

CHAPTER 97-192

Committee Substitute for Committee Substitute for House Bill No. 169

An act relating to the Florida Uniform Land Sales Practices Law; amending s. 498.005, F.S.; providing definitions; amending s. 498.007, F.S.; revising provisions with respect to the general powers and duties of the Division of Florida Land Sales, Condominiums, and Mobile Homes; amending s. 498.011, F.S.; revising provisions with respect to per diem and mileage; amending s. 498.017, F.S.; revising certain fees; deleting certain fees; amending s. 498.022, F.S.; revising provisions with respect to jurisdiction over fraudulent acts; providing that it is a violation of the act to dispose of, conceal, or divert any funds or assets of any person so as to adversely affect the interest of a purchaser; amending s. 498.023, F.S.; providing additional criteria with respect to permitted disposal of an interest in subdivided lands; amending s. 498.024, F.S.; revising provisions with respect to reservations; amending s. 498.025, F.S.; revising provisions with respect to exemptions; amending s. 498.027, F.S.; revising provisions with respect to application for registration; amending s. 498.029, F.S.; eliminating the registration of certain subdivided lands; amending s. 498.031, F.S.; providing for the time period during which registration becomes effective; revising provisions with respect to inquiry and examination; amending s. 498.033, F.S.; revising provisions with respect to the registration of subdivided lands; amending s. 498.035, F.S.; authorizing, rather than requiring, the division to approve advertising material; revising provisions with respect to advertising material; requiring the full disclosure of certain pertinent information; amending s. 498.037, F.S.; revising provisions with respect to public offering statements; amending s. 498.039, F.S.; revising provisions with respect to certain trust and escrow accounts; amending s. 498.041, F.S.; revising provisions with respect to annual renewal; providing for termination of registration; amending s. 498.047, F.S., relating to investigations; amending s. 498.059, F.S.; providing penalties with respect to certain violations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 498.005, Florida Statutes, is amended to read:

498.005 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

~~(1) “Active registration” means a registered subdivision, except a registration classified as inactive.~~

~~(1)(2)~~ (1) “Advertising” means the publication of or the causing to be published of any information for the purpose of inducing any other person to purchase or to acquire an interest in subdivided lands, including ~~the land~~

~~sales contract to be used and any photographs, drawings, or artist's representations of existing or planned physical conditions or facilities on the property, by means of any:~~

- (a) Newspaper or periodical;
- (b) Radio or television broadcast;
- (c) Written, printed, or photographic matter produced by any duplicating process producing 10 copies or more;
- (d) Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone, computer, or any other electronic means;
- (e) Material used by subdividers or their agents, distributors, or any other persons to induce prospective purchasers to visit this state, particularly vacation certificates which involve a land sales presentation by a subdivider or his agents; or
- (f) Billboards.

(2) "Closing" means the transfer of ownership or lease of an interest in subdivided lands to a purchaser as evidenced by the delivery of a deed to the purchaser or to the clerk of the court for recording in the official records of the county in which the subdivided lands are located.

~~(3) "Broker" means any person who is licensed as such by, or is exempt from, chapter 475 and who is employed or authorized by a subdivider to offer for disposition any interest in subdivided lands required to be registered pursuant to this chapter and who is responsible for the supervision of salesmen who offer for disposition any interest in subdivided lands.~~

(3)(4) "Conviction" means a determination of guilt resulting from a plea or trial, regardless of whether adjudication was withheld or imposition of sentence was suspended on an offense prohibited by this chapter, or forfeiture of a bond when charged with a criminal offense prohibited by this chapter.

(4)(5) "Disposition" means any transaction involving any interest in subdivided lands entered into for profit, including any sale, resale, lease for more than 5 years, assignment, or award by lottery.

(5)(6) "Division" means the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation.

(6) "Escrow" means the delivery to, or deposit with, an escrow agent of funds or property to be held and disbursed by such escrow agent consistent with the provisions of this act.

(7) "Escrow agent" means:

(a) A savings and loan association or bank located in Florida or any other financial institution located in Florida having a net worth in excess of \$5 million;

(b) An attorney who is a member in good standing of The Florida Bar;

(c) A real estate broker who is licensed pursuant to chapter 475 and in good standing with the Department of Business and Professional Regulation; or

(d) A title insurance agent licensed pursuant to s. 626.8417 or a title insurance agency licensed pursuant to s. 626.8418.

(8) “Governing documents” means the recorded declaration of covenants for a community, and all duly adopted and recorded amendments thereto; and the articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto.

(9) “Homeowners’ association” or “association” means a Florida corporation responsible for the operation of a community in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term “homeowners’ association” or “association” does not include a community development district or other similar special taxing district created pursuant to statute.

(10) “Homesite” means a lot, parcel, unit, or interest contained within a subdivision which is physically accessible by a public or private road at the time of deeding and usable by the purchaser for constructing or installing a single-family residential building without draining, filling, or other improvement, except for reasonable preparation for construction or installation, and that no fact or circumstance exists which prohibits the immediate use of the lot for such purpose upon deeding.

~~(7) “Inactive registration” means one in which a subdivision has demonstrated to the satisfaction of the division that all requirements under the registration are current and there is no ongoing sales program.~~

(11)(8) “Material change” means any act or failure to act by a registrant or its agents that would directly and adversely affect the registrant’s legal or financial ability to fulfill its contractual commitments to its purchasers or that would alter or change the legal obligations or commitments of the registrant to its purchasers or to the division.

(12)(9) “Notice” means a communication in writing from the division executed by its director or other duly authorized officer.

(13)(10) “Offer” includes every inducement, solicitation, or attempt to encourage a person to acquire any interest in subdivided lands, if undertaken for gain or profit.

(14)(11) “Offering” means any document, material, representation, agreement, or assurance contained in:

- (a) Advertising material used in connection with the offer of subdivided lands;
- (b) A public offering statement;
- (c) A contract or other agreement which a purchaser executes in connection with the purchase of subdivided land;
- (d) A document or other material submitted to the division as part of an application for registration and upon which application an order of registration is issued; or
- (e) An order of registration.

(15)~~(12)~~ “Order of registration” means the license issued by the division to evidence the registration status of the registrant for specified subdivided lands.

(16)~~(13)~~ “Person” means one or more individuals, corporations, governments or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, unincorporated associations, or any other legal or commercial entity having a common interest.

(17)~~(14)~~ “Purchaser” means a person who acquires, attempts to acquire, or succeeds to an interest in subdivided land.

(18)~~(15)~~ “Registrant” means the person or persons specifically named in the order of registration.

(19)~~(16)~~ “Registration” means the completion of all application requirements and the furnishing of all required exhibits to ~~the satisfaction of~~ the division.

~~(17) “Salesman” means any person who is licensed as such by, or is exempt from, chapter 475 and who is employed or authorized by a subdivider or broker to offer for disposition any interest in subdivided lands required to be registered pursuant to this chapter.~~

(20)~~(18)~~ “Subdivider” means a person who owns any interest in subdivided lands or is engaged in the disposition of subdivided lands either directly, indirectly, or through the services of an employee, agent, or independent contractor ~~a broker or salesman~~.

(21)~~(19)~~ “Subdivision” or “subdivided lands” means:

(a) Any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 50 or more lots, parcels, units, or interests; or

(b) Any land, whether contiguous or not, which is divided or proposed to be divided into 50 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

(22)~~(20)~~ “Common promotional plan” means an offering of subdivided lands by a person in a similar plan of disposition. Elements relevant to

whether the subdivided lands are being offered as part of a common promotional plan include but are not limited to: the physical relationship of the properties being offered; whether the offered properties are known, designated, or advertised as a common unit or by a common name; the utilization of a common broker or sales personnel, common sales office or facilities, or common promotional methods; the utilization of cross-referrals of prospective purchasers between sales operations; and common ownership interests.

Section 2. Section 498.007, Florida Statutes, is amended to read:

498.007 General powers and duties.—

(1) The division may adopt, amend, or repeal reasonable rules as necessary to carry out all provisions of this act, pursuant to the Administrative Procedure Act.

