

CHAPTER 498

LAND SALES PRACTICES

[498.001 Short title.](#)

[498.003 Legislative intent.](#)

[498.005 Definitions.](#)

[498.007 General powers and duties.](#)

[498.009 Offices.](#)

[498.011 Payment of per diem, mileage, and other expenses to division employees.](#)

[498.013 Seal and authentication of records.](#)

[498.017 Fees.](#)

[498.019 Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.](#)

[498.021 Jurisdiction.](#)

[498.022 Jurisdiction over fraudulent acts.](#)

[498.023 Prohibitions on dispositions of interests in subdivided lands.](#)

[498.024 Reservations.](#)

[498.025 Exemptions.](#)

[498.027 Application for registration.](#)

[498.028 Contracts and conveyance instruments.](#)

[498.029 Notice of filing and registration.](#)

[498.031 Inquiry and examination.](#)

[498.033 Registration of subdivided lands.](#)

[498.035 Advertising material.](#)

[498.037 Public offering statement.](#)

[498.039 Certain assurances or trust and escrow accounts required; reports required.](#)

[498.041 Annual renewal; termination of registration.](#)

[498.047 Investigations.](#)

[498.049 Suspension; revocation; civil penalties.](#)

[498.051 Cease and desist orders.](#)

[498.053 Notices to show cause.](#)

[498.057 Service of process.](#)

[498.059 Penalties.](#)

[498.061 Civil remedy.](#)

[498.063 Saving clause.](#)

498.001 Short title.--This chapter may be cited as the "Florida Uniform Land Sales Practices Law."

History.--s. 1, ch. 63-129; s. 1, ch. 67-229; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 1, 33, 34, ch. 88-90; s. 4, ch. 91-429.

Note.--Former s. 478.011.

498.003 Legislative intent.--

(1) The Legislature expressly recognizes that the disposition of any interest in subdivided lands has a vital impact on Florida's economy and that such land sales constitute a major industry within this state, employing many citizens, attracting thousands of visitors and new residents, and contributing countless dollars to the total annual gross income of the state. The Legislature also recognizes that the manner of conducting this business, including sales, financing, advertising, and promotional methods, is of direct concern not only to those engaged in the business but to the purchasers and public as well.

(2) The severe impact upon the land sales industry and upon the economic and political climate of the state of false, misleading, and fraudulent methods in the disposition of any interest in subdivided lands, and the probable detrimental effects of default by companies and persons engaged in the disposition of any interest in subdivided lands, create a danger to the economic well-being of the people of the State of Florida.

(3) It is therefore the intent of the Legislature to provide safeguards regulating the disposition of any interest in subdivided lands, including financial operations entered into by companies and persons regulated by the Florida Uniform Land Sales Practices Law, to prevent fraudulent and misleading methods and unsound financing techniques which could detrimentally affect not only remote land purchasers, but also the land sales industry, the public, and the state's economic well-being.

(4) This law is remedial as well as penal in purpose, and the remedial portions shall be liberally construed to effectuate this purpose.

History.--s. 17, ch. 76-262; ss. 2, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 2, 33, 34, ch. 88-90; s. 4, ch. 91-429.

Note.--Former s. 478.015.

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

(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 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 her 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) "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) "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) "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.

(11) "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) "Notice" means a communication in writing from the division executed by its director or other duly authorized officer.

(13) "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) "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) "Order of registration" means the license issued by the division to evidence the registration status of the registrant for specified subdivided lands.

(16) "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) "Purchaser" means a person who acquires, attempts to acquire, or succeeds to an interest in subdivided land.

(18) "Registrant" means the person or persons specifically named in the order of registration.

(19) "Registration" means the completion of all application requirements and the furnishing of all required exhibits to the division.

(20) "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.

(21) "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) "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.

