



## Condominium Program Should Process Complaints, Disputes Sooner and Enhance Program Services

### *at a glance*

Consumers file a wide range of complaints against condominiums. The Division of Land Sales, Condominiums, and Mobile Homes does not close a significant number of consumer complaint cases and dispute arbitrations within intended timeframes. The division also typically responds to violations it finds by sending informational and warning letters rather than taking stronger enforcement action such as levying fines.

The division and the Legislature could take several actions to improve the timeliness and effectiveness of the division's services.

- Clarify statutory timeliness standards
- Strengthen enforcement action
- Improve business processes
- Increase use of mediation
- Continue the requirement that the division submit quarterly reports

### Scope

OPPAGA conducted this project in response to a legislative request to evaluate the condominium-related complaint and dispute processes used by the Department of Business and Professional Regulation's Division of Land Sales, Condominiums, and Mobile Homes. Our report addresses four questions.

- What types of condominium-related complaints and disputes do consumers file with the division?
- How does the division address these issues?
- What are the outcomes of the division's investigations and enforcement actions, and how long does it take the division to complete these actions?
- How could the division's condominium-related services be improved?

Appendix A of this report provides the status of condominium-related legislative changes enacted by the 2004 Legislature.

### Background

The Division of Florida Land Sales, Condominiums, and Mobile Homes regulates a wide range of business activities, including the creation, sale, and operation of condominiums.<sup>1</sup> The division's mission is to respond to problems within its regulatory responsibilities in a timely and appropriate manner, with the goal of enhancing consumer protection, providing quality service, and increasing condominium owner and association satisfaction with services. The division's mission also includes educating the public and condominium developers, associations, association boards of directors, and unit owners about their statutory rights and responsibilities.

<sup>1</sup> Chapter 718, *F.S.* The division also regulates cooperatives and timeshares, the sale of subdivided land, yachts, and ships, and the lease of lots within mobile home parks.

### ***Condominium program functions***

The division regulates approximately 1.1 million condominium units that are governed by about 18,000 ownership associations. The division's major services are described below.

- Registration. Division staff review and approve documents prepared by condominium developers to ensure that these materials contain the disclosures required by statute.
- Education. The division provides training programs for condominium association board members and unit owners. The division contracts with the Community Associations Institute for these services, including classes held in various locations throughout the state and through a web-based tutorial.<sup>2</sup>
- Complaint investigation. The division operates three regional offices at which staff accept, investigate, and process complaints filed by consumers. When the division determines that it has jurisdiction over the matter and a violation of law has occurred, it can take several enforcement actions, including issuing informational letters, warning letters, and administrative fines. In Fiscal Year 2003-04, the division closed 1,995 complaint cases.
- Dispute hearing. For disputes related to violations of association bylaws, the division's authority is limited to assisting consumers through a dispute hearing process. The division offers both mediation and a mandatory, non-binding arbitration process to solve disputes between parties. In Fiscal Year 2003-04, the division closed 591 dispute cases.

### ***Organizational structure***

The division's condominium program functions are organized within three units—the Bureau of Standards and Registration, the Bureau of

Compliance, and the Arbitration Section, which is located within the division director's office.

Bureau of Standards and Registration. Nine staff members of this 28-person bureau process condominium registration filings. The bureau is located in Tallahassee.

Bureau of Compliance. Twenty-eight staff members of this 49-person bureau respond to condominium complaints and investigate alleged violations of state laws and rules. The bureau's three regional offices are located in Tallahassee, Tampa, and Fort Lauderdale.

The Arbitration Section. Six staff members arbitrate and mediate condominium disputes. The section is located in Tallahassee.

### ***Program financing***

For Fiscal Year 2003-04, the condominium function within the Division of Florida Land Sales, Condominiums, and Mobile Homes generated revenues of \$7 million, with expenditures of \$5.9 million. Program revenue is generated through fees and fines and deposited into the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.<sup>3</sup>

### ***Historical concerns with division activities***

In recent years, legislators and consumers have criticized the division's condominium-related complaint and dispute processes. The most commonly voiced concerns have been that the division takes too long to process consumer complaints, inadequately educates unit owners and condominium associations about their responsibilities, and does not adequately punish violators of condominium laws and rules. In 2003, the Florida House of Representatives established a Select Committee on Condominium Association Governance, which resulted in legislation enacted by the 2004 Legislature. During our current review, we received stakeholder input through an online questionnaire, telephone messages, e-mails, and correspondence received via U.S. mail. We received input from approximately 90 stakeholders. As this information was not

<sup>2</sup> Attendance at the division's three-hour classes is based on space availability. There is no attendee fee as the course cost is funded through an annual \$4 assessment paid by unit owners. In the past, the division also produced items such as a condominium association manual and provided outreach and one-on-one consumer education to unit owners and boards. The division no longer produces association manuals and provides outreach only upon request.

<sup>3</sup> An additional \$3 million was transferred from the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund balance to the Administrative Trust Funds.

derived through surveying a randomly selected sample, the results should not be generalized to represent the views of all stakeholders.<sup>4</sup> In general, the concerns expressed by these stakeholders were similar to those found by the select committee, including the timeliness of the division’s complaint investigation and dispute hearing process, enforcement actions, and educational efforts.

## Questions and Answers —

### *Question 1: What types of condominium-related complaints and disputes do consumers file with the division?*

The division receives a wide range of consumer complaints and questions. However, the division’s regulatory jurisdiction is limited by statute and administrative rules, and it is thus unable to address about 15% of the complaints it receives. Overall, most of the complaints and disputes processed by the division involve condominium association financial management, association records, and alleged violations of association bylaws.

#### **The division’s jurisdiction is limited**

The division receives a broad range of consumer complaints and disputes relating to condominiums, from concerns about unsanitary swimming pool conditions to allegations of misuse of condominium association funds. However, as shown in Exhibit 1, the division’s jurisdiction is limited to only specific violations of state law and rules (i.e., complaints) and disagreements related to condominium governing documents (i.e., disputes). The division specifically is excluded by law from addressing certain issues relating to condominiums, including questions of title to common areas, fees, and assessments levied by condominium associations, and, except in the case of condominium conversions, disputes relating to eviction of tenants.

### **Exhibit 1 The Division’s Jurisdiction Is Limited to Specific Complaints and Disputes**

Jurisdictional Categories	
Complaint	Dispute
<ul style="list-style-type: none"> <li>▪ Board action/inaction (e.g., failure to hold annual meeting)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Disagreements between a unit owner and association over use of a unit or common elements</li> </ul>
<ul style="list-style-type: none"> <li>▪ Elections (e.g., failure to timely hold runoff election)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Implementation of association by-laws</li> </ul>
<ul style="list-style-type: none"> <li>▪ Records/Reporting (e.g., failure to provide access to records)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Recall elections</li> </ul>
<ul style="list-style-type: none"> <li>▪ Financial (e.g., failure to propose full reserve funding in proposed budget)</li> </ul>	

Source: Chapter 61B-21, 22, 45, and 50, *Florida Administrative Code*.