(2) If it appears that a person has violated or is about to violate a provision of this chapter or a division rule or order, the division, with or without prior administrative proceedings, may bring an action in the circuit court to enjoin the violation and to enforce compliance with this chapter or any division rule or order. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. If appointed, the receiver or conservator may take action to implement the provisions of the court order, to ensure the performance of the order, and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and records pertaining thereto, and allow the examination and use of said property by the division and a court-appointed receiver or conservator. The division is not required to post a bond in any court proceedings. Venue for actions or proceedings brought pursuant to this subsection may be laid in any county where the venue is proper under chapter 47 or in Leon County.

(3) In addition to any remedy provided by this chapter, the division may:

(a) Apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subsection (2) shall be ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of any of the provisions of this chapter. Such restitution shall, at the option of the court, be payable to the conservator or receiver appointed pursuant to subsection (2) or directly to the persons whose funds or assets were obtained in violation of this chapter.

(b) Seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under s. 498.053. The civil penalty shall be no less than \$500 and no more than \$10,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney's fees and, in the event the division prevails, may also award reasonable costs of investigation.

(4)(3) The division may intervene in any suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivi-

vider shall promptly furnish the division a copy of the complaint and, if requested by the division, copies of all pleadings.

(5)(4) The division may:

(a) Accept registrations, property reports, or similar disclosure documents filed in other states or with the Federal Government, notwithstanding the requirements of s. 498.037; and may suspend or revoke any registration under this chapter that includes any registration, property report, or similar disclosure document accepted under this subsection if the registration, property report, or similar disclosure is suspended or revoked by the registering state or by the Federal Government;

(b) Contract with agencies in this state or other jurisdictions to perform investigative functions; or

(c) Accept grants-in-aid from any source.

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

(7)(6) The division shall adopt uniform accounting principles, policies, and standards by rule methods, in accordance with generally accepted accounting principles as defined by the rules of the Board of Accountancy, to be used by all applicants for and holders of registrations of subdivided lands in the preparation of all financial statements required by this chapter, documents, information, and reports required by, and in the transaction of all activities regulated under, ~~this chapter~~.

(8)(7) Notice to a subdivider shall be complete when delivered to the subdivider's address currently on file with the division.

(9)(8) Notwithstanding any provision of this chapter or any division rule, the division shall not take adverse action with regard to any document filed by any person with regard to subdivided lands solely because the document is not on a division form, if adequate information is provided.

Section 3. Section 498.011, Florida Statutes, is amended to read:

498.011 Payment of per diem, mileage, and other expenses to division employees.—The amount of per diem and mileage and expense money paid to employees shall be as provided in s. 112.061, except that the division shall establish by rule the standards for reimbursement of actual verified expenses incurred in connection with an inspection or investigation examination of subdivided lands.

Section 4. Section 498.017, Florida Statutes, is amended to read:

498.017 Fees.—The division shall charge fees as follows:

(1) A base fee of \$450 per subdivision registration application plus a fee of \$4 for each of the first 2,000 lots, parcels, units, or interests in the subdivision and a fee of \$2 for each additional lot, parcel, unit, or interest.

(2)(a) Each registration shall be renewed annually as provided in s. 498.041 and shall be accompanied by a base fee of \$300 for each renewal plus ~~75 50 cents for each of the first 1,000 undeeded lots, parcels, units or interests and 20 cents for each additional~~ undeeded lot, parcel, unit, or interest.

(b) A penalty not to exceed \$20 per day may be assessed for a delinquent renewal; and the order of registration shall be suspended by operation of law after the 10th day of delinquency until the renewal fee and penalty are received by the division. In no event shall the penalty fee exceed \$400 per registration.

~~(c) The division may, by rule, increase the per-lot fees provided in paragraph (a), not to exceed 75 cents.~~

(3) The division shall charge subdividers of out-of-state subdivisions disposed of or offered for disposition in this state an initial and annual renewal fee equal to the fees charged for subdivided lands located within the state.

~~(4) Except as provided in subsection (13),~~ The application for registration required by s. 498.027 shall be accompanied by the initial fee, and when an inspection is to be made of the subdivided lands situated outside the state and being disposed of or offered for disposition in this state, the application shall also be accompanied by an amount equivalent to the cost of travel ~~round-trip from Florida to~~ and from the location of the subdivided lands, as estimated by the division, and by a further amount estimated to be necessary to cover the additional expenses of the inspection. The division shall not approve ~~accept~~ a registration until the subdivider pays any other actual verified expenses incurred in the inspection ~~and examination~~.

~~(5) The division shall charge each subdivider who seeks an exemption under this chapter an initial fee of \$200, plus \$1 for each lot. The application for exemption shall be accompanied by the initial fee, and when a field inspection or examination is to be made relative to subdivided lands, the subdivider shall also pay all actual verified expenses incurred in the inspection or examination.~~

~~(5)(6)~~ The division shall charge each subdivider a fee, which it shall set by rule, for filing notification of a material change of the offering. The fee shall not be less than \$200 nor more than \$1,000 unless the division determines that the actual costs of processing the material change exceeds \$1,000. If the division so determines, it shall issue its order charging the registrant with the actual costs of processing the material change. The order shall include documentation of the actual costs, and the registrant shall be entitled to a hearing under chapter 120, upon request.

~~(6)(7)~~ Each request for release of assurances established for improvements shall be accompanied by a \$50 fee; the subdivider shall also pay all actual verified expenses for onsite inspections or examinations.

~~(7)(8)~~ Each request for an exemption advisory opinion shall be accompanied by a \$100 fee.

~~(8)(9) Each filing of advertising material as required by s. 498.035 submitted for approval, other than that submitted as part of an initial registration or exemption of subdivided lands, shall be accompanied by a fee of \$25.~~

~~(9)(10) The division shall charge a subdivider \$250 for filing a reservation program.~~

~~(10)(11) The division may contract with any subdivider or others for reasonable charges for any extra or special service pertaining to any registration or application for registration.~~

~~(11)(12) The division shall charge a subdivider \$250 for filing a no-action letter request.~~

~~(13) The division shall charge each subdivider who seeks an exemption pursuant to s. 498.025(4) an initial fee of \$200. The application for this exemption shall be accompanied by the initial fee, and by an amount equivalent to the cost of round-trip travel to the site, as estimated by the division, and by a further amount estimated to be necessary to cover the additional expenses of the investigation, as prescribed in s. 498.011, for each day spent on site. Before issuance of the exemption order, the subdivider shall pay any other actual verified expenses incurred in the investigation.~~

Section 5. Section 498.022, Florida Statutes, is amended to read:

498.022 Jurisdiction over fraudulent acts.—

(1) It shall be unlawful and a violation of this chapter for a any person to offer or dispose of 5 25 or more lots, parcels, units, or interests in a subdivision pursuant to a common promotional plan, and to:

(a) Employ any device, scheme, or artifice to defraud.

(b) Obtain money or property by means of a false statement of a material fact, or the failure to state a material fact which makes the statement misleading in light of the circumstances and the context of the overall transaction, with respect to any information pertinent to the transaction.

(c) Engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(d) Make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

(e) Falsify, conceal, or cover up, by any trick, scheme, or device, a material fact.

(f) Dispose of, conceal, or divert any funds or assets of any person so as to substantially and adversely affect the interest of a purchaser.

(2) Those persons qualifying for exemptions pursuant to s. 498.025 shall not be exempt from the provisions of this section, and the division shall have the authority to use any powers granted to it by this chapter to prevent, investigate, or punish any violation of this section.

(3) Any violation of the provisions of subsection (1) shall give to any purchaser of the lots, units, or interests the same rights the purchasers would have under s. 498.061, as if the lots, units, or interests were “subdivided lands” as defined in s. 498.005~~(21)~~(19).

(4) Notwithstanding any other provision of this chapter, the term “subdivision” or “subdivided lands” as used in this section means any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 25 or more lots, parcels, units, or interests and also includes any land, whether contiguous or not, which is divided or proposed to be divided into 25 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

~~(5)~~(4) Any willful violation of the provisions of subsection (1) shall be a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (2) and paragraph (d) of subsection (3) of section 498.023, Florida Statutes, are amended to read:

498.023 Prohibitions on dispositions of interests in subdivided lands.— Unless the subdivided lands or the transaction is exempt pursuant to s. 498.025:

(2) No person may dispose of, or participate in the disposition of, any interest in subdivided lands unless:

(a) A current public offering statement is delivered to the purchaser prior to the disposition;

(b) The purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition; and

(c) The contract and public offering statement authorize the purchaser to cancel the agreement without cause until midnight of the seventh business day after he executes the contract.