History.--s. 2, ch. 63-129; s. 1, ch. 65-274; s. 2, ch. 67-229; ss. 16, 35, ch. 69-106; s. 1, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-53; s. 1, ch. 73-54; s. 131, ch. 73-333; s. 3, ch. 76-168; s. 3, ch. 76-262; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 3, ch. 78-366; ss. 3, 30, 32, ch. 79-347; ss. 1, 21, ch. 81-177; s. 378, ch. 81-259; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 1, ch. 84-71; s. 3, ch. 85-60; ss. 3, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 197, ch. 94-218; s. 570, ch. 97-103; s. 1, ch. 97-192.

Note.--Former s. 478.021.

498.007 General powers and duties.--

(1) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this 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) The division may intervene in any suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider shall promptly furnish the division a copy of the complaint and, if requested by the division, copies of all pleadings.

(5) 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) 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) The division shall adopt uniform accounting principles, policies, and standards by rule, 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.

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

(9) 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.

History.--s. 4, ch. 63-129; s. 4, ch. 67-229; s. 2, ch. 71-98; s. 1, ch. 72-378; s. 2, ch. 73-108; s. 3, ch. 76-168; ss. 4, 5, ch. 76-262; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 4, 30, 32, ch. 79-347; ss. 2, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 4, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 2, ch. 97-192; s. 169, ch. 98-200.

Note.--Former s. 478.041.

498.009 Offices.--

(1) The executive offices of the division shall be established and maintained in Tallahassee.

(2) The division may establish and maintain branch offices.

History.--s. 6, ch. 63-129; s. 5, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; ss. 1, 7, ch. 76-262; s. 1, ch. 77-457; ss. 5, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 33, 34, ch. 88-90; s. 4, ch. 91-429.

Note.--Former s. 478.061.

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 of subdivided lands.

History.--s. 8, ch. 63-129; s. 7, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 5, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 1, ch. 93-190; s. 3, ch. 97-192.

Note.--Former s. 478.081.

498.013 Seal and authentication of records.--The division shall adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, shall be prima facie evidence of the records in all the courts of this state.

History.--s. 9, ch. 63-129; s. 8, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 6, 33, 34, ch. 88-90; s. 4, ch. 91-429.

Note.--Former s. 478.091.

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 cents for each 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.
- (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) 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, the application shall also be accompanied by an amount equivalent to the cost of travel 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 a registration until the subdivider pays any other actual verified expenses incurred in the inspection.
- (5) 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) 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) Each request for an exemption advisory opinion shall be accompanied by a \$100 fee.
- (8) Each filing of advertising material as required by s. 498.035 shall be accompanied by a fee of \$25.
- (9) The division shall charge a subdivider \$250 for filing a reservation program.
- (10) 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) The division shall charge a subdivider \$250 for filing a no-action letter request.

History.--s. 13, ch. 63-129; s. 12, ch. 67-229; s. 3, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 5, ch. 78-366; ss. 9, 30, 32, ch. 79-347; ss. 3, 21, ch. 81-177; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 82-400; s. 3, ch. 83-265; ss. 7, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 4, ch. 97-192.

Note.--Former s. 478.131.

498.019 Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund.--

(1) There is created within the State Treasury the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund to be used for the administration and operation of this chapter and chapters 718, 719, 721, and 723 by the division.

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court shall be paid into the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to each category of business covered by this trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses which may be used to determine fees charged by the division. This subsection shall operate pursuant to the provisions of s. 215.20.

History.--ss. 10, 32, ch. 79-347; ss. 2, 7, ch. 81-172; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 21, ch. 83-339; s. 16, ch. 87-102; ss. 8, 33, 34, ch. 88-90; s. 83, ch. 90-132; s. 4, ch. 91-429.

498.021 Jurisdiction.--The dispositions of subdivided lands are subject to this chapter, and the circuit courts of this state have jurisdiction in claims or causes of action arising under this law, if:

(1) The subdivided lands offered for disposition are located in this state.

(2) The subdivider's principal office or any salesperson or broker representing the subdivider is located in this state.

(3) The offer or disposition of any interest in subdivided lands is made in this state, if the offer originates or is accepted within this state or is directed by the offeror to a person or place in this state.

History.--s. 24, ch. 67-229; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 11, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 9, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 571, ch. 97-103.

Note.--Former s. 478.27.

