

oppaga Special Review

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Division of Land Sales, Condominiums, and Mobile Homes Improves Timeliness, But Faces Funding Issues

at a glance

The division has been generally responsive to our prior recommendations relating to the regulation of condominiums. However, the Legislature has not clarified its directives relating to master associations. Thus, it is not clear who should receive complaints regarding master associations or how these complaints should be addressed.

Although the division closes many complaint investigations in a timely manner, it needs to assess what actions it can take to encourage respondents to be more timely in filing certain needed documents such as financial statements.

The land sales program does not generate revenues sufficient to cover its costs. The Legislature needs to consider several funding alternatives to address the program's deficit.

The division and the Legislature need to address a number of issues relating to the regulation of mobile home parks. These issues relate to improving disclosures made to residents of parks and encouraging park owners to enforce their own park-specific rules. The division needs to collect additional information relating to mediation options before recommending any actions in this area.

Purpose

The Joint Legislative Auditing Committee requested the Office of Program Policy Analysis and Government Accountability to review issues relating to the Division of Land Sales, Condominiums, and Mobile Homes within the Florida Department of Business and Professional Regulation. Specifically, we were requested to review and comment on

- the status of recommendations made in OPPAGA's December 1999 report, *Bureau of Condominiums Has Improved Its Complaint Investigation Process*;
- if data are readily available, the length of time the department takes to investigate and enforce laws for mobile home parks, land sales, and timeshares;
- the proposals a department work group is developing to transfer enforcement of land sale laws to the Division of Real Estate; and
- the proposals a department task force is developing on the regulation of mobile home parks.

Since neither the work group nor task force had completed its final report, our comments relating to proposals for the regulation of land sales and mobile home parks are based on interim documents.

There was not sufficient time to obtain an official response from the Secretary of the department and meet the committee's timeframe for completing this report.

Status of OPPAGA's Recommendations —

The Division of Land Sales, Condominiums, and Mobile Homes has been generally responsive to the recommendations included in OPPAGA's 1998 report and 1999 progress report. The division has taken the actions described below.

- Revised its complaint investigation procedures to take more timely enforcement action. As a result, the division reduced the average time to close a case from 432 days in 1996 and 1997 to 181 days in the first half of Fiscal Year 1999-2000.¹
- Created a system to track the types of complaints it receives that are outside of its jurisdiction or do not lend themselves to investigation. This type of tracking system will enable the division to determine whether changes in the laws are needed to better protect the public.
- Improved its process for collecting civil penalties by developing procedures for following up on unpaid penalties.
- Planned to study a sample of cases in which the assessed penalties have been classified as uncollectable to determine whether it would be cost-effective to try to collect these outstanding penalties. (Division management has recently decided to conduct this study, which has not yet been implemented.)

The Legislature has not yet clarified its directive to the division concerning

master associations. Several bills have been introduced to address these concerns, but none have been enacted. The division now plans to recommend that the Division of Community Colleges address master associations in its educational program.²

Issues Needing Further Action

The Legislature needs to clarify whether master condominium associations should be regulated under the provisions of Ch. 718, F.S. Master associations are entities that operate or maintain real property, such as golf courses, in which condominium unit owners have use rights. Division staff experience difficulties responding to complaints involving master associations because their jurisdiction over these associations is often unclear.

Chapter 718, F.S., provides that some master associations are subject to division regulation, but others are not. The division lacks jurisdiction over master associations in which membership is optional or includes owners of single-family homes or other types of property. For example, a master association that administers a country club whose members include private homeowners as well as owners of condominium units is not subject to division regulation. Such master associations may, in effect, be homeowner associations that fall under the provisions of s. 617.301, F.S., rather than the Condominium Act.

Establishing the division's jurisdiction over master associations is not easy and may be inconclusive. A report issued by the House of Representatives

¹ Data came from a sample of 100 cases closed between July 1, 1996, and August 31, 1997.

² The 1999 Legislature appropriated \$500,000 from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to be used for a condominium/cooperative association education program contracted with the Florida Division of Community Colleges.

Committee on Real Property and Probate staff in December 1999 identifies a number of unanswered questions associated with establishing jurisdiction noted below.

Is the association subject to Chapter 718, as long as the membership at the moment is exclusively unit owners or is application of the statute determined only when the development is complete?

Can an association be subject to the requirement of Chapter 718, at one time but not another? If it is initially exempt but later included, what effect does this have on past financial and other operations?