(d) The public offering statement, contract, note, mortgage, deed, or other sales documents, delivered to the purchaser, are in the language in which the sales campaign is conducted, unless an accurate translation is attached to the document.

(3) When the principal solicitation of the disposition is by long-distance telephone, no person may dispose of, or participate in the disposition of, any interest in subdivided lands unless:

(d) One of the following takes place subsequent to the solicitation of the disposition by long-distance telephone:

1. The prospective purchaser personally inspects the property before executing the agreement to purchase and so certifies in writing; or

2. The prospective purchaser executes an agreement to purchase which expressly provides that the purchaser or purchaser's agent has 6 months

from the date the purchaser received the fully executed agreement to purchase in which to take a subdivider-guided personal inspection of the subdivided lands, and, at that time, if the purchaser is not satisfied with his purchase and the agreement to purchase is not in default, the purchaser may request in writing a refund of all moneys paid in under the agreement to purchase, and shall be entitled to the refund, even though the aforesaid 30-day period has expired. The agreement to purchase shall also provide that the subdivider must make available a guided personal inspection of the subdivision upon request by the purchaser and that the purchaser may request, and shall be entitled to, the refund if the subdivider fails to make the inspection available. ~~The documents mailed or delivered in accordance with this paragraph shall be governed by s. 498.037(3).~~

Section 7. Section 498.024, Florida Statutes, is amended to read:

498.024 Reservations.—

(1) ~~Notwithstanding s. 498.023, prior to filing an application for an order or exemption pursuant to s. 498.025(3) or (4) or an order of registration pursuant to s. 498.027, a subdivider may file an application for a reservation program which shall be approved by the division if the following conditions are met:~~

(a) ~~The subdivider has established an escrow or trust account with an escrow agent which meets the requirements of this section;~~

(b) ~~The subdivider has filed and received approval for all advertising, promotional material, reservation agreements, and trust or escrow agreements; and~~

(c) ~~The subdivider obtains an order of registration or order of exemption prior to any release of funds, except those made to prospective purchasers. Should the offer or property be exempt pursuant to s. 498.025(1), or (2), or (3), the subdivider shall notify the division of the exemption, prior to the release of funds.~~

(2) ~~Approval of a reservation program shall not be unreasonably withheld, and the division shall render a decision within 20 days from the date it receives adequate information, unless the subdivider extends the time limit in writing.~~

(3) ~~The provisions for an acceptable escrow or trust account pursuant to this section shall be as follows:~~

(a) ~~The subdivider shall give the prospective purchaser a receipt for and shall deposit all reservation deposits into an escrow account established with an escrow agent acceptable trust company, or a bank having trust powers within 5 3 business days after of receipt.~~

(b) ~~The escrow agent shall notify the prospective purchaser that the reservation deposit was received within 7 business days after of receipt by the escrow agent. The notice shall state that the funds are being held and will be released only in accordance with this section.~~

(c) The funds may only be placed in accounts and financial institutions that are insured by an agency of the United States Government. The funds may be placed in an interest-bearing or non-interest-bearing account, provided, the funds shall be available for withdrawal in full by the escrow agent at all reasonable times.

(d) The subdivider shall maintain separate books and records within his books for each reservation program in accordance with good accounting practices generally accepted accounting standards, as defined by rule of the Board of Accountancy.

(e) Upon the written request of a prospective purchaser, the escrow agent shall immediately and without qualification refund in full all moneys deposited by the prospective purchaser. Any applicable interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement.

(f) The escrow agent may release reservation deposits to the subdivider only upon adequate showing that the prospective purchaser has entered into a binding contract or agreement for purchase of the subject lot, parcel, or unit. Any applicable interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement.

(g) The reservation deposit shall be held by the escrow agent for a maximum of 180 days, after which time it shall be distributed to either the prospective purchasers or the subdivider as provided for in this section, unless the reservation program is extended with the written approval of the division and the purchasers are given notice of the right to receive a refund if they so request. This time limit is suspended for the period in which a registration ~~or exemption~~ application for the subject subdivided lands is pending with the division.

(4) The lot, parcel, or unit sales price to a person holding a reservation shall not be increased from the price stated in the reservation program for that unit, unless the possibility of a variance is fully disclosed in the reservation program.

~~(5) When this chapter requires delivery of a public offering statement to the prospective purchaser or an onsite inspection by the prospective purchaser prior to execution of the contract for purchase or lease of subdivided lands, the prospective purchaser shall have the right of rescission for a period of 7 days from the date of delivery of the public offering statement or of the onsite inspection.~~

~~(5)(6)~~ Any subdivider who willfully fails to comply with the escrow requirements of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082.

Section 8. Section 498.025, Florida Statutes, 1996 Supplement, is amended to read:

498.025 Exemptions.—

(1) Except as provided in s. 498.022, the provisions of this chapter do not apply to:

(a) ~~The An~~ offer or disposition of ~~an any~~ interest in subdivided lands by a purchaser for his own account in a single or isolated transaction, ~~except that this exemption shall not apply to registrants.~~

(b) The An offer or disposition of an interest in subdivided lands land by or to any government or government agency. This exemption shall not apply to registrants.

(c) ~~The An~~ offer or disposition of an interest in subdivided lands land as cemetery lots or interest.

~~(d) A subdivision as to which the plan of ultimate disposition is to dispose to 45 or fewer persons.~~

~~(d)(e)~~ An offer or transfer of securities currently registered with the Department of Banking and Finance or the United States Securities and Exchange Commission, except when s. 498.023(4) applies.

~~(e)(f)~~ Any offer or disposition constituting a single sale or offer to sell to a person when the purchase price is \$50,000 or more.

~~(f)(g)~~ The offer or disposition of an interest in subdivided lands to a ~~The sale or lease of land to any person engaged in the business of constructing residential or commercial buildings, or to any person who acquires the land for the purpose of resale or lease to a person engaged in such business unless the person who acquires the land sells it to individuals as unimproved lots with no legal obligation on the seller to construct a building on the lot within 2 years from the date of disposition.~~

~~(g)(h)~~ The Any offer or disposition of an interest in subdivided lands land on which there is a residential, commercial, or industrial building or as to which the seller has a legal obligation to construct such a building within 2 years from date of disposition.

~~(h)(i)~~ The An offer or disposition of an interest in subdivided lands in which the registrant conveys a lot, unit, or parcel or portion thereof to the purchaser of the contiguous lot. If only a portion of a lot, unit, or parcel is conveyed to the purchaser of contiguous property, the remaining balance of the lot, unit, or parcel shall be conveyed only to a purchaser of contiguous property. The only purpose of this conveyance shall be to increase the size of a purchaser's holdings; and restrictions shall be recorded to restrict the use of such lots, units, or parcels and the contiguous portions for use only as single-family homesites.

~~(i)(j)~~ Any offer or disposition constituting a single sale or offer to sell to a person if the lot, parcel, unit, or interest in the subdivision contains at least 20 acres. In determining eligibility for the exemption, easements for ingress and egress or public utilities are considered part of the total acreage of the lot, parcel, unit, or interest if the purchaser retains ownership of the property affected by the easement.

(j) The disposition of fewer than 25 homesites located within this state by a person within a consecutive period of 12 calendar months beginning after December 31, 1997, provided that the grantor or lessor holds marketable title to the subdivided lands to be conveyed or leased to purchasers and the purchaser physically inspects the homesite prior to the execution of the contract or lease.

(k) The offering or disposition of a homesite by one party together with the sale of a mobile home or manufactured home by another party if both contracts for purchase contain no provision which restricts the purchaser's remedy of bringing suit for specific performance and contain the following provisions:

1. Each seller is obligated to perform contingent upon the other seller carrying out its obligations so that the mobile home or manufactured home will be installed on a homesite lot within 2 years after the date the purchaser signs the contract to purchase the lot.