#### **The largest number of complaints relate to financial management, while most disputes relate to document enforcement**

In Fiscal Year 2003-04, the division received 1,822 consumer complaints and 610 disputes relating to condominiums. As shown in Exhibit 2, most complaints received by the division involved association financial management (23%) and board records (21%). For arbitration cases, the majority of closed disputes involved alleged violations of condominium association governing documents (46%). Due to the division’s coding system, there is some overlap in the issues addressed by the complaints and disputes. For example, the division may classify a consumer complaint regarding improper election nominating procedures, which is a violation of state regulations, as an election/recall problem, and use the same category to record a dispute relating to failing to properly conduct elections.

<sup>4</sup>For our online questionnaire, we solicited input from the following stakeholder groups: American Resort Development Association; Association of Florida Community Developers; Community Associations Institute (all chapters); Condo News; Cyber Citizens for Justice; Florida Community Association Coalition; Timeshare Users Group; and We the People, Inc.

**Exhibit 2  
Most Complaint Allegations Involve Association Financial Management,  
While Most Disputes Involve Governing Documents <sup>1</sup>**

Jurisdictional Categories					
Complaint Allegations			Disputes		
Financial Management	689	23%	Governing Document Enforcement	253	46%
Records	627	21%	Miscellaneous <sup>2</sup>	174	31%
Board Jurisdiction	508	17%	Election/Recall	86	15%
Meetings	360	12%	Maintenance	21	4%
Maintenance	341	11%	Records	20	4%
Election/Recall	295	10%			
Governing Document Enforcement	166	5%			
Sales Activity	30	1%			
Miscellaneous	6	>1%			

<sup>1</sup> Complaint allegation data is based on cases filed in Fiscal Year 2003-04, while dispute data is based on cases closed during the year but excludes mediation cases. The categories of allegations are consistent with those of a sample of 100 cases we examined during our review.

<sup>2</sup> Includes 137 attorney fee cases, which involve disputes about attorneys' fees for previously arbitrated cases.

Source: Department of Business and Professional Regulation.

***Question 2: How does the division address these issues?***

The division uses two different approaches to handle condominium-related issues. Division staff investigate complaints, while disputes are processed using arbitration.

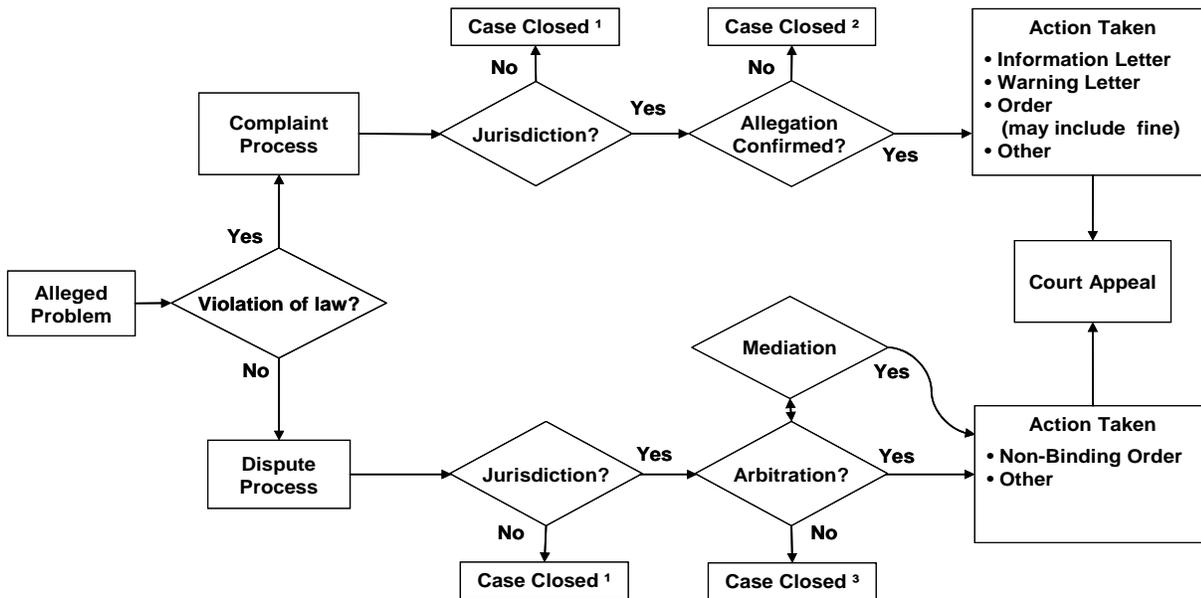
**The division handles complaints and disputes using different approaches**

The division accepts, investigates, and processes both consumer complaints and disputes. Complaint processing is used for problems involving statutory violations, while problems

related to association bylaws and governing documents are processed through dispute hearings.

Condominium owners and associations can file complaints with the division in several ways. Customers can call the department's centralized call center and receive a complaint or arbitration form, which they can submit via U.S. mail, e-mail, fax, or hand delivery to division headquarters or regional offices. Assistance, forms, and educational materials are provided in both English and Spanish. Exhibit 3 provides a flowchart of the division's complaint and dispute processes.

**Exhibit 3  
Complaints and Disputes Are Processed Differently**



<sup>1</sup> Another governmental entity may have jurisdiction.  
<sup>2</sup> May be determined unfounded, lack of evidence, dropped by complainant, etc.  
<sup>3</sup> May be withdrawn by petitioner or there is pending court action.

Source: Department of Business and Professional Regulation.

**Complaint processing**

When the division receives complaints associated with violations of state condominium law and rules, its investigators evaluate the information provided by the complainant, collect additional information, speak to involved parties, and review condominium documents as necessary. The investigation can result in one or more of the actions described below.

- Dismissal. If the complaint is determined to be outside the division’s jurisdiction, unfounded, or duplicates issues already under investigation, the division sends a dismissal letter and closes the case.
- Civil Penalty. If the division’s investigation verifies a complaint and determines that a violation of the law has occurred, it may impose fines up to \$5,000.
- Other enforcement provisions. Through its broad delegation of authority in the law, the division has developed, via administrative rule making, a hierarchy of other enforcement actions it may take when it determines that a

complaint is valid but the offense does not merit imposing a civil penalty.<sup>5</sup> The division has established a list of minor and major violations, as well as a list of aggravating and mitigating factors that it will consider in determining what enforcement action to take. These enforcement provisions include those described below.