498.022 Jurisdiction over fraudulent acts.--

(1) It shall be unlawful and a violation of this chapter for a person to offer or dispose of 5 or more lots, parcels, units, or interests in a subdivision, 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).

(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) 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.

History.--ss. 10, 34, ch. 88-90; s. 4, ch. 91-429; s. 2, ch. 93-190; s. 5, ch. 97-192.

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

(1) No person shall, unless the person has a valid order of registration for the subdivided lands:

(a) Offer or dispose of, or participate in an offer or disposition of, any interest in subdivided lands located in this state;

(b) Offer or dispose of, or participate in an offer or disposition of, any interest in subdivided lands located outside this state to persons in this state;

(c) Participate within this state in an offer or disposition of any interest in subdivided lands located outside this state to persons located outside this state.

(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 or she 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:

(a) The prospective purchaser is given an unconditional 30-day refund privilege extending from the time the fully executed agreement to purchase is received by the purchaser;

(b) The subdivider includes this unconditional refund privilege in the agreement to purchase and in the public offering statement;

(c) Prior to the execution of the agreement by the purchaser, the subdivider furnishes the prospective purchaser by mail or personal delivery an approved synopsis of the sales script and a current public offering statement, and the purchaser certifies in writing to the receipt thereof; and

(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 or her 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.

(4) No person may offer or dispose of, or participate in an offering or disposition of, any evidence of indebtedness secured by a mortgage or deed of trust of any interest in subdivided lands through any means of advertising unless the offering is registered with and approved by the division. This subsection does not apply to the offer or disposition of evidences of indebtedness which are offered to not more than 20 purchasers; however, a person shall only avail himself or herself of this exemption one time within any 12-month period. This subsection does not apply to the bona fide sale, transfer, or delivery of evidences of indebtedness by or to a bank, savings and loan association, trust company, insurance company, or real estate investment trust.

History.--s. 20, ch. 67-229; s. 6, ch. 69-393; s. 131, ch. 71-355; s. 1, ch. 73-175; s. 1, ch. 73-178; s. 3, ch. 76-168; ss. 2, 18, ch. 76-262; s. 1, ch. 77-457; ss. 12, 30, 32, ch. 79-347; ss. 4, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 11, 33, 34, ch. 88-90; s. 35, ch. 91-220; s. 4, ch. 91-429; s. 572, ch. 97-103; s. 6, ch. 97-192.

Note.--Former s. 478.23.

498.024 Reservations.--

(1) Notwithstanding s. 498.023, prior to filing an application for 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 account with an escrow agent;

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

(c) The subdivider obtains an order of registration 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), (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 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 within 5 business days after receipt.
- (b) The escrow agent shall notify the prospective purchaser that the reservation deposit was received within 7 business days after 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 for each reservation program in accordance with good accounting practices.
- (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 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) 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.

History.--ss. 5, 21, ch. 81-177; s. 36, ch. 83-215; s. 3, ch. 83-265; s. 2, ch. 87-50; ss. 12, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 573, ch. 97-103; s. 7, ch. 97-192.

498.025 Exemptions.--

- (1) Except as provided in s. 498.022, the provisions of this chapter do not apply to:
 - (a) The offer or disposition of an interest in subdivided lands by a purchaser for his or her own account in a single or isolated transaction.
 - (b) The offer or disposition of an interest in subdivided lands by or to any government or government agency. This exemption shall not apply to registrants.
 - (c) The offer or disposition of an interest in subdivided lands as cemetery lots or interest.
 - (d) An offer or transfer of securities currently registered with the Office of Financial Regulation of the Financial Services Commission or the United States Securities and Exchange Commission, except when s. 498.023(4) applies.

(e) 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) The offer or disposition of an interest in subdivided lands to a 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.

(g) The offer or disposition of an interest in subdivided lands 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) The 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) 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 Financial Services Commission in accordance with Securities and Exchange Commission Regulation 230.501, 17 C.F.R. s. 230.501.