2. All funds or property paid by the purchaser shall be put in escrow until closing of the transaction.

3. All funds or property received by the seller shall be released to the purchaser upon demand if the homesite on which the mobile home or manufactured home has been erected is not conveyed within 2 years.

4. The homesite is developed in conformance with all applicable local land development laws and regulations pursuant to part II of chapter 163, including lots, parcels, units, or interest vested under such part.

5. At the time of closing:

a. Domestic water supply and sanitary sewage disposal are available to the homesite;

b. Electric power has been extended to the lot line;

c. The homesite is accessible by a street or road;

d. All promised improvements, including any common areas or recreational facilities represented by the seller or the seller's agent, are complete and provisions for perpetual maintenance have been provided; and

e. The purchaser receives marketable title to the homesite.

(l) The offer of disposition of an interest in subdivided lands located within the boundaries of a special dependent or independent district, subject to the following conditions:

1. All funds or property paid by a purchaser are put in escrow until closing; and

2. Closing shall not occur until all promised improvements including infrastructure, facilities, and amenities represented in any manner by the seller or the seller's agent are complete and the plat of same is recorded in the official records of the county in which the subdivision is located.

(m) The offer or disposition of an interest in subdivided lands to an accredited investor, as defined by rule of the Florida Department of Banking and Finance in accordance with Securities and Exchange Commission Regulation 230.501, 17 C.F.R. 230.501.

(n) An offer or disposition of any interest in a subdivision that has received a development order pursuant to s. 380.060 or s. 380.061, or the offer or disposition of any interest in subdivided lands by a person who has entered into a development agreement with local government in accordance with part II of chapter 163, subject to the following conditions:

1. All funds or property paid by a purchaser are escrowed until closing; and

2. Closing shall not occur until all promised improvements including infrastructure, facilities, and amenities represented by the seller or the seller's agent are deemed complete and the plat of same is recorded in the official records of the county in which the subdivision is located.

(o) The offer or disposition of an interest in subdivided lands which are zoned by the appropriate governmental authority for industrial or commercial development or which are restricted to such use by restrictive covenants which have been recorded in the official records of the city or county in which such real estate is located, when:

1. Local authorities have approved access from such real estate to a public street or highway;

2. The purchaser of such real estate is a duly organized corporation, partnership, trust, or business entity engaged in commercial or industrial business;

3. The purchaser of such real estate is represented in the transaction of sale or lease by a representative of its own selection;

4. The purchaser of such real estate affirms in writing to the seller or lessor that it either:

a. Is purchasing such real estate substantially for its own use; or

b. Has a binding commitment to sell, lease, or sublease such real estate to an entity which is engaged in commercial or industrial business, and is not affiliated with the seller, lessor, or agent thereof; and

5. A policy of title insurance or a title opinion is issued in connection with the transaction showing that title to the real estate purchased is vested in the seller or lessor, subject only to such exceptions as may be approved in writing by such purchaser prior to recordation of the instrument of conveyance or execution of a lease.

a. Nothing in this subparagraph shall be construed as requiring the recordation of a lease; and

b. Any purchaser may waive, in writing in a separate document, the requirement of this subparagraph that a policy of title insurance or title opinion be issued in connection with the transaction.

(p) The offer or disposition of condominium or cooperative parcels pursuant to chapter 718 or chapter 719, respectively.

(2) Except as provided in s. 498.022, the provisions of this chapter do not apply to offers or dispositions of interests in lots, parcels, or units contained in a recorded subdivision plat, or resulting from the subdivision of land in accordance with applicable local land development laws and regulations pursuant to part II of chapter 163, including lots, parcels, units, or interest vested under such part, if all of the following conditions exist:

(a) Each lot, parcel, or unit is situated on an existing, dedicated road or street that is constructed to the specifications of the appropriate local governing body which has voluntarily agreed to accept the road or street for maintenance, and, if a waiting period is required, adequate assurances have been established with the appropriate local governing body. Alternatively, maintenance may be provided by an acceptable homeowners' property owner's association, community development district, or special dependent or independent district. A homeowners' property owner's association shall be acceptable if it is a duly incorporated, not-for-profit nonprofit corporation whose governing documents bylaws, which provide for the assessment of the cost of maintenance of the roads on a pro rata basis, have been incorporated into the restrictive covenants imposed upon the subdivision.

(b) The subdivision has drainage structures and fill necessary to prevent flooding, which have been approved by the appropriate local governing body and, if a waiting period is required, adequate assurances have been established with the appropriate local governing body. In addition, provisions for perpetual maintenance of these drainage structures must be established with the appropriate local governing body, community development district, special dependent or independent district, or an acceptable homeowners' property owners' association or through restrictive covenants running with the land.

(c) Electric power is available at or near each lot, parcel, or unit.

(d) Domestic water supply and sanitary sewage disposal meeting the requirements of the applicable governmental authority are available at or near each lot, parcel, or unit.

(e) The subdivider is the fee simple owner of the subdivided land offered and to be leased or conveyed to purchasers.

(f) All promised improvements, including infrastructure, facilities, and amenities represented by the seller or the seller's agent any common areas or recreational facilities, are complete.

(g) The contract for purchase or lease contains, and the subdivider complies with, the following provisions:

1. The purchaser must inspect the subdivided land prior to the execution of the contract or lease.
2. The purchaser shall have an absolute right to cancel the contract or lease for any reason whatsoever for a period of 7 business days following the date on which the contract or lease was executed by the purchaser.
3. In the event the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days of the receipt of the notice of cancellation by the developer.
4. All funds or property paid by the purchaser shall be put in escrow until closing has occurred and the lease or deed has been recorded.
5. Unless otherwise timely canceled, closing shall occur ~~and the deed shall be recorded~~ within 180 days of the date of execution of the contract by the purchaser.
6. When title is conveyed, said title shall be conveyed by statutory warranty deed unencumbered by any lien or mortgage except for any first purchase money mortgage given by the purchaser and restrictions, covenants, or easements of record.
7. The subdivider presents to the purchaser the disclosure required by s. 689.26 prior to the execution of the contract or lease.

(h) The agreement for deed contains, and the subdivider complies with, the following provisions:

1. The purchaser must inspect the subdivided land prior to the execution of the agreement for deed.
2. The purchaser shall have an absolute right to cancel the agreement for deed for any reason whatsoever for a period of 7 business days following the date on which the agreement for deed was executed by the purchaser.
3. If the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days after the receipt of the notice of cancellation by the developer.
4. All funds for property paid by the purchaser shall be put in escrow until the agreement for deed has been recorded in the county in which the subdivision is located.
5. Unless otherwise timely canceled, the agreement for deed shall be recorded within 180 days after its execution by the purchaser.
6. Sale of lots in the subdivision shall be restricted solely to residents of the state.
7. The underlying mortgage or other ancillary documents shall contain release provisions for the individual lot purchased.

8. The subdivider presents to the purchaser the disclosure required by s. 689.26 prior to the execution of the agreement for deed.

~~(3) Except as provided in s. 498.022, the provisions of this chapter do not apply to offers or dispositions of interests in lots, parcels, or units contained in a recorded subdivision plat, or resulting from the subdivision of land in accordance with applicable local land development law and regulations pursuant to part II of chapter 163, including lots, parcels, units, or interest vested under such part, if all of the following conditions exist:~~

~~(a) Each lot, parcel, or unit is situated on an existing, dedicated road or street that is constructed to the specifications of the appropriate local governing body. Alternatively, maintenance may be provided by an acceptable property owner's association. A property owner's association shall be acceptable if it is a duly incorporated nonprofit corporation whose bylaws, which provide for the assessment of the costs of maintenance of the roads on a pro rata basis, have been incorporated into the restrictive covenants imposed upon the subdivision.~~

~~(b) The subdivision has drainage structures and fill necessary to prevent flooding, which have been approved by the appropriate local governing body. In addition, provisions for perpetual maintenance of such drainage structures must be established with the appropriate local governing body or an acceptable property owner's association or through covenants running with the land.~~

~~(c) Electric power is available at or near each lot, parcel, or unit.~~

~~(d) Domestic water supply and sanitary sewage disposal meeting the requirements of the applicable governmental authority are available at or near each lot, parcel, or unit.~~

