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Progress Report



December 1999

Report No. 99-15

Bureau of Condominiums Has Improved Its Complaint Investigation Process

at a glance

In response to our recommendations, the bureau has revised its complaint investigation procedures and is taking more timely enforcement action.

The bureau has improved its tracking system and is now employing procedures to ensure personnel compliance with case management procedures. It has also created such a system relating to cases outside its jurisdiction and those that do not lend themselves to investigation.

The bureau has improved its collection process for accounts receivable for civil penalties and assigned responsibility for related follow-up activities. However, closed files will not be reviewed to determine the amount of receivables still uncollected.

The Legislature has not yet clarified its directive to the bureau concerning master associations, thus no educational program on this topic has been developed.

Purpose

In accordance with state law, this progress report informs the Legislature of actions taken by the Department of Business and Professional Regulation in response to a 1998 OPPAGA report.^{1,2} This report presents our assessment of

the extent to which the department has addressed the findings and recommendations included in our report.

Background

The Condominium Act was enacted in 1963 to recognize and regulate condominium ownership.³ Condominiums are a form of ownership of real property in which persons buy individual living units, but a developer or owners' association controls the maintenance of common property, such as landscaping. Unit owners pay fees for this maintenance and upkeep.

The Bureau of Condominiums, within the Department of Business and Professional Regulation's Division of Florida Land Sales, Condominiums and Mobile Homes, enforces the act. The bureau has three primary responsibilities: educating condominium owners and the public about legal requirements; examining documents that developers must provide to condominium purchasers to check for compliance with legal requirements; and investigating complaints alleging violations of program requirements. Complaints can allege that developers and associations have misused funds, have not complied with legal requirements, or have not provided required information to condominium owners. In Fiscal Year 1998-99, the bureau received 1,118 complaints.

¹ Section 11.45(7)(f), F.S.

² *Review of the Bureau of Condominiums Complaint Investigation Process*, [OPPAGA Report No. 97-62](#), March 1998.

³ Chapter 718, F.S.

New guidelines for handling complaints went into effect in June 1998 and are codified as Chapters 61B-20, 61B-21, 61B-77, and 61B-78, F.A.C. According to these rules, violations are grouped into two categories, major and minor, and can be addressed through educational resolution or enforcement resolution. The method of resolution is based both on the severity of the violation and the type of organizational unit (e.g., unit owner controlled associations versus developer controlled associations). Educational resolution involves sending violators informational or warning letters that provide information about the alleged violation and related laws. The intended goal of educational resolution is voluntary compliance. Enforcement resolution typically involves administrative action and/or assessment of penalties.

The bureau's 1998-99 funding allocation was \$3,875,398 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. In addition to fines and penalties, the trust fund receives developer filing fees and an annual association fee of \$4 per condominium unit.⁴ According to bureau records, there are approximately 1,013,687 condominium units in Florida. The bureau is authorized 83 staff and has offices in Tallahassee, Tampa, and Fort Lauderdale.⁵

Prior Findings

Investigation of Complaints

The Bureau of Condominiums does not complete investigations and close cases in a timely manner, and it can take over three years to complete investigations and take enforcement action. Several factors delay complaint investigations, including the bureau's policy to investigate issues not raised by complainants and the bureau's policy to not take formal actions against parties until all issues are resolved. In addition, the bureau does not have a tracking system that provides reliable data on how long it takes to complete investigations.

To enable the bureau to more quickly take formal action on original complaints, we recommended that the bureau revise its procedures regarding complaint investigations. The bureau should eliminate its requirement to add additional issues to investigations unless they are directly pertinent to

⁴ Every developer is required to pay a \$20 developer filing fee for each residential unit to be sold, a document amendment filing fee of up to \$100 per filing, and a \$250 fee for each filing of a proposed reservation program.

⁵ Seventy-three FTEs are in the Bureau of Condominiums and 10 FTEs are in the Arbitration Section.

the complaint. The bureau should also revise its policy and take enforcement action as soon as it resolves individual issues in complaints, rather than waiting until all issues are resolved.