The division does not feel that it can apply the statute to associations when there is a possibility of future non-condominium unit owner members.

As a result of these complexities, division staff must make an extensive review of legal documents governing an association to determine whether it has jurisdiction over a master association when investigating a complaint. Even when it determines that the master association falls under the provisions of Ch. 718, F.S., it may be unable to resolve the complaint because the current wording of the statutes may not cover the problem. Thus, the division spends valuable investigative resources reviewing complaints related to master associations that it is unable to resolve.

We believe that citizens' problems with master associations can best be resolved by educating condominium owners about the differences between master associations and traditional condominium associations. The Legislature could also clarify the division's jurisdiction by removing master associations from regulation under Ch. 718, F.S., and specifying that they are subject to the provisions

and remedies offered in Ch. 617, F.S., relating to homeowners associations.

Review of Investigative Timeframes

While the division closed many of its cases in a timely fashion, some complainants had to wait lengthy periods of time before their cases were closed. When the division does not take timely action, law violations can continue to occur. For example, if association funds are being misused, the amount of funds being misused can grow while the division completes the investigation and before it takes enforcement action.

The division has a general policy that most investigations should be completed within 90 or 120 days of their assignment to an investigator. However, some cases may go on for extended periods of time due to factors outside of the division's control. For example, one case involved a defunct time share plan that was on the verge of going into receivership. It took the division two years to determine who was responsible for the plan. After establishing responsibility, the division monitored the owners' rehabilitation of the timeshare plan until past due managing entity fees were paid and the plan was operating in compliance with Ch. 721, F.S. As a result, the division kept this case open over four years.

To determine whether the division conducts and closes cases in a timely manner, we reviewed data on all cases closed from July 1, 1999, to December 31, 1999. We also requested the division to provide us a description of the cases it did not close in a timely manner. As shown in Exhibit 1, the division took an average of 138 days to close a mobile home investigation, 278 days for land sale violations, and 335 days for timeshare investigations.

Exhibit 1

The Division Closes Less Than Half of Its Cases Within 120 Days

Time to Complete Investigations and Close Cases	Mobile Home Cases		Land Sales Cases		Timeshare Cases	
	Number	Percent	Number	Percent	Number	Percent
Days: 1-120	20	49%	44	47%	26	36%
121-180	16	39%	5	5%	12	17%
181-365	4	10%	24	26%	10	14%
Years: 1-2	1	2%	8	9%	17	24%
2-3	0	0	4	4%	4	6%
Over 3	0	0	8	9%	3	4%
Total Cases	41		93		72	
Average Duration	138 days		278 days		335 days	

Source: Division of Florida Land Sales, Condominiums, and Mobile Homes data warehouse report and OPPAGA analysis.

In the majority of the cases that were not closed within anticipated time frames, we concluded that the causes of the delays were factors that the department could not control. However, we also concluded that the division might have been able to take proactive steps to shorten the time needed to close some of these cases. For example, in 13 of the 24 timeshare cases that remained open for more than a year, the primary reason for delay appeared to be respondents failing to give the division needed documents such as financial statements, budgets, or ad valorem tax statements. These 13 cases remained open an average of 662 days. Although the division does not directly control the length of time respondents take to provide required documentation, it may be able to take steps to encourage respondents to return these documents in a timelier manner.

Issues Needing Further Action

The division should explore options for encouraging respondents to provide needed documents in a timely manner.

Proposal to Transfer Land Sales to the Division of Real Estate

The department formed a study group to review the Land Sales Program. One of the primary reasons for reviewing the program was that it has operated in a deficit in all but two years since Fiscal Year 1987-88. During this period, the program has incurred a \$2.4 million deficit.³

The work group initially addressed three questions.

- Is the program needed or has it outlived its usefulness to the public?
- If the program is needed, can it be operated more efficiently?
- If the program is needed, how should it be funded?

The work group has not developed answers to all of the above questions, nor has it developed proposals for the

³ Based on preliminary information from the Auditor General, this deficit is likely to be understated because the department did not always include certified forward expenditures in its calculation of the deficit. Certified forward expenditures are those paid after a new fiscal year begins to satisfy obligations made during the preceding fiscal year.

Secretary's consideration. However, the work group did discuss these issues and identified a number of alternatives. OPPAGA offers the following comments relating to the work group's efforts.