~~(e) The subdivider is the fee simple owner of the subdivided land offered and to be conveyed to purchasers.~~

~~(f) All promised improvements, including any common areas or recreational facilities, are complete.~~

~~(g) The agreement for deed contains, and the subdivider complies with, the following provisions:~~

~~1. The purchaser must inspect the subdivided land prior to the execution of the agreement for deed.~~

~~2. The purchaser shall have an absolute right to cancel the agreement for deed for any reason whatsoever for a period of 7 business days following the date on which the agreement for deed was executed by the purchaser.~~

~~3. If the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days after the receipt of the notice of cancellation by the developer.~~

~~4.— All funds for property paid by the purchaser shall be escrowed until the agreement for deed has been recorded in the county in which the subdivision is located.~~

~~5.— Unless otherwise timely canceled, the agreement for deed shall be recorded within 180 days after its execution by the purchaser.~~

~~6.— Sale of lots in the subdivision shall be restricted solely to residents of the state.~~

~~7.— The underlying mortgage or other ancillary documents shall contain release provisions for the individual lot purchased.~~

~~(4)—The division may also grant additional exemptions from the registration and reporting provisions of this chapter if the subdivider demonstrates to the division's satisfaction that he has qualified for an order of exemption in those cases involving offers or dispositions of interests in subdivided lands where:~~

~~(a)—The contract for purchase contains, and the subdivider complies with, the following provisions:~~

~~1.—The purchaser must inspect the subdivided land prior to the execution of the contract.~~

~~2.—The purchaser shall have an absolute right to cancel the contract for any reason whatsoever for a period of 7 business days following the date on which the contract was executed by the purchaser.~~

~~3.—In the event the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days of the receipt of the notice of cancellation by the developer.~~

~~4.— All funds or property paid by the purchaser shall be escrowed until closing has occurred and the deed has been recorded.~~

~~5.— Unless otherwise timely canceled, closing shall occur and the deed shall be recorded within 180 days of the date of execution of the contract by the purchaser.~~

~~6.— Title shall be conveyed by statutory warranty deed unencumbered by any lien or mortgage except for any first purchase money mortgage given by the purchaser and restrictions, covenants, or easements of record.~~

~~(b)—The subdivider has completed all improvements promised;~~

~~(c)—The land is useful for the purpose for which it is offered;~~

~~(d)—The purchaser has personally inspected the property prior to the execution of the purchase contract and has so certified in writing; and~~

~~(e)—Each lot, parcel, or unit is accessible by a street or road that is constructed to the specifications of the appropriate local governing body or, if~~

~~the local governing body does not have specifications, the street or road shall be constructed in accordance with applicable standards from the Department of Transportation, and provisions acceptable to the division have been made for their perpetual maintenance.~~

(3)(5) A registrant or other person may obtain an exemption advisory opinion from the division stating whether or not a particular method of disposition or offer is exempt from the provisions of this chapter. Any opinion request shall be accompanied by the required fee as provided in s. 498.017, a comprehensive statement of facts and applicable law under which the petitioner believes the method of disposition or offer to be exempt, and any other information as is required by rule or requested by the division. Within 30 days after the date adequate information has been provided, the division shall issue an exemption advisory opinion indicating whether or not the method of disposition or offer is exempt. The advisory opinion shall not bind the division with regard to future action if circumstances should change, nor shall it affect any right which any purchaser may have under this chapter.

(4)(6) Whenever the division determines, on the basis of material ~~the~~ facts presented and a demonstration that adequate safeguards and assurances exist with respect to a particular offer or disposition, the division shall have the discretion to issue a letter any other relevant information, that an exemption is indicated, a letter may be issued within 30 days after the date adequate information has been provided stating that it will take no action may be taken by the division. The letter shall not bind the division with regard to future action relating to these matters if circumstances should change nor affect any right which any purchaser may have under this chapter.

(5)(7) Under this section or other provisions of this chapter, the burden of establishing the right to any exemption shall be upon the person claiming the benefit of such exemption, and it shall not be necessary for the division to negate any of the exemptions provided in this chapter in any notice to show cause, cease and desist order, complaint, or other suit or proceedings brought under this chapter.

Section 9. Subsection (1) of section 498.027, Florida Statutes, is amended to read:

498.027 Application for registration.—

(1) The application for registration of subdivided lands shall be filed as prescribed by the rules of the division and shall contain any of the following documents and information required by the division:

(a) If the subdivided lands offered for registration are located within this state, the application shall contain the following:

1. A recorded or proposed plat which meets the criteria required by applicable law or ordinance and a showing of the relation of the subdivided lands to existing streets, roads, and other offsite improvements. If the plat is

unrecorded, it shall be recorded prior to the issuance of the order of registration. Notwithstanding any applicable local ordinance, law, or regulation, no portion of a platted lot may be offered for registration or for disposition unless the registration application fully discloses that this may occur and appropriate disclosure acceptable to the division is made to prospective purchasers. This paragraph is not intended to supersede any local ordinance, law, or regulation that prohibits the disposition of less than a whole platted lot.;

2. If the lands are subdivided into lots, parcels, or units which are not required to be platted by local ordinance, special law, or general law of local application, a proposed or recorded plat meeting the criteria prescribed in part I of chapter 177, and, ~~If unrecorded, the plat shall be recorded in the situs county prior to the disposition of any lands, unless prohibited by the county, and the subdivider shall provide satisfactory evidence of recording to the division.~~ If any improvements are included in the offer, arrangements acceptable to the division shall be made for the perpetual their permanent maintenance of improvements included in the offering.;

3. ~~If the minimum size of a lot, parcel, or unit is 2½ acres or less, or, regardless of size, if the lot, parcel, or unit is intended for homesites, Evidence that the following conditions and the requirements of the local governing body, have been or will be met:~~

a. ~~A plat has been recorded with Provisions~~ are made for legal and physical access to each lot, parcel, or unit.;

b. A showing is made that the access street or road to, and all streets or roads within, the subdivided lands are or will be constructed traversable by conventional automobile pursuant to specifications adopted by the appropriate local governing body, and acceptable to the division; and

c. ~~Arrangements acceptable to the division have been made for the perpetual maintenance of all roads and streets;~~

4. Evidence that arrangements acceptable to the division have been made for the perpetual maintenance of improvements, including, but not limited to, streets or roads.

5.4. A showing that the subdivided lands meet, or will meet at the time specified by the local governing bodies, all requirements of the local governing bodies in effect on the date of registration, including requirements relating to public or private roads and streets, drainage, telephone and electric utilities, domestic water supply, and sanitary sewage disposal.;

(b) If the subdivided lands offered for registration are located outside this state, the application shall contain the following:

1. A proposed or recorded plat which meets the requirements of applicable state or local law or ordinance, which, if unrecorded, shall be recorded prior to the disposition of any lands.;

2. A legal description of the lands, together with a map, showing the division proposed or made; the dimensions of the lots, parcels, and units; and

the relationship of the subdivided lands to existing streets, roads, and other offsite improvements.

