, the Department of Agriculture and Consumer Services operates an online consumer complaint system that

allows consumers to attach supporting documents to electronic complaints.<sup>6</sup> Department officials expect this feature to shorten complaint-processing time since consumers will not have to provide hard copies of supporting documents.

Similarly, the Department of Financial Services has an electronic complaint system. Though the system does not allow consumers to attach documents to the complaint, it enables consumers to send electronic documents via e-mail. Department officials noted that for an insurance complaint, consumers would not typically need to provide additional documents because as long as consumers can supply a policy or claim number, department staff can begin processing the complaint.

Given that many consumers have computer access and other state agencies have successfully implemented online complaint submission processes, we continue to recommend that the department develop procedures to allow for electronic complaint filing.<sup>7</sup>

The board has not increased penalties for first offenses related to financial mismanagement and abandonment allegations. Each year the department and the board receive thousands of complaints against construction contractors. Some complaints may be relatively minor such as an advertising violation or failing to display a license, while other more serious allegations might include financial mismanagement, abandonment, or incompetency. Our prior review found that for the three fiscal years ending in June 2007, allegations of financial mismanagement increased 200%. Because of the complex nature of these complaints and the time needed to resolve them, we

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<sup>4</sup> The unlicensed activity office also plans to prosecute unlicensed activity cases in circuit court instead of relying on court injunctions. Officials believe that filing a complaint for civil damages will take less time, be more convenient for witnesses, improve the chances for collection, and also allow the recovery of attorney fees.

<sup>5</sup> When the department conducts a sweep, they send inspectors into a construction area or areas and check licenses for all the workers. Stings involve seeking bids from contractors and then checking for the contractor's license once he or she has agreed to do the work.

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<sup>6</sup> Consumers may submit any type of document, for example contracts, work estimates, payment verification, etc. in any electronic format, either word processing documents or scanned documents.

<sup>7</sup> In a November 2009 operational audit of the Department of Business and Professional Regulation, the Office of the Auditor General agreed with OPPAGA's recommendation regarding electronic complaint submission. The report noted that its review of other states provided numerous examples of regulatory agencies that accept electronic complaints.

recommended the board consider increased penalties for first offenses involving these serious allegations.

Of the 8,032 complaints to the board during Fiscal Year 2008-09, 3,652 complaints met the state threshold for legal sufficiency and resulted in an investigation; these complaints included 4,708 separate allegations. As shown in Exhibit 1, from Fiscal Year 2007-08 to Fiscal Year 2008-09, the number of allegations involving financial mismanagement declined from 866 to 788, while allegations of abandonment declined from 788 to 584. Most notable is the increase in allegations involving practicing without a license - from 40 in Fiscal Year 2007-08 to 1,325 in Fiscal Year 2008-09.

**Exhibit 1  
In Fiscal Year 2008-09, Allegations of Practice Without a License Composed Nearly One-Third of Complaint Allegations**

Type of Allegation	Fiscal Year	
	2008-09 <sup>1</sup>	2007-08 <sup>1</sup>
Financial Misconduct	788 (16.7%)	866 (30.9%)
Abandonment	584 (12.4%)	788 (28.1%)
Incompetency/Misconduct	557 (11.8%)	297 (10.6%)
Aiding and Abetting Unlicensed Activity	227 (4.8%)	193 (6.9%)
Violating a Provision of or Rule	444 (9.4%)	181 (6.5%)
Practice Without a License	1,325 (28.1%)	40 (1.2%)
Other	783 (17%)	381 (13.5%)
Missing	0	59 (2.1%)
<b>TOTAL</b>	<b>4,708</b>	<b>2,805</b>

<sup>1</sup> Percentages do not sum to 100 due to rounding.

Source: OPPAGA analysis of Department of Business and Professional Regulation data.

Board officials contend that current sanctions are appropriate because, in addition to license suspension, revocation, or voluntary license relinquishment, many disciplinary actions represent serious discipline and include additional education requirements, monitoring by the board, and requirements to pay restitution, disciplinary costs, or additional fines. As a result, board officials have not made changes for first offenses involving financial mismanagement or abandonment.

The department continues to work with the Legislature regarding the Homeowners' Construction Recovery Fund shortfall. In Fiscal Year 2005-06, recovery fund revenues totaled \$4.3 million but since that time have sharply declined. Department officials report that for Fiscal Year 2008-09, the fund collected revenues totaling \$58,488, with \$779,064 transferred from the Professional Regulation Trust Fund to pay claims.

Department officials report that they will continue to work with the Legislature regarding the status of the recovery fund. As of December 2009, the recovery fund had 801 pending claims, with 325 claims totaling \$7.2 million completed and ready for review by the Construction Industry Licensing Board. The remaining 476 claims are still being reviewed.<sup>8</sup> Department officials report that estimated revenues for Fiscal Year 2009-10 could reach \$500,000 but that this amount would not result in additional paid claims because the funds will not be sufficient to cover the prior year's fund transfer.

<sup>8</sup> Open claims do not have a specified dollar amount due because department review is not yet complete.

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