Program Need

OPPAGA concludes that the state should continue to regulate and provide safeguards relating to the sale or transfer of subdivided lands. The absence of this type of regulation would create a risk that Florida would once again become a haven for fraudulent land sales practices.

An alternative would be for the state to rely on the federal government to regulate land sales practices. However, federal regulations focus on owners of 100 or more lots. This would have been effective in the late 1960s to the early 1980s, when the land sales industry primarily consisted of large corporations that were subdividing large tracts of land. However, the industry has changed, and now many of the problems relate to opportunists who acquire small blocks of lots and resell them at inflated prices with no disclosure whatsoever. Much of the department's resources go to straightening out problem subdivisions so that purchasers receive their lots free and clear of encumbrances and that the lots are usable for the purposes for which they were sold. Since the federal program is less comprehensive, it may not cover many of the fraudulent land sales practices the department is able to address.

Program Efficiency

The work group looked at options for streamlining the program. However, it did not provide sufficient information for OPPAGA to comment on the feasibility of these options. However, any improvements in efficiency will not reduce the program's costs sufficiently to eliminate its operating deficits.

Program Funding

The work group concluded that since many of the program's activities arise from past land sale practices or non-registered entities, it is not feasible to fund the land sales program from fees collected from current registered subdivision owners. It then identified several alternatives to address funding. These alternatives included transferring the program to the department's Division of Real Estate and allowing it to be funded from fees collected from real estate agents and brokers. Other alternatives included transferring the program to the Department of Banking and Finance or Department of Agriculture and Consumer Services and using documentary stamp fees or General Revenue to fund it.

OPPAGA concurs that it is not reasonable for current registrants to cover the full cost of the program. The number of registrants has been decreasing, and most of the program's investigative resources are devoted to responding to past violators or violators that fail to register and do not pay required fees. Over 60% (65 of 106) of the program's current land sales cases pertain to actions of non-registrants.

We do not see any benefit to transferring the program to either the Department of Banking and Finance or the Department of Agriculture and Consumer Services. Its current placement within the Department of Business and Professional Regulation reasonably matches with organizational responsibilities.

Transferring land sales to the Division of Real Estate is a complex issue. The director of the Division of Real Estate reported that probably less than 30% of its licensees participate in the sale of subdivided land. This raises an issue of whether it is appropriate for this group to cover land sales regulatory

funding deficits. In addition, the regulation of property rights is significantly different from the regulation of the activities carried out by real estate salespeople and brokers. Land sale regulation is more closely aligned with the regulation of timeshares, condominiums or cooperatives, and mobile home parks, and placing the program in a division responsible for regulating these entities is a better match of responsibilities.

One option not addressed by the task force would be to combine both the Division of Real Estate and the Division of Land Sales, Condominiums, and Mobile Homes and centralize these functions in one entity. This has the benefit of keeping the similar functions of land sale, timeshare, condominium, and mobile home park regulation together in one operating division. OPPAGA did not have sufficient time to assess this option, which is much broader than transferring just the land sales program.

We believe organizational placement and funding are two separate issues that should be addressed on their individual merits. Absent more compelling information about program placement, we conclude that the land sales program current placement in the Division of Land Sales, Condominiums, and Mobile Homes is reasonable.

We identified three options for funding the land sales program. First, the program could be funded from program fees and general revenue. General revenue is an appropriate source of funds because the program is a general consumer protection program that takes a proactive approach against land sale scams or swindles. Second, the program could be funded from program fees and documentary stamp taxes. This approach is somewhat problematic because documentary stamp taxes are

paid by all property purchasers and not just purchasers of subdivided lands. Third, the program could be funded from program fees and a special tax on the transfer of all subdivision lots. While this type of tax would better match the individuals benefiting from the program and those paying for it, it may be difficult to implement. Time constraints did not permit OPPAGA to assess the viability of this type of tax.

Proposals from the Mobile Home Interagency Panel

Because of the unique relationship between mobile home park owners and residents, the Legislature recognized the need to regulate mobile home parks. Once a mobile home owner moves into a park, the substantial cost of relocating the home creates a unique situation that affects the bargaining position of the parties and the operation of market forces. To protect the property and other rights of mobile home park residents as well as the business interests of mobile home park owners, the legislature created Ch. 723, F.S., regulating mobile home parks.