(n) An offer or disposition of any interest in a subdivision that has received a development order pursuant to s. 380.06 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' association, community development district, or special dependent or independent district. A homeowners' association shall be acceptable if it is a duly incorporated, not-for-profit corporation whose governing documents, 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' association or through restrictive covenants.

(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, 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 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. 720.401 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 or 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. 720.401 prior to the execution of the agreement for deed.

(3) 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) Whenever the division determines, on the basis of material 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 stating that it will take no action. 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) 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.

History.--s. 19, ch. 67-229; ss. 12, 35, ch. 69-106; s. 5, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-108; s. 3, ch. 76-168; ss. 14, 15, ch. 76-262; s. 178, ch. 77-104; s. 1, ch. 77-457; s. 6, ch. 78-366; ss. 13, 30, 32, ch. 79-347; ss. 6, 21, ch. 81-177; s. 379, ch. 81-259; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 13, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 3, ch. 93-190; s. 23, ch. 96-389; s. 1153, ch. 97-103; s. 8, ch. 97-192; s. 16, ch. 2001-63; s. 562, ch. 2003-261; s. 27, ch. 2004-345; s. 23, ch. 2004-353.

Note.--Former s. 478.221.

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 plat meeting the criteria prescribed in part I of chapter 177, and arrangements acceptable to the division shall be made for the perpetual maintenance of improvements included in the offering.
3. 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.
 - 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 to specifications adopted by the appropriate local governing body.
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. A showing that the subdivided lands meet or will meet 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. 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.
 - 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 to specifications adopted by the appropriate local governing body.
 5. 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 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.
- (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 her or 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, 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.

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.

(2) If the subdivided lands, in whole or in part, are subject to the permit requirements of chapter 253, chapter 373, chapter 380, or chapter 403, or the certification requirements of the Federal Water Pollution Control Act, Pub. L. No. 92-500, or the environmental laws of another state, prior to the entry of an order of registration, the subdivider shall furnish satisfactory evidence that either waivers of jurisdiction have been issued or all required permits and approvals, or all required conceptual permits or conceptual approvals, have been obtained. Extensions of these permits shall be governed by the provisions of the relevant chapter. The subdivider shall notify the division within 7 days of the revocation or suspension of any permit. Within 60 days of this notice the division may issue a notice to show cause and, upon request, provide for a hearing in accordance with the provisions of chapter 120. As an alternative to required waivers, approvals, or permits, the division may accept one of the following:

(a) If required, a development-of-regional-impact review for the subdivision, prepared pursuant to chapter 380, and a resulting development order; and a legal opinion from a member of The Florida Bar listing all permits required to complete the project, a list of all permits that have been issued, and a list of permits that have not been issued with the reasons why they have not been obtained.

(b) If a development-of-regional-impact review is not required, copies of all required permits that have been obtained and a legal opinion from an attorney authorized to practice in the state where the subdivided land is located, listing all required permits which have not been obtained and stating the reasons why those permits have not been obtained. The attorney's opinion shall include the factual basis upon which it was rendered and any supporting documentation. When applicable to permit issues, the legal opinion shall incorporate and be based upon an affidavit prepared by a registered professional engineer licensed in the state where the subdivided lands are located. The engineer's affidavit shall be based upon an onsite inspection of the project and shall be supported by appropriate information contained in the filing for registration. A detailed explanation shall be given of the plans for the project, the current physical condition of the property, questions of agency jurisdiction, and other matters of fact or law which bear on the question of jurisdiction, issuance, or denial of the permits. The portion of the legal opinion relating to water and sewage system permits shall be based upon the affidavit of a registered professional engineer licensed in the state where the subdivided lands are located and experienced in water and wastewater systems.

(3) An application for registration shall be accompanied by the application fee established in s. 498.017.

(4) If a subdivider registers additional subdivided lands to be offered for disposition, she or he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan, if the subsequent registration is contiguous to the earlier registration or is part of the same master plan.