- Informational letter. The division may issue an informational letter when it determines that a minor violation has occurred but is the first offense.<sup>6</sup> The letter contains educational materials and guidance, along with an opportunity to respond. Once the letter is issued, the division closes the case but does not verify that the proposed actions have been taken or the violation has been resolved. For example, a case involving denial of access

<sup>5</sup> See Chapter 61B-21, *Florida Administrative Code*.

<sup>6</sup> As defined in Rule 61B-21.003(7)(a), *Florida Administrative Code*, minor violations can involve associations not allowing unit owners to speak at association board meetings, limiting unit owner testimony to less than three minutes, and failing to hold a timely runoff election.

to records would be closed without the association providing documentation that access has been granted.

- Warning letter. The division may issue a warning letter when a subsequent and identical minor violation occurs within two years or if an initial violation is defined as “major”.<sup>7</sup> A warning letter states that the violation must be corrected or additional enforcement action may be taken. The investigator is required to verify that corrective actions have been taken.
- Orders. The division may issue an administrative order if a third minor or second major violation is found within two years. If the violator agrees to take corrective action, the case is closed with a consent order. If the violator does not act per the conditions of the consent order, the division will conduct an administrative hearing and issue a final order. The division may impose monetary penalties ranging from \$100 to \$5,000 per violation. The division also may file a petition with the circuit court to enforce its final orders.

### ***Dispute hearings***

The division’s arbitration section has the authority to handle disputes that involve disagreements between owners and associations and their officers rather than statutory or regulatory violations. These may include problems such as those associated with recall elections, access to condominium governing documents, modification of common elements of a condominium complex, and unit owners keeping pets in violation of condominium association bylaws. Such disputes are handled using arbitration or mediation. Arbitration is formal, with the arbitrator making a decision in a court-like setting and issuing an order. In contrast, mediation is conducted in informal settings with the mediator working with the parties to develop mutual agreements in a non-adversarial way that will resolve the dispute.

The division’s dispute hearing process starts when a complainant files a petition along with a \$50 fee. The arbitrator reviews and processes the petition and determines whether the division has jurisdiction over the matter.<sup>8</sup> The arbitrator seeks a response from the other party, and determines whether the matter may be more efficiently and effectively resolved through mediation. If appropriate for mediation, division staff will work with the two parties to attempt to reach a mutually agreeable resolution. If successful, mediation results in a settlement and case closure; if unsuccessful, the parties may drop the matter or return it to arbitration.

The arbiter may issue a summary order or hold a formal hearing in person or via telephone to decide the case based on its merits, in which case a final order is issued. The arbitrator’s decision is final but non-binding. If either party is dissatisfied with the arbitrator’s final decision, they may file with the county or circuit court, for a new hearing before a judge.

### ***Question 3: What are the outcomes of the division’s investigations and enforcement actions, and how long does it take the division to complete these actions?***

The division generally disposes of consumer complaints by issuing informational and warning letters rather than imposing sanctions such as fines. It also tends to arbitrate disputes rather than using mediation to resolve these problems. The division closes about two-thirds of complaint and dispute cases within established timeframes, but exceeds these periods in a significant number of cases.

The division uses informational and warning letters for most complaints

Our review of the division’s Fiscal Year 2003-04 closed complaint data revealed that about two-thirds of the cases the division receives are valid (see Exhibit 4). The division closed the remaining 34% of complaints after determining that it lacked jurisdiction or the cases were unfounded.

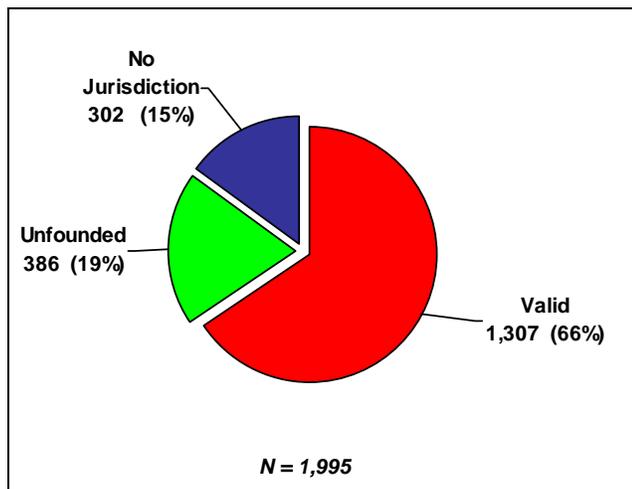
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<sup>7</sup> Rule 61B-21.003(7)(b), *Florida Administrative Code*, lists major violations, which include associations failing to fund reserves, hold an annual meeting, to fully fund reserves, and/or maintain meetings minutes.

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<sup>8</sup> The division closes cases that are outside its jurisdiction, when the courts have already assumed jurisdiction, and unfounded disputes.

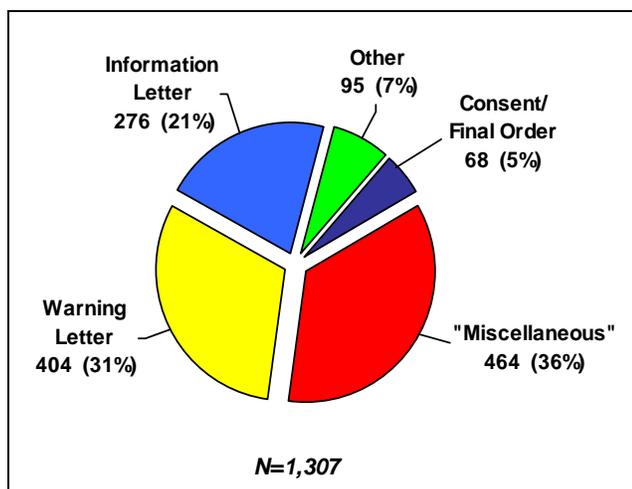
**Exhibit 4**  
**Two-Thirds of Complaints Filed**  
**in Fiscal Year 2003-04 Were Valid**



Source: Department of Business and Professional Regulation.

For complaint cases that the division determined to be valid, it addressed over half of the violations using informational and warning letters. Exhibit 5 shows the number of actions, by category, that the division took for valid complaint cases in Fiscal Year 2003-04. During this time, the division disposed of most complaints using informational or warning letters (52%). During the period, only 5% of complaints resulted in enforcement action through final and consent orders. In total, the division imposed 46 monetary penalties, with fines totaling \$230,176.

**Exhibit 5**  
**Most Valid Complaints Were Disposed of Using Warning**  
**and Informational Letters in Fiscal Year 2003-04**<sup>1</sup>



<sup>1</sup>The "other" category includes dispositions such as inquiry answered, withdrawn, currently in administrative action.