To determine whether changes in the statutes and their implementation are needed to better protect the interests of mobile home park owners and their residents, the department conducted public hearings on September 30 and December 14, 1999. During these hearings, residents identified five issues that are being addressed by the interagency panel. Three of these issues relate to the prospectus the mobile home park owner is to provide mobile home owners. The remaining two issues relate to the division's ability to fine park owners for failing to comply with park rules and the cost of the mediation process. The panel plans to hold its final meeting on February 23, 2000.

Issues Relating to Mobile Home Park Prospectuses

Three of the issues identified by residents related to the prospectus that park owners deliver to residents and the disclosures included in that prospectus. These three issues are interrelated. One issue was the lack of disclosure mobile home owners received at the time of their initial purchase. They complained that they were not informed of, or permitted to rely on, the seller's prospectus. They complained that they did not understand that their rent would be raised according to "market." They also stated that many homeowners did not know what "market rent" was and did not know that the park owner had the right to pass on additional charges. The second issue was that park owners are not allowing purchasers to rely on the terms of the prospectus as delivered to the initial recipient as required by s. 723.059(3), F.S. The third issue related to park owners not keeping an accurate and current copy of the prospectus that applies to each individual mobile home lot.

OPPAGA concurs that the disclosures made in many of the prospectuses are not clear to the residents. Mobile home owners should have a reasonable disclosure about the rent they pay and future rent increases. The division needs to develop a readable disclosure statement relating to rent increases that is similar to a truth-in-lending statement. Furthermore, the division needs to revise its educational materials and newsletters to ensure they are written in a user friendly and readable manner.

Current law gives mobile home purchasers the right to retain the initial prospectus issued for the lot on which the home is located. OPPAGA believes that the park owners should keep

accurate records as to which prospectus applies to each lot. Park owners should be required to submit to the division a copy of and information on the lots covered by each prospectus used in their park. They also should keep this information at the park office for inspection by existing and potential mobile home residents.

Park owners that fail to keep accurate records should bear the cost of obtaining this information from the division. If the park owner fails to make reasonable attempts to correct his records or to provide owners this information, then the division should be authorized to assess fines against park owners.

In addition, mobile home park residents who are selling their homes should inform potential buyers about the terms of the prospectus governing their lot and where the buyer can obtain an accurate version of that prospectus. This will help insure that buyers check the information sellers provide them against the information kept by the mobile home owner so they can resolve any discrepancies before they purchase the home.

Issues Relating to Fining Park Owners for Violations of Park-Specific Rules

Mobile home park residents believe that park owners should abide by and enforce the specific rules the owners have established for the park. Section 723.006(5)(e), F.S., permits the division to assess civil penalties against park owners that fail to enforce park-specific rules. However, some task force members believe that the division should not be responsible for assessing these penalties, because the park-specific rules often are too broad and costly to uphold.

Another option would be for the division to establish rules for the types

of park-specific rules it would enforce as well as procedures residents must follow to document and report owners' non-compliance with these park rules. Under this option, the division would impose fines only for park-specific rules it considered essential to protecting the property rights of park residents. Residents would have to attempt to get park owners to comply with park-specific rules before filing a complaint with the division. The division would exercise its fining ability only after residents could document that, despite written notification, the owner continued to be in noncompliance with a park-specific rule that division rules classified as being essential to protecting residents' property rights. This option would continue the protection the law currently affords mobile home park residents without unduly burdening the division with less serious complaints.

Issues Relating to the Cost of Mediation

Currently the department conducts mediation to resolve problems between mobile home park owners and park residents. Although park owners appear to be reasonably satisfied with this process, park residents believe that the process takes too long and costs too much.

One option the task force considered was to transfer the department's mediation process to the circuit courts. Although available documents indicate that the success rate of the department's mediation process is similar to the success rates of circuit courts that conduct their own mediation, information is not available on costs of the department- and court-run mediation processes. Absent cost information, OPPAGA does not have an opinion about whether to transfer the mediation process to the circuit courts.

Issues Needing Further Action

The department should explore alternatives it could take in developing rules and procedures for imposing fines against park owners who do not enforce park-specific rules. The rules should identify the types of park-specific rules that have the potential to adversely affect property rights of mobile home residents and therefore will be subject to division enforcement. They also should specify the procedures residents must follow to file complaints against park owners who fail to enforce park-specific rules.

In addition the department should obtain comparative costs and time frames taken for department mediation and circuit court mediation of disputes between mobile home park owners and park residents. It should use this information to recommend who should conduct mediation between mobile park owners and residents.

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