We also recommended that the bureau improve the reliability and accuracy of its tracking system to better monitor complaint investigations. The bureau should implement procedures to ensure that personnel are diligent in complying with procedures relating to case monitoring, record maintenance, deadlines, and supervisory case reviews.

Collections of Fees and Penalties

The bureau also lacks an effective system to ensure that persons found to have violated program requirements pay fines and penalties in a timely manner, which weakens the impact of these sanctions. The bureau does not maintain an accounts receivable ledger or summary information that allows it to identify what penalties remain unpaid, who owes what amount, or how long fines have been outstanding. Several important aspects of the collection process also need to be improved to ensure sufficient efforts are made to collect these amounts.

- The department does not routinely track the age of its unpaid fines to allow it to identify the need for follow-up procedures or increasingly aggressive collection efforts.
- No procedures have been developed regarding what collection efforts should be taken or when cases should be classified as uncollectable.
- The department has not referred delinquent accounts that are more than six months old to the Department of Banking and Finance for further action.⁶

In addition, bureau staff estimated that over a number of years they had closed approximately 1,000 files with unpaid balances. The bureau cannot readily identify the amount of unpaid fines and penalties on these files.

To improve the effectiveness of the bureau's collection process, we recommended that bureau staff develop an accounts receivable aging schedule to track the status of outstanding accounts. The bureau should also:

- clearly assign primary responsibility for follow-up activities in the event of nonpayment;

⁶ Rule 3A-21.003, F.A.C., provides for the reporting of delinquent receivables within six months unless the Department of Banking and Finance approves another period or the reporting entity is pursuing other lawful collection efforts.

- develop procedures for determining when more aggressive collection efforts are appropriate and for classifying cases as uncollectable; and
- refer delinquent accounts to the Department of Banking and Finance, as required by Rule 3A-21.003, F.A.C.

We also recommended that the bureau review its closed files to determine the amount of receivables that remain uncollected from these files and determine which cases, if any, warrant pursuing collection.

Complaints Outside Bureau's Jurisdiction

Complaints involving master associations are frequently outside of the bureau's jurisdiction or provisions of the Condominium Act cannot be applied.⁷ Although the bureau often receives complaints regarding master associations, it frequently determines, after a lengthy investigation, that it has no jurisdiction over the association or that statutory provisions do not apply to the complaint.

In addition, the bureau closed approximately half of the complaints received in Fiscal Year 1996-97 because the issues raised were outside the bureau's jurisdiction or did not lend themselves to investigation. While it is appropriate for the bureau to dismiss cases on which it cannot act, it should periodically examine these cases to determine whether they represent areas where changes in the bureau's activities are needed to better protect consumers.

To clarify the differences between master associations and traditional condominium associations and ensure condominium owners and potential buyers are informed about issues relating to the different forms of ownership and their limitations, we recommended that the Legislature amend Ch. 718, F.S., to remove master associations from regulation under the Condominium Act and to clarify that these associations are subject to the provisions of Ch. 617, F.S., governing homeowners associations. The Legislature should also direct the bureau to develop an education program advising condominium associations and condominium unit buyers about the differences between master associations and traditional condominium associations.

To better protect consumers, we also recommended the bureau periodically examine cases that fall outside its jurisdiction or do not lend themselves to investigation to determine if changes in the

⁷ Master associations operate or maintain other real property in which condominium unit owners may have use rights (such as golf courses).

bureau's activities are needed. If the bureau determines it needs additional authority, it should propose statutory revisions for the Legislature's consideration.

Current Status

The bureau has taken steps to address some of the concerns identified by OPPAGA.

Actions Taken

Investigation of Complaints

The bureau has eliminated its requirement to add additional issues to complaints unless they are directly pertinent to the complaint and has drafted policies and procedures to provide guidance to investigators when they encounter issues not alleged by the complainant. Only issues submitted in the complaint are being investigated. If additional violations are found during the investigation, the investigator requests they be added only if it appears that the violations are material and could affect the health, safety, or welfare of unit owners. Moreover, the bureau chief must approve most issues before they are added to any case. Exceptions include issues related to failure to pay annual fees and failure to maintain corporate status of the association.