Source: Department of Business and Professional Regulation.

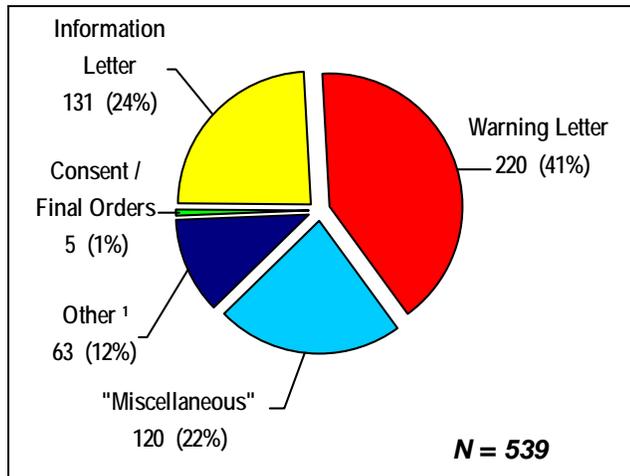
While the division's emphasis on educational remedies may be appropriate in many situations (e.g., first offenses with minor violations), overuse of educational enforcement methods can compromise consumer protection because it weakens the division's deterrent power and may allow entities that have violated the law to continue operating, without correcting identified problems, with little fear of serious sanctions.

Our review of the division's Fiscal Year 2003-04 data also revealed that it was technically unable to more specifically categorize the disposition of 36% of cases, which were classified as "miscellaneous." Division officials indicate that this category was used extensively during the period because of data conversion problems associated with the introduction of the department's LicenseEase case management system.<sup>9</sup> Because of concern about data accuracy, we reviewed division disposition data for the first two quarters of the current Fiscal Year (2004-05). We determined that a smaller, yet still significant, number of complaints (22%) were reported in the miscellaneous category during this period (see Exhibit 6). Therefore, it appears that the division still needs to improve its classification system to more specifically group closed complaint cases.<sup>10</sup>

<sup>9</sup> Division officials noted that as staff become more familiar with LicenseEase, the use of the miscellaneous category will decrease.

<sup>10</sup> Division officials provided us closed complaint data for February 2005, which indicated that 21 of 153 cases were categorized as "miscellaneous." A review of each case in the miscellaneous group revealed that these cases typically fall into three categories: (1) in litigation; (2) recommended for arbitration; and (3) duplicate case. According to division officials, they have requested that two codes be added to the LicenseEase system to account for cases in the first two groups. In addition, the division has implemented a new procedure whereby duplicate cases will be combined with existing cases, rather than coded as "miscellaneous." Division officials asserted that these changes should further reduce staff use of the miscellaneous category.

**Exhibit 6**  
**The Division Continued to Use the Miscellaneous Category for a Significant Number of Cases in the First Half of Fiscal Year 2004-05 <sup>1</sup>**



<sup>1</sup>The "other" category includes dispositions such as inquiry answered, withdrawn, currently in administrative action.

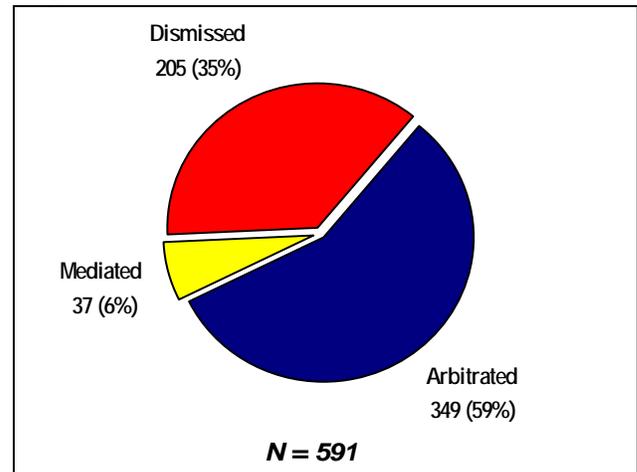
Source: Department of Business and Professional Regulation.

Another weakness in the division's current complaint process is that it does not always verify that consumers' concerns are resolved. Informational letters do not require the violator to take corrective action, and the division does not verify that the violator resolved the problem that prompted the complaint. Moreover, division letters informing complainants that their cases were closed due to lack of jurisdiction do not always provide information on other agencies that may be able to assist them (e.g., county health department or state attorney's office). Further, when this information was provided to complainants, the division did not always forward the complaint to the other entity, even when it was the division's own arbitration section.

**The division handles the vast majority of disputes using arbitration**

In Fiscal Year 2003-04, the division's arbitration section closed 591 cases (see Exhibit 7). Most of those cases (59%) were arbitrated, while only 6% were mediated. Thirty-five percent of disputes were dismissed because they were withdrawn, no decision was needed, not within the division's jurisdiction, or active court cases. Division officials estimate that approximately 2% of the cases arbitrated are subsequently appealed to the courts for further action.

**Exhibit 7**  
**In Fiscal Year 2003-04, Most Disputes Were Arbitrated, With Mediation Being Used on a Very Limited Basis**



Source: Department of Business and Professional Regulation.

**The division frequently exceeds statutory time periods in processing complaints**

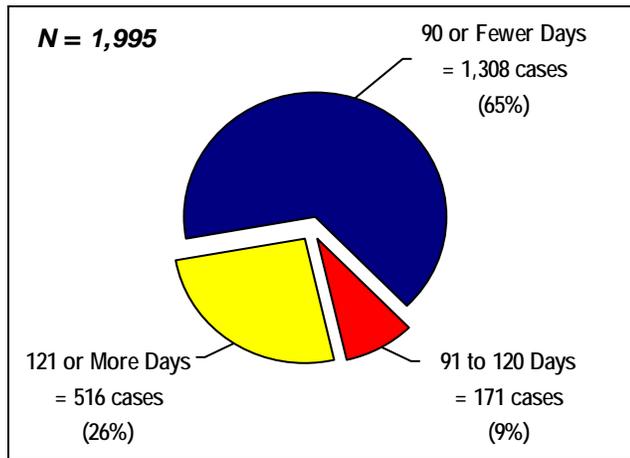
The Legislature has established the goal that the division should take action on complaints within 90 days.<sup>11</sup> However, the division is authorized to continue to investigate complaint cases that are still open after 90 days if it believes that a violation of law has occurred. The division views the 90-day period as an internal standard rather than as a statutory requirement.<sup>12</sup>

For Fiscal Year 2003-04, the division reports that it closed 1,995 complaint cases and that the median time to close these cases was 53 days. As shown in Exhibit 8, the division closed about two-thirds (65%) of the cases within the statutory timeframe. However, the division exceeded the 90-day time period for the remaining cases. The division took between 91 and 120 days to close 9% of the cases, and took more than four months (120 days) to close the remaining 26% of the cases.