History.--s. 12, ch. 63-129; s. 11, ch. 67-229, s. 2, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-51; s. 1, ch. 73-52; ss. 1, 2, 4, ch. 73-348; s. 1, ch. 74-179; s. 3, ch. 76-168; ss. 8, 9, 10, ch. 76-262; s. 177, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 4, ch. 78-366; ss. 15, 30, 32, ch. 79-347; ss. 7, 21, ch. 81-177; s. 380, ch. 81-259; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 14, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 4, ch. 93-190; s. 574, ch. 97-103; s. 9, ch. 97-192.

Note.--Former s. 478.121(1).

498.028 Contracts and conveyance instruments.--The contract for purchase of subdivided lands shall contain, and the subdivider shall comply with, the following provisions:

(1) 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.

(2) 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.

(3) If the property is sold under an agreement for deed or a contract for deed where title to the property is not conveyed to the purchaser within 180 days or if the promised improvements to the property have not been completed, the agreement or contract shall contain the following language in conspicuous type immediately above the line for the purchaser's signature: YOU MAY NOT RECEIVE YOUR LAND UNDER THIS CONTRACT IF THE SUBDIVIDER FILES FOR BANKRUPTCY PROTECTION OR OTHERWISE IS UNABLE TO PERFORM UNDER THE TERMS OF THIS CONTRACT PRIOR TO YOUR RECEIVING A DEED EVEN IF YOU HAVE MADE ALL THE PAYMENTS PROVIDED FOR UNDER THIS CONTRACT. IF YOU HAVE ANY QUESTIONS ABOUT THE MEANING OF THIS DOCUMENT, CONSULT AN ATTORNEY.

History.--ss. 5, 7, ch. 93-190.

498.029 Notice of filing and registration.--

(1) Upon receipt of the application for registration in proper form, the division shall issue a notice of filing to the applicant. Within 30 days after the date of this notice, the division shall examine the application and notify the applicant of any apparent errors or omissions or of any additional information the division is authorized to require. Each application for registration shall be approved or denied within 45 days after the date of the notice or within 30 days from receipt of the requested additional information, whichever occurs later. If the application for registration is not approved or denied within the 30-day period, within 15 days after conclusion of a public hearing on the application, or within 45 days after the recommended order is submitted to the agency, whichever is latest, the application shall be deemed approved unless the applicant and the division have agreed in writing to a delay.

(2) If the division approves the application, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(3) If the division disapproves the application, it shall enter an order disapproving the registration which shall include the findings of fact upon which the order is based and shall state with particularity the grounds for disapproval. If no hearing has been held, the division shall inform the applicant of his or her right to a hearing under ss. 120.569 and 120.57.

History.--s. 22, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 73-348; s. 1, ch. 74-226; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 14, 30, 32, ch. 79-347; ss. 8, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 15, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 239, ch. 96-410; s. 1154, ch. 97-103; s. 10, ch. 97-192.

Note.--Former s. 478.25.

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 subdivided lands offered for disposition if the purchaser complies with the terms of the offer;

(b) Reasonable assurance is given that all obligations imposed by this chapter and all obligations contained in the offering will be complied with by the subdivider;

(c) The general promotional plan is not false or misleading and complies 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 or will be usable as homesites.

(2) The division may deny the application of any person who does not meet all of the requirements of subsection (1) or of s. 498.027.

(3) The division may require each director and officer of the applicant or any registrant or person occupying a similar status or performing similar functions, or any person who directly or indirectly controls the operation of the business of the applicant or registrant, and each person who owns 10 percent or more of the outstanding stock or other form of equity interest in the applicant or registrant, to furnish her or his fingerprints and to provide evidence of her or his qualifications. The division shall exchange this information and fingerprints with the Department of Law Enforcement and the Federal Bureau of Investigation. This requirement to furnish fingerprints shall not apply to any applicant or registrant who:

(a) Has received an order of registration or exemption prior to July 1, 1974; and

(b) Has not been convicted of a criminal offense prohibited by this chapter and is not the subject of an indictment, information, or other formal charge relating to a criminal offense prohibited by this chapter.

The exemption provided by this subsection shall not extend to any individual who was not employed by or affiliated with the applicant or registrant prior to July 1, 1979.

(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 incomplete or the plan of sale deceptive or misleading, take such action as authorized by this chapter.