Notwithstanding any applicable local ordinance, law, or regulation, no portion of a platted lot may be offered for registration or for disposition unless the registration application fully discloses that this may occur and appropriate disclosure acceptable to the division is made to prospective purchasers. This paragraph is not intended to supersede any local ordinance, law, or regulation that prohibits the disposition of less than a whole platted lot.;

3. If no state or local law or ordinance for platting exists, a legal description of the subdivided lands, together with a map showing the existing or proposed dimensions of the lots, parcels, units, or interests and the relationship of the subdivided lands to existing streets, roads, and other offsite improvements.;

4. ~~If the minimum size lot or parcel is 2½ acres or less, or, regardless of size if the lot or parcel is intended for homesites,~~ Evidence that the following conditions and the requirements of the local governing body have been or will be met:

a. Provisions are made for legal and physical access to each lot, parcel, or unit, the subdivided lands;

b. A showing is made that the access street or road to, and all streets or roads within, the subdivided lands are or will be constructed traversable by conventional automobile pursuant to specifications adopted by the appropriate local governing body, and acceptable to the division; and

~~c. Arrangements acceptable to the division have been made for the perpetual maintenance of the streets or roads;~~

5. ~~If the minimum size lot or parcel is more than 2½ acres and is not offered as a homesite,~~ Evidence that arrangements acceptable to the division have been made for the perpetual maintenance of improvements, including, but not limited to, streets or roads.;

6. A showing that the subdivided lands meet or will meet all requirements of the appropriate local governing body in effect bodies on the date of registration, including requirements relating to public or private, but not limited to, streets or roads and streets, drainage, telephone and electric utilities, domestic water supply, and sanitary sewage disposal.;

(c) Regardless of where the subdivided lands are located, the application shall contain the following:

1. An irrevocable consent that, in noncriminal suits, proceedings, and actions growing out of any violation of this chapter or any rule or order of the division, the service on the division of any notice, process, or pleading authorized by the laws of this state shall be valid and binding as if due service had been made on the applicant.;

2. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree

entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.;

3. The applicant's name and address, the form, date, and jurisdiction of organization, and the address of each of its offices in this state.;

4. The name, home address, and principal occupation for the past 5 years of each director and officer of the applicant or of any person occupying a similar status or performing similar functions or any person who, in accordance with the rules of the division, is determined to be able to directly or indirectly control the operation of the business of the applicant; the name and home address of each shareholder holding a 10-percent-or-greater interest in the applicant, and the extent and nature of their interest in the applicant or the subdivided lands, as of a specified date within 30 days of the filing of the application.;

5. A statement, such as a title opinion of a licensed attorney who is not a salaried employee, officer, or director of the applicant or owner, or other evidence of title acceptable to the division, of the condition of the title to the subdivided lands, including encumbrances, as of a specified date within 30 days of the date of application.;

6. Copies of the instruments, acceptable to the division, which will be delivered to a purchaser showing his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign.;

7. Copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, showing the recording data.;

8. If a lien or encumbrance exists which affects more than one lot, parcel, unit, or interest, a statement of the consequences for a purchaser of the subdivider's failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser if this occurs.;

9. Copies of instruments creating easements, restrictive covenants ~~restrictions~~, or other encumbrances affecting the subdivided lands.;

10. A statement of the zoning and other governmental regulations affecting the use of the subdivided lands, and of any existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands.;

11. A statement of the existing provisions for legal and physical access; a statement of the existing or proposed provisions for sewage disposal and potable water; a statement of other public utilities available in the subdivision; a statement of the improvements to be installed and the schedule for their completion, which may not be more than 4 years from the date of the issuance of the order of registration for roads and drainage and for other improvements in accordance with a development agreement pursuant to ss. 163.3220-163.3243; and a statement as to the provisions for perpetual maintenance of these improvements.;

12. A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of any proposed advertising material;

13. The proposed public offering statement;

14. Any other information which the division by its rules requires for the protection of purchasers, ~~including a current financial statement;~~ and

15. Notice of any local or state land use regulation or plan, and of any moratorium, the duration of which is 180 days or more, imposed by executive order, law, ordinance, regulation, or proclamation adopted by any governmental body or agency which prohibits or restricts the development or improvement of property not otherwise prohibited or restricted by applicable law, and the effect on the proposed use of the property.

Section 10. Subsection (4) of section 498.029, Florida Statutes, 1996 Supplement, is amended to read:

498.029 Notice of filing and registration.—

~~(4) Notwithstanding the provisions of ss. 498.027(2) and 498.033(3), the division shall enter an order registering subdivided lands which are otherwise qualified for registration pursuant to this chapter if:~~

~~(a) The applicant submits evidence that he has applied for the permits required by chapters 253, 373, 380, and 403 and the certificates required by the Federal Water Pollution Control Act, Pub. L. No. 92-500; and~~

~~(b) The state agency charged with the responsibility of issuing such permits or certificates has failed, within 120 days of the filing of the applications, either:~~

~~1. To issue the permit or certificate; or~~

~~2. To deny the application setting forth in writing:~~

~~a. The rules, guidelines, and criteria used to evaluate the application;~~

~~b. The reasons for denial and the rules, guidelines, and criteria the application fails to satisfy; and~~

~~c. The action the applicant must take to satisfy the agency's requirements.~~

Any subdivider who obtains an order of registration under this subsection shall show in its public offering statement, in a manner prescribed by the division, that it has not received the necessary permit, certificate, or other authorization which must be granted prior to the construction of a specified improvement.

Section 11. Subsection (1) of section 498.031, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

498.031 Inquiry and examination.—

(1) Upon receipt of an application for registration in proper form and if subject to the provisions of s. 498.039, the division shall conduct an examination to determine whether:

(a) ~~The subdivider can convey or cause to be conveyed marketable title to the interest in any subdivided lands offered for disposition if the purchaser complies with the terms of the offer and, when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;~~

(b) Reasonable assurance is given that all obligations imposed by this chapter and all obligations contained in the ~~offering purchase contract, public offering statement, and registration statement~~ will be complied with by the subdivider;

(c) ~~The advertising material and~~ The general promotional plan is ~~are~~ not false or misleading and complies ~~comply~~ with the standards prescribed by the division in its rules and afford full and fair disclosure;

(d) The subdivider has not, or, if a corporation, its officers, directors, or principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country, or had a bond forfeited when charged with such a crime, within the past 10 years;

(e) No evidence exists which would reasonably lead the division to believe that the subdivider is, or, if a corporation, its officers, directors, or principals are, contemplating a fraudulent or misleading sales promotion;

(f) The public offering statement requirements of this chapter have been satisfied; and

(g) The subdivided lands which are the subject of the proposed registration ~~are have been~~ or will be made usable as homesites ~~for the purpose for which they are being offered or sold.~~

(4) Upon receipt of an application for registration in proper form that is not subject to the provisions of s. 498.039, the registration shall become effective within 10 days, and the division shall issue an order of registration. The division may, should it deem the application for registration is incomplete or the plan of sale is deceptive or misleading, take such action as authorized by this chapter.

Section 12. Section 498.033, Florida Statutes, is amended to read:

498.033 Registration of subdivided lands.—

(1) After an order of registration has been issued, the registrant shall comply with all obligations contained in the purchase contract, public offering statement, and registration statement.

(2) After an order of registration has been issued, no material change of the offering shall be made unless the registrant first notifies the division in writing and obtains the division's written approval. The approval shall not be unreasonably withheld, and a decision shall be rendered within 20 days from the date the division receives adequate information, unless the registrant and the division have agreed in writing to a delay.

(3) The subdivider shall furnish the purchaser an agreement for deed in recordable form which may be recorded by the subdivider or purchaser when the refund provision of the contract expires.

(4) ~~Unless given a written waiver by the division,~~ Each registrant shall provide the division with financial statements, audited by an independent certified public accountant registered in a state or territory of the United States or in the District of Columbia, not later than 5 months after the end of the registrant's fiscal year, ~~unless:-~~

(a) ~~All promised improvements have been completed as of the end of the registrant's fiscal year; and The registrant's financial statements shall be accompanied by the underlying data used to prepare the audited financial statements relating to the current estimated cost of completing the promised improvements, and by the accountant's opinion of the statements.~~

(b) ~~All registered property is free and clear of any encumbrance or the encumbrance contains a subordination provision that states: "The lien of this document is subordinate to the purchaser's rights and the purchaser shall obtain the legal interest or other interest provided for in the purchase contract or lease, free and clear of the encumbrance, upon the purchaser's compliance with the terms, provisions, and conditions of the purchase contract or lease." If promised improvements are not completed as of the end of the registrant's fiscal year, the registrant's financial statements shall be accompanied by a certification of the new estimate under seal by a licensed professional engineer expressing an opinion as to the cost of completing the improvements.~~

(c) ~~The requirement for filing financial audited statements may be waived by the division in writing if all promised improvements have been completed; if the property is free and clear of any lien, mortgage, or other encumbrance; and if the division determines that purchasers will not be required to rely upon the financial condition of the registrant for the fulfillment of contract obligations. The waiver shall be valid for 1 year and may be extended upon a showing by the registrant that the qualifying conditions for the waiver still exist. If the extension is not applied for and granted at least 30 days prior to the end of the 1-year period, the registrant shall submit new audited financial statements in accordance with the provisions of this chapter.~~

(5) ~~If promised improvements are not completed, upon request by the division, the registrant shall provide the division with a current estimate of the cost to complete the promised improvements, certified by a licensed professional engineer.~~

(6)(d) If the registrant fails to comply with the provisions of this section subsection, the division may shall issue a notice to show cause and, upon request, provide for a hearing in accordance with the provisions of chapter 120.