<sup>11</sup> Section 718.501(1)(m), *F.S.*

<sup>12</sup> The division's January 1, 2005, quarterly report explains the division's reasoning. "Section 718.501(1)(m), *Florida Statutes*, does not require that an investigation be 'closed' within 90 days, but does require the division to take action upon a complaint within 90 days of receipt of the complaint or receipt of additional information."

**Exhibit 8**  
**The Division Closed 35% of Complaint Cases After 90 Days in Fiscal Year 2003-04**



Source: Department of Business and Professional Regulation.

These results are consistent with those noted in our three prior reviews of the program, which all reported that the division frequently did not close cases within established timeframes.<sup>13</sup> The Department of Business and Professional Regulation’s inspector general also reported in December 2004 that there were often unexplained processing delays within condominium complaint cases.<sup>14</sup> Specifically, the inspector general concluded that for 21% of the complaint files reviewed, there were 30-day lapses in case activity. The inspector general concluded that the delays were due to poor management oversight of case activity. Because of concerns about the division’s lack of efficiency, the inspector general recommended that the 10 positions currently held in reserve not be released until the division takes corrective action to improve core business processes (see Appendix A). The Legislature did not release the positions.

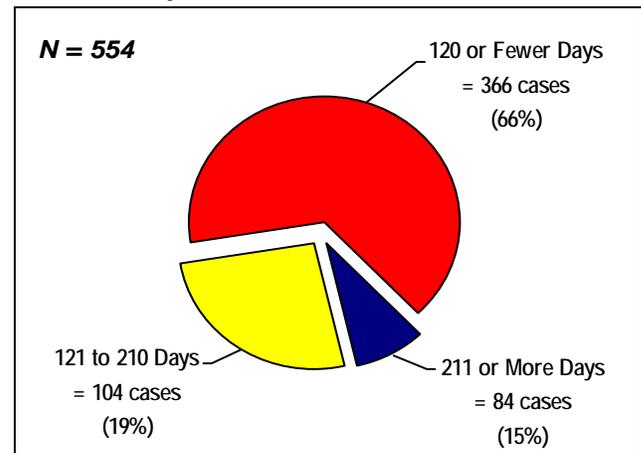
<sup>13</sup> *Review of the Bureau of Condominiums Complaint Investigation Process*, Report No. 97-62, March 1998; *Bureau of Condominiums Has Improved Its Complaint Investigation Process*, Report No. 99-15, December 1999; *Special Review: Division of Land Sales, Condominiums, and Mobile Homes Improves Timeliness, But Faces Funding Issues*, Report No. 99-37, March 2000.

<sup>14</sup> *Audit Report: Division of Land Sales, Condominiums, and Mobile Homes*, Department of Business and Professional Regulation, Office of Inspector General, AR 04-05-02, December 2004.

**Thirty-four percent of arbitration cases were not closed within 120 days**

Florida law does not specify a timeframe for handling condominium-related disputes using arbitration and mediation. However, the division uses a 125-day period as an internal goal to resolve arbitration cases. The division arbitrated 554 cases (349 successfully arbitrated and 205 dismissed) and mediated 37 cases in Fiscal Year 2003-04. During this period, the division closed arbitration files in a median of 65 days, and mediation files in a median of 45 days. About two-thirds (66%) of arbitration cases were closed within 120 days. However, 34% of the cases took longer; of these cases, 19% were closed between 121 and 210 days, and 15% were closed after seven months (210 days) (see Exhibit 9). The vast majority of mediation cases (95%) were closed within 120 days.

**Exhibit 9**  
**The Division Closed 34% of Arbitration Cases After 120 Days in Fiscal Year 2003-04<sup>1</sup>**



<sup>1</sup> Includes arbitrated and dismissed cases.

Source: Division of Business and Professional Regulation.

**Question 4: How could the division’s condominium-related services be improved?**

The Division of Land Sales and Condominiums and the Legislature could take several actions to improve the timeliness and effectiveness of the division’s services, including

- clarifying statutory timeliness standards;
- strengthening enforcement action;
- improving business processes;

- increasing use of mediation; and
- continuing the requirement that the division submit quarterly reports

Clarify timeliness goals. The current standards for the timely processing of condominium-related problems are unclear. Current statutory language requires that the division “take action” on complaints within 90 days. The division interprets this 90-day period as an internal standard rather than a legislatively required timeframe. If the Legislature wishes there to be a statutory timeframe for resolving and closing complaint cases, it should clarify language in s. 718.1255(4), *Florida Statutes*.

Similarly, there is currently no statutory timeframe for dispute hearings; the division uses a 125-day internal standard. If the Legislature wishes to establish a timeliness requirement for closing disputes through either arbitration or mediation, it should codify such a requirement in s. 718.1255(4), *Florida Statutes*.

Strengthen enforcement action. Currently, the division generally responds to violations of program requirements by sending violators informational and warning letters rather than taking stronger disciplinary action. If the Legislature desires stronger enforcement of the state’s condominium laws, it could direct the division to eliminate the use of informational letters, require warning letters for all initial violations, and require imposition of fines for all similar repeat violations occurring within five years of an initial violation.

Improve business processes. To address concerns about the timeliness of the division’s complaint and dispute processes, the inspector general recommended that the division monitor case files to ensure no lapse in activity longer than 30 days; enact policies and procedures that spread the responsibility of constant activity to management; and devise reports within the department’s data system that notify managers when a complaint investigation has been inactive for 20 days or more. We concur with the inspector general’s findings and recommend that the division immediately implement these changes to its business processes.

In addition, to address timeliness concerns and improve customer satisfaction, we recommend that the division

- automatically forward case information to appropriate government agencies when the division does not have jurisdiction and notify consumers in writing that their complaints are being referred; and
- ensure that corrective actions have taken place prior to closing cases, with investigators tracking follow-up activities in both paper and electronic files and supervisors periodically reviewing files for completeness.

To improve consumer education, we recommend that the division evaluate the efficacy of its educational efforts in reducing condominium-related problems. While the division evaluates participants’ satisfaction with educational programs, it does not measure the effect of these programs on decreasing the number of reported problems. To assess whether its educational efforts are having the desired effect, the division should review their current curriculum and determine whether it is targeting areas that are most frequently the subject of complaints. Using evaluation results, along with recommendations from the condominium ombudsman and the condominium advisory council, the division should modify its educational programs to improve effectiveness. In addition, the division should take immediate steps to enhance its educational services by

- developing more comprehensive educational materials in both Spanish and English; and
- recreating its condominium association manual and providing it to users via the Internet and/or in a printed format.