History.--s. 14, ch. 63-129; s. 13, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 16, 30, 32, ch. 79-347; ss. 9, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 16, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 575, ch. 97-103; s. 11, ch. 97-192.

Note.--Former s. 478.141.

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) 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
 - (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."
- (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) If the registrant fails to comply with the provisions of this section, the division may issue a notice to show cause and, upon request, provide for a hearing in accordance with the provisions of chapter 120.
- (7) Each registrant shall comply with the terms of any instrument encumbering subdivided lands, including timely payments for satisfaction of the debts.

History.--s. 12, ch. 63-129; s. 11, ch. 67-229; s. 2, ch. 69-393; s. 2, ch. 71-98; s. 1, ch. 73-51; s. 1, ch. 73-52; ss. 1, 2, 4, ch. 73-348; s. 1, ch. 74-179; s. 3, ch. 76-168; ss. 8, 9, 10, ch. 76-262; s. 177, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 77-457; s. 4, ch. 78-366; s. 87, ch. 79-65; ss. 15, 30, 32, ch. 79-347; s. 1, ch. 80-120; ss. 10, 21, ch. 81-177; ss. 2, 3, ch. 81-318; ss. 2, 3, ch. 82-400; s. 3, ch. 83-265; ss. 17, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 6, ch. 93-190; s. 12, ch. 97-192.

Note.--Former s. 478.121(2)-(8).

498.035 Advertising material.--

- (1) The division, by rule or order, may 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) The division shall 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 further require reasonable assurances that the subdivider or his or her agent can meet the obligations imposed by the certificate program.
- (3) "Advertising" shall not include 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.

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

History.--ss. 17, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 18, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 576, ch. 97-103; s. 13, ch. 97-192.

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. 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) The name and principal address of the subdivider.

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

(c) 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) A statement of the use for which the property is offered.

(e) 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) 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) 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.

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

(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.

(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 she or 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 to a prospective purchaser along with the public offering statement.

History.--s. 21, ch. 67-229; s. 2, ch. 71-98; s. 2, ch. 73-175; s. 3, ch. 76-168; s. 16, ch. 76-262; s. 1, ch. 77-457; ss. 18, 30, 32, ch. 79-347; ss. 11, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 19, 33, 34, ch. 88-90; s. 1, ch. 90-46; s. 4, ch. 91-429; s. 577, ch. 97-103; s. 14, ch. 97-192.

Note.--Former s. 478.24.

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

(1) The division shall require each registrant offering property subject to an encumbrance to establish and maintain an 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."

(2) The division shall require each person offering debt instruments secured by a balloon mortgage or deed of trust involving any interest in subdivided lands to establish and maintain a sinking fund in a financial institution in a manner acceptable to retire the debt instruments.

(3) The division may require each registrant responsible for interim maintenance of roads, recreational facilities, or other types of improvements to establish and maintain trust or escrow accounts in a financial institution in an acceptable manner if perpetual maintenance is not being performed in a manner otherwise acceptable to the division.

(4) The division may require each registrant that offers subdivided lands pursuant to a plan of disposition involving a refund-of-moneys provision to establish and maintain trust or escrow accounts in a financial institution in a manner acceptable to assure refunds to purchasers.

(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.

(6) Each registrant with registered subdivided lands subject to any lien, mortgage, or other encumbrance shall submit quarterly encumbrance reports certifying that all terms of any encumbering instrument have been met and that timely payments have been made to satisfy any lien, mortgage, real property tax, or other encumbrance upon subdivided lands in whole or in part. The quarterly report shall include satisfactory evidence of the registrant's compliance.

(7) If registered subdivided lands are not subject to any lien, mortgage, delinquent real property taxes, or other encumbrance, encumbrance reports shall be submitted as directed by the division. The report shall include an affidavit establishing that no lien, mortgage, or other encumbrance has been placed upon the subdivided lands in whole or in part and that the payment of any real property tax assessed against the subdivided lands in whole or in part is not delinquent.