(7)(5) Each registrant shall comply with the terms of any instrument encumbering subdivided lands, including timely payments for satisfaction of the debts.

Section 13. Section 498.035, Florida Statutes, is amended to read:

498.035 Advertising material.—

(1) The division, by rule or order, may shall require the filing for approval of advertising material relating to subdivided lands prior to distribution of the material and may charge a fee for the filing pursuant to s. 498.017.

~~(2) Advertising submitted as part of the initial registration of land shall be treated as part of the initial registration and shall be reviewed for approval in accordance with the requirements of this chapter and division rules. Advertising submitted subsequently shall be deemed a subsequent filing, and the division may require any supporting data necessary at that time. The subsequent filing shall be approved or disapproved within 10 days after the date of filing. If the division fails to do so within 10 days, the subdivider may cause to be published all material which has been properly filed.~~

~~(3) Any communication in which any subdivider attempts to induce, entice, or otherwise influence any purchaser to prepay or accelerate payments on the contract shall include notice that prepayment will not accelerate the seller's obligation to deliver a deed or the time for making improvements to the property.~~

(2)(4) The division shall ~~may~~ require full disclosure of all pertinent information concerning a vacation or visitor campaign, including the terms and conditions of the campaign and the extent of the subdivider's participation in the campaign. The division shall ~~may~~ further require reasonable assurances that the subdivider or his agent can meet the obligations imposed by the certificate program.

(3)(5) "Advertising" shall not include:

(a) stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for prospectuses, property reports, offering statements, or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government;

~~(b) All communications addressed to and relating to the account of any purchaser, except when directed to the sale of additional lands or the prepayment or acceleration of payments on any purchase contract; or~~

~~(c) Press releases or other communications delivered to newspapers or other periodicals for general information or public relations purposes, for~~

~~which no charge is made by the newspapers or other periodicals for the publication or use of any part of the communications.~~

~~(6) The division may establish, by rule, provisions for the deletion of advertising material no longer in use.~~

~~(7) Notwithstanding the provisions of chapter 475, a subdivider may utilize advertising practices that include payment of nonmonetary gifts for referral of prospects for sales presentations if all of the following conditions are met:~~

~~(a) The person giving the gift does so for a referral related to the sale of real property owned by such person;~~

~~(b) The person receiving the gift previously purchased or contracted for deed to purchase real property owned by the person giving the gift;~~

~~(c) The receipt of the gift is not conditioned upon the sale of the real property;~~

~~(d) The fair market value of gifts received by a Florida resident for referrals relating to Florida real property does not exceed \$250 per year per household; and~~

~~(e) The person referred for a sales presentation relating to Florida real property is not a resident of Florida.~~

~~The division may enact rules requiring an annual report to the division by any person giving gifts pursuant to this subsection. Such rules may require information regarding the nature of the program and information on the total number of gifts given during the year and the number of gifts given within various categories of value.~~

(4) All advertising used in connection with the offer or disposition of subdivided lands shall comply with requirements and standards adopted by the division.

Section 14. Section 498.037, Florida Statutes, is amended to read:

498.037 Public offering statement.—

(1) Any public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands and shall make known to prospective purchasers all unusual and material circumstances or features affecting those lands.

(a) The proposed public offering statement submitted to the division shall be in a form prescribed by its rules and shall include the following information and items, unless otherwise provided by the division:

(a)1. The name and principal address of the subdivider.;

(b)2. A general description of the subdivided lands, stating the total number of lots, parcels, units, or interests in the offering.;

~~3. A map, which shall be physically separate from the public offering statement, but which shall be delivered to the purchaser with the public offering statement, indicating the location of the lots, parcels, or units being offered within the subdivision and its location in relation to the surrounding area;~~

(c)4. A statement of the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each lot, parcel, or unit; a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands; the name and office address of each special taxing district in which all or any part of the subdivided lands are located; and, if all or any part of the subdivided lands are located in a community development district established under chapter 190, a copy of the information required by s. 190.009, relating to the public financing and maintenance of improvements to real property undertaken by the community development district.;

(d)5. A statement of the use for which the property is offered.;

(e)6. Information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands.;

(f)7. Notice of any local or state land use regulation or plan and of any moratorium, the duration of which is 180 days or more, imposed by executive order, law, ordinance, regulation, or proclamation adopted by any governmental body or agency which prohibits or restricts the development or improvement of property which development or improvement would not otherwise be prohibited or restricted by applicable law, and the effect on the proposed use of the property.;

(g)8. A statement that the subdivider shall provide the purchaser with a recordable agreement for deed and a statement as to what effect recording of the agreement will have in providing the purchaser with legal protection.;

~~and~~

(h)9. Any additional information required by the division to assure full and fair disclosure to prospective purchasers.

~~(b) If, pursuant to s. 498.027(2), the division accepts an alternative to the subdivider's obtaining the referenced waivers, approval, or permits, the following disclosure shall appear in a prominent place on the cover of the Florida public offering statement for the subject subdivision: YOU SHOULD BE AWARE THAT THIS SUBDIVISION DOES NOT PRESENTLY HAVE ALL THE GOVERNMENT APPROVALS IT NEEDS TO COMPLETE CONSTRUCTION, AND, THEREFORE, DELIVERY OF YOUR COMPLETED LOT MAY BE DELAYED OR MAY NOT BE POSSIBLE.~~

(2)(a) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if used in its entirety. No person may advertise or represent that the division approves or recommends the subdivided lands or their disposition.

(b) No portion of the public offering statement may be underscored, italicized, or printed in larger, heavier, or different color type than the remainder of the statement ~~unless the division so requires.~~

(c) The division may require the subdivider to alter or amend the proposed public offering statement to assure full and fair disclosure to prospective purchasers.

(d) The subdivider shall make no change in the substance of the promotional plan or plan of disposition or development of the subdivision after registration until he notifies the division in writing, complies with the requirements of s. 498.033(2), and appropriately amends the public offering statement.

(e) A public offering statement is not current unless all amendments are incorporated.

(3) The division may limit the amount and format of the promotional materials that are presented ~~submitted~~ to a prospective purchaser along with the public offering statement.

Section 15. Subsections (1) and (5) of section 498.039, Florida Statutes, are amended to read:

498.039 Certain assurances or trust and escrow accounts required; reports required.—

(1) The division shall require each registrant offering property subject to ~~an any lien, mortgage, or other~~ encumbrance to establish and maintain an a trust or escrow account with an escrow agent in a financial institution ~~unless the encumbrance contains a subordination provision that states as follows: "The lien of this document is subordinate to the purchaser's rights and the purchaser shall obtain the legal interest or other interest provided for in the purchase contract or lease, free and clear of the encumbrance, upon the purchaser's compliance with the terms, provisions, and conditions of the purchase contract or lease."~~ in an acceptable manner if the division determines that:

~~(a) The encumbering instrument contains release clauses which are inadequate under the rules of the division; or~~

~~(b) The encumbering instrument does not provide that the secured creditor's rights are subordinate to the purchaser's rights and does not provide that the purchaser can obtain legal title or other interest provided for in the purchase contract or lease, free and clear of the encumbrance, upon compliance with the terms and conditions of the purchase contract or lease.~~

~~This subsection shall not apply to registrations containing encumbering instruments approved prior to June 27, 1976, unless additional subdivided~~

lands covered by the encumbering instruments are filed for registration under this chapter.