Increase use of mediation. The division’s current arbitration process does not timely resolve disputes in a significant number of cases and makes limited use of mediation. The department’s Division of Professional Regulation makes greater use of mediation, which can be significantly less costly and provide faster resolution of problems. Accordingly, we recommend that the Legislature direct the division to attempt to mediate cases prior to arbitration. In addition, the division should coordinate its mediation efforts with

those of the condominium ombudsman, who is statutorily tasked with “encouraging and facilitating voluntary meetings to resolve condominium-related disputes prior to filing for a formal or administrative remedy.” Ideally, increased collaboration between the two entities would result in better consumer outcomes.

Continue quarterly reports. The 2004 Legislature directed the division to issue quarterly reports on its complaint process. We recommend that the Legislature continue this reporting requirement, and also require submittal of information on dispute arbitration and mediation data, until the Legislature is satisfied with the division’s progress.

Future follow-up study. OPPAGA will report on the impact of the changes to condominium law made by the 2004 Legislature (see Appendix B) in our progress report on this program. As provided by law, OPPAGA will conduct a follow-up study to inform the Legislature on the status of the issues raised in this report prior to the 2007 legislative session. OPPAGA is currently conducting reviews of the department’s Division of Hotel and Restaurant, Customer Contact Center, and the Bureau of Central Intake.

## Agency Response

In accordance with the provisions of s. 11.51(5), *Florida Statutes*, a draft of our report was submitted to the Secretary of the Department of Business and Professional Regulation for review and response. The Secretary’s written response is included in Appendix D.

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OPPAGA supports the Florida Legislature by providing evaluative research and objective analyses to promote government accountability and the efficient and effective use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

**Florida Monitor:** [www.oppaga.state.fl.us](http://www.oppaga.state.fl.us)

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Project conducted by Richard Woerner, Julie Golding, Jason Hight, and Don Wolf  
(Any of these individuals can be reached at 850/488-0021.)

Gary R. VanLandingham, OPPAGA Director

## Appendix A

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# Status of Recent Condominium-Related Legislative Changes

In response to recommended changes by the House Select Committee on Condominium Association Governance and to constituent concerns, the 2004 Legislature passed laws that made a number of changes to Florida condominium law.<sup>15</sup> Collectively, these changes created a new ombudsman position and advisory council and require the division to provide quarterly reports on its complaint processing services to the Legislature.

The status of these initiatives as of March 2005 is described below.

**Condominium ombudsman.** The condominium ombudsman has been appointed by the Governor and is administratively located within the Division of Land Sales, Condominiums, and Mobile Homes. The ombudsman is responsible for various duties, including informing condominium-related parties of their rights and responsibilities, coordinating educational materials, monitoring association elections, and facilitating voluntary resolution of disputes. A complete list of the ombudsman's duties is included in Appendix B, with the ombudsman appointment listed in Appendix C.

The Governor appointed an ombudsman on December 3, 2004. The ombudsman is already involved in a number of activities including fielding condominium-related consumer questions and complaints, responding to requests for election monitoring, and formulating proposed changes in the division's condominium-related operations. According to the ombudsman, his office receives approximately 24 telephone calls and 20 e-mails per day from concerned consumers. As of March 2005, division officials reported that they have communicated with the ombudsman on administrative procedures, participated in a "town hall" style meeting with him, and are investigating several cases referred to the division by the ombudsman.

**Advisory Council on Condominiums.** The council, which consists of seven appointed members with six members representing condominiums and one member representing timeshare condominiums, receives public input on condominium-related issues, advises the division on revising rules affecting condominiums, and recommends improvements in condominium-related educational programs.<sup>16</sup> Council member appointments were completed in October 2004 (Appendix B describes the council's duties and Appendix C lists the council members). The division lends administrative support to the council, including providing a meeting space, maintaining and archiving information received by the council, and supplying requested information (e.g., complaint statistics).

The council had its organizational meeting on January 6, 2005. At the meeting, the council requested the division furnish information on arbitration and complaint cases, fines collected last year, and the contracted condominium education program for its February meeting. At its February 24, 2005, meeting, the council received comments on the need to improve condominium regulation, discussed the division's education efforts, and obtained information on its arbitration program.

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<sup>15</sup> Chapters 2004-345 and 2004-353, *Laws of Florida*.

<sup>16</sup> The governor appoints three members, with two members each appointed by the President of the Senate and the Speaker of the House. The division director also sits on the council as a non-voting member.

Division quarterly reports. The Legislature also included proviso in the 2004 General Appropriations Act requiring the division to report quarterly to several legislative committees, the governor's office, and OPPAGA.<sup>17</sup> The purpose of the quarterly reports is to

- ensure compliance with state law;
- identify improvements in response time and efficiencies in the complaint review process;
- determine statutory changes are necessary to expand division authority over specific complaint categories; and
- determine whether 10 FTEs held in reserve should be released.

The reports were required to contain data on condominium training programs, complaints, and investigations and include the division's recommendations for improving services and consumer satisfaction. However, the reports do not include data on the division's arbitration and mediation services.

To date, the division has issued two quarterly reports in October 2004 and in January 2005. These reports contain data on condominium training programs, complaints, and investigations along with internal changes made to improve the complaint handling process. In the reports, the division details steps it is taking to improve complaint-handling services. However, neither report has included recommendations for legislative changes as required by law; the division asserted its desire to withhold such recommendations until it has a year's worth of data and OPPAGA has issued its report.

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<sup>17</sup> Chapter 2004-268, *Laws of Florida*.

**Appendix B**

**Duties of the Division of Land Sales, Condominiums, and Mobile Homes, Office of the Condominium Ombudsman, and Condominium Advisory Council**