In addition, the bureau has adopted a new policy to take enforcement action as soon as individual issues are resolved, rather than waiting until all issues are resolved. Currently, when a complaint is received, all issues are initially reviewed to determine course of action. In general, issues requiring educational resolution are handled first and those issues are closed once informational or warning letters are sent out. However, a case remains open until all issues are resolved.

The bureau has also taken steps to improve the reliability and accuracy of its tracking system to better monitor complaint investigations. Specifically, complaints are opened and immediately assigned to an investigator and the bureau no longer suspends cases or puts them on hold. The bureau has developed an Enforcement Performance Database (EPDB), which when implemented will be used to better track individual issues and create reports that are more reliable. The bureau asked for funds to implement the prototype in its 2000-2001 Legislative Budget Request.

Finally, the bureau has implemented procedures to ensure that personnel are diligent in complying with procedures relating to case monitoring, record maintenance, deadlines, and supervisory case

review. All enforcement procedures have been reviewed and revised, and an investigator supervisor position was added to the bureau in December 1997. Research associates now conduct supervisory reviews of cases in each office and report their findings to the bureau chief, and supervisors meet on a weekly basis to discuss cases with each other and with the bureau chief.

Collections of Fees and Penalties

The bureau has developed an accounts receivable aging schedule for civil penalties. The schedule categorizes penalties by age, ranging from category one (1 to 30 days) to category seven (over 180 days). Bureau staff are also cleaning up the bureau's association fee database to determine whether old unpaid fees should be written-off or assessed. The bureau hopes to complete the clean-up project by the end of Fiscal Year 1999-2000. Once this is done, an accounts receivable aging schedule will be developed to track outstanding association fees.

The bureau has also assigned primary responsibility for follow-up activities in the event of nonpayment to the investigator of each case. The investigator is responsible for tracking compliance and payment of penalties. The bureau's revised policies and procedures manual includes an outline for handling nonpayment of civil penalties.

Procedures for determining when more aggressive collection efforts are appropriate have also been developed. Currently, the bureau prioritizes cases and tries to expedite their closing and the collection of penalties. Procedures to guide the fine collection process, including guidance on referring accounts to the Department of Banking and Finance, have been drafted and submitted to division directors for review and comment. In addition, the bureau is drafting procedures to guide the collection of association fees and to classify cases as uncollectable. The procedures were to be drafted by October 29, 1999.

Complaints Outside Bureau's Jurisdiction

The bureau has established a policy for classifying and tracking cases that fall outside its jurisdiction or do not lend themselves to investigation. The Enforcement Performance Database (EPDB) will facilitate the compilation of reliable data on complaints closed due to lack of jurisdiction. The

EPDB will also count the number of cases closed due to lack of jurisdiction, will categorize issues into 12 subcategories, and will calculate summary statistics for each subcategory.⁸

Actions Not Taken

Collections of Fees and Penalties

The bureau has decided not to review closed files to determine the amount of receivables that remain uncollected from these files and to determine which cases warrant pursuing collection. This decision was based on the belief that many closed files were not receivables and that reviewing closed files would tax staff resources.

However, all dockets opened as of OPPAGA's initial report are being handled in accordance with draft collection procedures and will be referred to Department of Banking and Finance when appropriate.⁹ Since OPPAGA's initial review, 120 dockets have been opened, 43 have been closed, and none have been closed with uncollected penalties.

Complaints Outside Bureau's Jurisdiction

The bureau worked with various stakeholders to draft language that would clarify the legal status of master associations and the responsibilities of the bureau concerning such associations. The language was included in several bills during the 1999 session, but did not pass. The bureau does not intend to propose similar legislative changes during the 2000 session.

The Bureau has not developed an education program for advising condominium associations and condominium unit buyers about the differences between master associations and traditional condominiums. The bureau does not intend to expand its education program in this area until the Legislature takes steps to clarify its directive in statute.

⁸ The 12 categories are misrepresentation, breach of fiduciary duty, misconduct by manager, criminal violations, Fair Housing Act violations, Land Lord-Tenant Act violations, Corporations Act violations, selective enforcement by association, nuisance, document violations, developer warranties, and miscellaneous.

⁹ When the bureau receives a complaint, it becomes a case. When litigation or settlement negotiations begin, the case is closed and a docket is opened.

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