~~(5) The division shall require each registrant offering property in which all promised improvements have not been completed to establish reasonable assurances to ensure that all obligations imposed by the offering will be fulfilled. The division may require each registrant to establish and maintain trust or escrow accounts in a financial institution in an acceptable manner or provide an alternative form of acceptable assurance if the promised improvements to subdivided lands are not complete and paid for at the time of registration.~~

Section 16. Section 498.041, Florida Statutes, is amended to read:

498.041 Annual renewal; termination of registration.—

(1) Each registrant shall annually renew each order of registration it holds ~~as an active registration until the subdivision qualifies for inactive registration,~~ or the registration is revoked or terminated by the division. The annual renewal shall include:

- (a) The annual renewal fee prescribed in s. 498.017.;
- (b) An annual report in the form prescribed by the rules of the division; ~~and~~
- ~~(c) The name, license number, and address of any real estate salesman or broker in the State of Florida who was employed during the past year, or who is expected to be employed during the coming year, as an agent of the registrant to offer or dispose of registered subdivided lands.~~

This subsection does not limit or reduce the obligation of each registrant to submit to the division a notification of all material changes, pursuant to s. 498.033(2).

(2) Each registrant shall renew all its existing registrations based on the first letter of the registrant's name pursuant to the following schedule:

First Letter	Due Date
A and B	January 31
C	February 28
D and E	March 31
F and G	April 30
H and I	May 31
J and K	June 30
L and M	July 31
N and O	August 31

P September 30
 Q and R October 31
 S November 30
 T through Z December 31

(3) A registration may be terminated upon application if, at the time of application for termination, all of the following conditions are met:

(a) All current renewal fees and annual reports have been submitted to the division.

(b) All improvements to the subdivided lands as provided in the offering have been completed.

(c) Provision in a manner acceptable to the division has been made for the perpetual maintenance of all improvements to the subdivided lands to the extent required by the offering.

(d) No administrative orders are pending with any state or federal governmental agency to suspend or revoke any registration of the subdivided lands subject to the application for termination.

(e) Each contract purchaser has received title to the property purchased as so provided for in the offering, free and clear of any liens and encumbrances, except for any mortgage given by the purchaser. The registrant must provide the division with an affidavit, executed by an authorized representative of the registrant, verifying the subdivided lands sold have been deeded to each purchaser in fulfillment of the registrant's offering.

(4) If, at the time of application for termination, title has not been delivered to all purchasers from whom unpaid balances are due pursuant to agreements for deed, the termination shall be deemed a material change. In such event, the registrant must comply with paragraphs (a) through (e) of subsection (3) and either paragraph (a) or paragraph (b):

(a) The registrant shall convey title to all such purchasers by general or statutory warranty deed, or in the manner provided for in the contract, receiving from each said purchaser a purchase money mortgage and note, or retaining a vendor's lien in the amount of the unpaid balance due pursuant to the agreement for deed. In such event, the registrant shall:

1. Record said conveyance and deliver to the division, prior to the entry of an order of termination, an affidavit listing the name of each purchaser and the clerk's file number of official record book and page number of each recorded deed; however, if the registrant was not obligated to record these conveyances, their dates of delivery may be provided in place of official recording information. Said affidavit shall also include an affirmative statement that the property conveyed to each purchaser is the same as the buyer agreed to purchase.

2. If the registrant elects to convey title subject to a vendor's lien rather than a purchase money mortgage, the conveyance shall include the following

statement: "This conveyance is subject to a vendor's lien in favor of (name of grantor), with a principal balance outstanding of \$ _____. This vendor's lien is payable at the rate of \$ _____ per month, including a period of _____ months from this date. Upon payment in full of this vendor's lien, the grantor shall record upon the public records a satisfaction of this vendor's lien and mail to the grantee the original recorded satisfaction of vendor's lien."

(b) The registrant may prepare and execute general or statutory warranty deeds or other conveyance as provided for in the contracts, for all purchasers, in recordable form and deliver such conveyances to a trustee. The registrant may also record and deliver a single general warranty deed to the trustee conveying legal title to all lots subject to outstanding agreements for deed. The trustee and the registrant shall enter into an irrevocable trust agreement properly certified and delivered to the division which shall include, but not be limited to, the following:

1. A statement that the trustee shall hold physical possession of said conveyances of property until they are delivered or the property is conveyed to the purchaser.

2. The name and address of the grantee in each conveyance, and the legal description of the property to be conveyed.

3. An undertaking by the registrant to notify the trustee within 10 days after receipt of final payments from a purchaser that full payment has been made for the particular lot or lots purchased.

4. An undertaking that the trustee shall deliver each conveyance to the grantee named therein or agree to prepare a conveyance from the trustee to the purchaser upon receipt of notice by the trustee that the balance owed by the purchaser pursuant to the agreement for deed has been paid in full. Said undertaking shall also provide that if the registrant fails to give such notice to the trustee when it is due, the trustee may deliver said conveyance to the grantee upon the presentation to the trustee by the purchaser or the grantee of proof that the balance owed by the purchaser has been paid in full.

5. An undertaking by the trustee that a conveyance will be redelivered to the registrant only after proof has been presented to the trustee that the recorded interest of the grantee has been legally terminated in the public records by a final judgment of foreclosure, final judgment quieting title, quit claim deed, or otherwise.

6. An undertaking by the registrant that the trust agreement shall be recorded in the public records of the county in which the subdivided lands are located.

7. An undertaking by the trustee to notify the division when all of the subject deeds have been delivered to grantees or redelivered to the developer.

(5) A registrant who has been granted an order of termination pursuant to paragraph (4)(b) with regard to a subdivision shall not be required to

comply with the reporting provisions of this chapter or file annual renewals. However, until each purchaser has received a deed in fulfillment of his or her purchase contract, the registrant shall remain subject to the jurisdiction of the division, the provisions of this chapter, and administrative rules promulgated thereunder, notwithstanding the entry of an order of termination.

(6) If the division subsequently finds that the order of termination was granted upon false information or, as a matter of law, that the registrant was not entitled to an order of termination, the order may be revoked by the division after due notice to the registrant.

(7) A pending application for termination shall not relieve the registrant from the obligation to renew a registration annually and pay the annual renewal fee, unless an order of termination is entered prior to the first day of that annual renewal period.

(8) The division may also enter an order terminating a registration:

(a) If no dispositions of interests in subdivided lands in a registration have occurred, or any made have been legally rescinded, and the registrant will not offer or dispose of the property in a manner subject to the registration requirements of this chapter. The registrant may petition for termination pursuant to this paragraph without regard to the provisions of this section. The petition shall include the following:

1. A petition for termination under this paragraph, signed by the registrant, stating the registrant's name and the division's reference number assigned to the order of registration.

2. An affidavit executed by each individual registrant, by the chief executive officer of an incorporated registrant, by a general partner if the registrant is a partnership, or by each participant if the registrant is a joint venture, which verifies the following information:

a. No interests have been disposed of in the subdivided lands subject to the registration; or

b. All dispositions of interests in the subject subdivided lands have been legally rescinded.

(b) Notwithstanding the requirements of this section, the division may approve an application for termination of registration if, in the discretion of the division, the circumstances are such that no affirmative action to enforce the requirements of this section is needed to protect purchasers or the public interest.

Section 17. Subsection (5) of section 498.047, Florida Statutes, is amended, and subsections (6) and (7) are added to that section, to read:

498.047 Investigations.—

(5) A person who furnishes information or evidence to the division is immune from civil liability unless such person acts in bad faith or with

~~malice in providing such information as evidence. For the purpose of any investigation or proceeding under this chapter involving a person whose books or records are maintained outside of the state, that person shall either:~~

~~(a) Deliver the original books or records, together with any other documents requested by the division, to the designated office of the division in this state; or~~

~~(b) Pay all documented expenses incurred by the division in conducting the investigation or proceeding at the location of the books or records.~~

~~(6) Unless otherwise ordered by a court of competent jurisdiction, nothing shall prohibit a complainant, respondent, or any witness from disclosing the existence of an investigation or other proceeding under this section.~~

~~(7) Any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst may be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests to under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to the authority of this chapter.~~

Section 18. Subsections (8) and (9) are added to section 498.059, Florida Statutes, to read:

498.059 Penalties.—A person is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he willfully:

(8) Makes any material misrepresentation or conceals any material fact in any written communication with the division.

(9) Fails to comply with the provisions of this act concerning deposits of funds into trust or escrow accounts, or withdrawal of funds from trust or escrow accounts. The failure to place funds in trust or escrow accounts established pursuant to this act after receipt by the subdivider of such funds is prima facie evidence of an intentional and purposeful violation of this act.

Section 19. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.