Duties/Responsibilities	Division	Ombudsman	Advisory Council
Resolve Disputes	<ul style="list-style-type: none"> <li>Conduct arbitration hearings and mediation proceedings to resolve disputes involving condominium governing documents and election disputes.</li> <li>Investigate complaints/assess penalties for violation of state condominium regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Monitor/ review procedures and disputes concerning condominium elections and meetings with recommendations for enforcement action if there is reasonable cause.</li> <li>Encourage and facilitate voluntary meetings to resolve condominium-related disputes prior to filing for a formal or administrative remedy.</li> </ul>	
Rules/Regulations	<ul style="list-style-type: none"> <li>Develop rules and regulations related to condominiums.</li> </ul>	<ul style="list-style-type: none"> <li>Make recommendations to the division for changes in rules and procedures for handling of complaints.</li> </ul>	<ul style="list-style-type: none"> <li>Review, evaluate, and advise the division on condominium rules.</li> </ul>
Training	<ul style="list-style-type: none"> <li>Provide training programs for condominium board members and owners.</li> <li>Develop a program to certify mediators to mediate condominium-related disputes.</li> </ul>	<ul style="list-style-type: none"> <li>Coordinate/assist in the preparation/adoption of educational and reference materials.</li> <li>Provide assistance to board members and officers of associations to properly carry out their duties.</li> <li>Be a neutral resource to assist unit owners and others in understanding their rights and responsibilities.</li> </ul>	<ul style="list-style-type: none"> <li>Recommend improvements, if needed, to the educational programs offered by the division.</li> </ul>
Other	<ul style="list-style-type: none"> <li>Receive and approve condominium development documents.</li> </ul>	<ul style="list-style-type: none"> <li>Issue reports including recommendations for legislation relative to division operations.</li> </ul>	<ul style="list-style-type: none"> <li>Receive from the public input on condominium-related issues and make recommendations for changes.</li> </ul>

Source: *Florida Statutes*.

## Appendix C

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# Appointees to the Condominium Advisory Council and Office of the Condominium Ombudsman

### Appointees to the Condominium Advisory Council

- Pete Dunbar (Tallahassee) (two-year term) (Senate President's appointment)
- Mark Benson (Fort Myers) (one-year term) (Senate President's appointment)
- Joseph Adams (Fort Myers) (one-year term) ( House Speaker's appointment)
- Thomas Sparks (Panama City) (two-year term) (House Speaker's appointment)
- Michael W. Andrew (Windermere) (two-year term) ( Governor's appointment)
- George F. Geisler (Islamorada) (two-year term) (Governor's appointment)
- Karen Gottlieb (Fort Lauderdale) (one-year term) (Governor's appointment)

### Appointee to the Office of the Condominium Ombudsman

- Virgil Rizzo

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Source: Senate President's Office, Speaker of the House's Office, and Governor's Office.

## Appendix D



STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

April 7, 2005



Jeb Bush  
Governor

Diane Carr  
Secretary

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RE: OPPAGA Draft Report, March 2005

Dear Mr. VanLandingham:

The following information is presented in response to the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) March 2005 report entitled "Condominium Program Should Process Complaints, Disputes Sooner and Enhance Program Services."

Our staffs worked closely on the contents of this report and we feel you have represented the compliance and arbitration processes of the Division of Land Sales, Condominiums and Mobile Homes under the report's first three questions in a manner that is reasonably accurate for the 2003-2004 Fiscal Year timeframe focused on by the OPPAGA team. The fourth question asks, "How could the division's condominium-related services be improved?" and proceeds to recommend five action items. A number of the action items identified have in fact been undergoing significant revision since early 2004, and we believe that the improvements reflected in data from July 2004 to March 2005, prepared for the division's third quarterly report on condominium compliance issues to the Legislature bear this out.

Some of the most compelling statistics address the division's enhanced service to the condominium community include:

- **Ninety-nine percent** of complaints tracked from July 1, 2004, to March 31, 2005, were acknowledged in writing within 30 days.
- The number of cases open after 90 days was reduced from **25 percent in 2003-2004, to 15 percent in 2004-2005**, for comparable periods of the year and the average number of days cases remained open was **reduced from 102 days to 58 days** during that same time frame.
- The division has already incorporated **9 business practice improvement steps** into the revised Bureau of Compliance Procedure Manual and LicenseEase manuals, including immediate complaint assignment, 48 hour or less contact with complainants by investigators and 30-day updates for all cases open after 90 days.

Additionally, to further improve business processes, the division has developed a **22 point action plan** with a defined timeline for each item.

As the last question in the report sets forth OPPAGA's conclusions and findings, we will respond specifically to those items and include supporting data from the quarterly report as appropriate.

**Clarify statutory timeliness standards**

OPPAGA recommends that the Legislature consider clarifying statutory time frames with respect to processing (investigating) complaints and dispute (arbitration) hearings.

We believe the correct and appropriate resolution of a problem should prevail over the desire to set statutory deadlines or simply close cases quickly. Therefore, we believe that the current threshold for initiating action provides a clear and suitable standard against which to measure our level of service.

Section 718.501(1)(m), Florida Statutes, does not require that an investigation be “closed” within 90 days, but does require the division to take action within 90 days of receipt of the complaint or receipt of additional information. The purpose of an investigation or arbitration is not to simply come to a quick conclusion, but is to bring about resolution to the complaint situation. Depending on the complexity of the issue both activities could, and often do, require involved fact finding and quasi-judicial activities that necessitate due process of law and a final order, which may then be subject to further appeal. There are a myriad of reasons why both could extend beyond an artificially codified time-frame in spite of the most efficient investigator or disciplined hearing officer. Availability of witnesses, scheduling of depositions or witness statements, discovery, availability of expert testimony, resort to subpoena, avoidance of service of process, crowded administrative dockets, and complex financial issues necessitating audits, are but a few of the uncontrollable and unpredictable events which could lengthen an investigation or hearing regardless of a codified number of days or desirable standard that might be statutorily imposed.

Although the report states that investigations and arbitrations “are not closed within intended time frames,” our data for the current 2004-2005 Fiscal Year shows we are closing 64% of our complaints within 90 days - a statistic we do not consider to be insignificant, contrary to the report’s assertion that it is. Additionally, the division now takes an average of 58 days to close a case. This is 342 days less than reported by OPPAGA in 1996. Similarly, 74% of our arbitration cases are now resolved in an average of 120 days or less, which is significantly less time than petitioners might endure if they had to file a lawsuit in court.

**OPPAGA Comment**

*Our report does not assert that closing 64% of complaints within 90 days is “insignificant.” It states, “The division closes about two-thirds of complaint and dispute cases within established timeframes, but exceeds these periods in a significant number of cases” (see page 6).*

**Strengthen Enforcement action**

OPPAGA recommends that the legislature and the division “take stronger enforcement action such as levying fines.”

**OPPAGA Comment**

*Our report does not “recommend that the legislature and the division take stronger enforcement action such as levying fines.” It states, “If the Legislature desires stronger enforcement of the state’s condominium laws, it could direct the division to eliminate the use of informational letters, require warning letters for all initial violations, and require imposition of fines for all similar repeat violations occurring within five years of an initial violation” (see page 10).*

We agree with OPPAGA’s acknowledgement of the need for enhanced compliance and enforcement. In fact, we have advised the Legislature, in the quarterly report, that the division will enhance its enforcement and compliance by implementing a required follow-up program for all cases that would result in increased penalties in the event of non-compliance. This would not require a statutory change, but could be accomplished by adding this function to an investigator’s standard case management activity.

The report accurately notes that the division imposed \$236,176 in fines during the 2003-2004 Fiscal Year. In the first 9 months of the current fiscal year, the division has collected \$170,515 in fines. This is not an insignificant amount given that most boards are voluntary, elected members and any financial penalties imposed are borne by unit owners. It must be noted, however, that the Legislature, in section 718.501(1)(d)4., Florida Statutes, provided the framework within which the division was directed to establish penalty guidelines that, "...must be based upon the harm caused by the violation, the repetition of the violation, and such other factors deemed relevant by the division."

Additionally, in that section the Legislature voiced the intent that, "...minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents..." This framework gives the division the flexibility to address the severity and harm of violations with the appropriate penalty and allows the opportunity to employ the educational component of the division's mission as a method to deter further violations. Coupled with the desire to be responsive to current Legislative intent, this is the basis for the division's current set of guidelines, which includes educational, informative letters and warning letters for certain first time minor violations and major violations respectively.

The effectiveness of this method is reflected in a sample of data collected from March 1, 2003, through March 31, 2005, which shows that of the 727 warning letters issued to associations, only 23 had repeated violations within a 2 year period that resulted in administrative actions. We believe this demonstrates the importance of education as a compliance tool and feel it should continue to be emphasized in the resolution guidelines.

Another option we are currently exploring would make education part of resolution or settlement agreements. This would require board members of associations that have committed major violations under the Florida Administrative Code to attend live classroom style training or online training. This strategy offers a targeted, focused approach that redirects existing resources toward the resolution of specific complaints regarding specific associations.

### **Improve business processes**

As noted above, the division began revising and updating its business processes in early 2004. During this time, through the exercise of collecting data for the quarterly reports, an internal review of business practices, and new division leadership, a number of items were identified for improvement. For example, to address cases with unexplained lapses in activity, the division developed specific reports to be used as a tool by supervisors in monitoring investigative time lapses. Currently our investigative supervisors run weekly, bi-weekly and monthly reports that gauge productivity and monitor casework to ensure that policies are being followed.

The quarterly report data helped us identify issues in our complaint contact process which we were then immediately able to address with the implementation of new procedures. Our investigators now call each complainant within one business day of being assigned the complaint to acknowledge our receipt of it, to ascertain the jurisdiction of each allegation if possible, and to educate the complainant as to the process and what to expect from the division. Below is a list of other process changes established so far this year:

- Complaints received in Tallahassee are electronically transmitted to field offices on the same day they are received by the division, or no later than the next business day.
- Complaints are assigned to investigators on the same day they are received in the local offices, or no later than the next business day.
- The investigator assigned to the case calls the complainant within one business day of assignment.
- The investigator discusses each allegation with the complainant to gain an understanding of the allegations contained in the complaint and to educate them on the process.
- The investigator sends a letter to the complainant within one business day after discussing the complaint to acknowledge receipt and to confirm the verbal understanding obtained during the initial telephone contact.
- The investigator ensures ongoing activity in each case.
- The investigator prepares a written investigative plan for each complaint received.
- Contact with the respondent to obtain their version of events is required prior to forming a conclusion as to whether a violation may have occurred.

As noted above, in response to the identification of division-wide improvement issues, a 22 point plan was developed and is being implemented in accordance to a timeline established for each point.

The OPPAGA report also raised the issue of measuring the effect of division education programs on decreasing the number of condominium-related problems. We do evaluate the educational materials and classes offered by our contracted education provider as well as the educational materials we provide directly to unit owners and associations, for content and update them on a periodic basis. The division will explore methodologies to determine whether the education programs implemented by both the contracted provider and the division are appropriately focused on the most prevalent concerns.

We believe that the division has improved the reach of the educational programs because more individuals are completing condominium education presently than at anytime in our history. The division sends out approximately 2,000 packages of educational materials each month. Many of these materials are available in English as well as Spanish, and are available on the division web site. We are in the process of revamping these in-house materials as well as redesigning our web site, and we are not opposed to recreating the Condominium Association Manual. However, we note that this manual was produced and maintained when the division contained a condominium education section with a staff of approximately 25 employees. As such we would need additional resources to produce, maintain, distribute and deploy such a publication with appropriate follow-up.

### **Increase use of mediation**

We do not agree with OPPAGA's assessment that the division's arbitration process does not timely resolve disputes in a "significant" number of cases. We believe that the current closure rate of 74% in 120 days or less is reasonable.

#### **OPPAGA Comment**

***In response to our draft report, the division provided additional data, which yielded the following results: "About two-thirds (66%) of arbitration cases were closed within 120 days. However, 34% of the cases took longer; of these cases, 19% were closed between 121 and 210 days, and 15% were closed after seven months" (see page 9).***

Moreover, the division is very much involved in the mediation process. We have a full time staff mediator and each new dispute is screened for possible referral to mediation. Current law allows the parties to jointly choose mediation once a petition for arbitration has been filed, and further permits the arbitrator to refer the dispute to mediation regardless of whether the parties desire to attend. In this manner, both the parties and the arbitrator may choose mediation. This flexibility permits the division to both identify probable targets for mediation referral as well as winnow out those disputes that are not likely candidates for a successful mediation, saving the parties both time and expense.

It follows that many disputes are not properly subject to mediation. For example, mediation is not a meaningful or appropriate remedy for election disputes; recall disputes; disputes involving pure issues of law, such as challenges to the validity of amendments to the documents; disputes where it would take longer to mediate the case than to arbitrate the case; and disputes that present global issues in a condominium that impact other residents, such as challenges to concrete restoration projects, major capital expenditures and the like. The division is in favor of continuing under the current statute which allows the mediation referral to rest within the judgment of the arbitrator. The division would also welcome the opportunity to develop a plan in cooperation with the Condominium Ombudsman to coordinate mediation efforts between the division and the Ombudsman's Office

#### **OPPAGA Comment**

***We continue to recommend that the Legislature direct the division to attempt to mediate cases prior to arbitration (see page 10).***

**Continue Quarterly Reports**

As noted, the division has benefited from the exercise of gathering data for the quarterly reports and is not opposed to continuing with this activity until such time as the Legislature determines that it is no longer necessary.

**Conclusion**

In conclusion, we appreciate the time and energy put forth by your staff and we look forward to reviewing the final report. We are confident that your efforts to improve the operations of state government will continue to assist us all in providing better and more efficient service. Please contact me at 413.0755 if you need further information or have additional questions at this time.

Sincerely,

/s/  
Diane Carr  
Secretary

Cc: Susan F. Cutchins, Deputy Secretary  
Michael Cochran, Division Director, Land Sales, Condominiums and Mobile Homes