(8) The division may require a registrant to establish and maintain a trust or escrow account in a financial institution or provide some other acceptable assurance that all applicable real property taxes will be timely paid if the division determines that:

(a) The registrant is offering or will offer registered property for disposition under a contract for purchase, and the registrant is or will be responsible for the payment of the real property tax assessed against the property; and

(b) The payment of any real property tax assessed against the registered property is delinquent.

(9) The registrant shall submit a statement from the appropriate financial institution to the division indicating the status of any trust or escrow account established pursuant to this section on a monthly, quarterly, or semiannual basis as directed by the division.

(10) The division may issue an order to show cause for any violation of the provisions of this section, which shall provide for a hearing, upon request, in accordance with chapter 120.

History.--s. 6, ch. 76-262; ss. 19, 30, 32, ch. 79-347; ss. 12, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 20, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 15, ch. 97-192.

Note.--Former s. 478.052.

498.041 Annual renewal; termination of registration.--

(1) Each registrant shall annually renew each order of registration it holds until 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.

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 (3)(a)-(e) 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, quitclaim 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.

History.--s. 31, ch. 67-229; s. 9, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 20, 30, 32, ch. 79-347; ss. 13, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 21, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 578, ch. 97-103; s. 16, ch. 97-192.

Note.--Former s. 478.33.

498.047 Investigations.--

(1) The division may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any division rule or order, to aid in the enforcement of this chapter, or to aid in the adoption of division rules or forms; and

(b) Require or permit any person to file a statement in writing, under oath or otherwise, as to the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation under this chapter, any officer or employee designated by rule may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) If any person fails to obey a subpoena or to answer questions propounded by the investigating officer, upon reasonable notice to all affected persons, the division may apply to circuit court for an order compelling compliance.

(4) The division may permit a subdivider, broker, or salesperson whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding in which orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the subdivider, broker, or salesperson.

(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.

(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.

(8)(a) Information held by the Division of Florida Land Sales, Condominiums, and Mobile Homes relative to an investigation pursuant to this chapter, including any consumer complaint, is confidential and exempt from s.

119.07(1) and s. 24(a), Art. I of the State Constitution, until 10 days after a notice to show cause has been filed by the division, or, in the case in which no notice to show cause is filed, the investigation is completed or ceases to be active. For purposes of this section, an investigation shall be considered "active" so long as the division or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license or registration. However, in response to a specific inquiry about the registration status of a registered or unregistered subdivider, the division may disclose the existence and the status of an active investigation. This subsection shall not be construed to prohibit disclosure of information which is required by law to be filed with the division and which, but for the investigation, would be subject to s. 119.07(1).

(b) A consumer complaint and other information relative to an investigation shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, after the filing of a notice to show cause or the investigation is completed or ceases to be active to the extent disclosure would:

1. Jeopardize the integrity of another active investigation.
2. Reveal the name, address, telephone number, social security number, or any other identifying number or information of any purchaser or account holder, or social security number or any account number of a complainant.
3. Reveal a trade secret as defined in s. 688.002.

(c) The division may provide confidential and exempt information to any law enforcement or administrative agency or regulatory organization when such agency or organization makes the request in connection with its official duties. Any law enforcement or administrative agency or regulatory organization receiving confidential and exempt information in connection with its official duties shall maintain the confidential and exempt status of the information as provided for in this subsection.

(d) If information subject to this subsection is offered in evidence in any administrative, civil, or criminal proceeding, the presiding officer may, in his or her discretion, prevent the disclosure of information which would be confidential and exempt pursuant to paragraph (b).

History.--s. 15, ch. 63-129; s. 14, ch. 67-229; s. 4, ch. 69-393; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 23, 30, 32, ch. 79-347; ss. 15, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 22, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 579, ch. 97-103; s. 17, ch. 97-192; s. 1, ch. 98-54; s. 1, ch. 2003-107.

Note.--Former s. 478.151.

498.049 Suspension; revocation; civil penalties.--

- (1) The division may revoke or suspend a registration upon finding that the registrant has:
- (a) Failed to comply with the terms of any written order of the division;
 - (b) Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions or has forfeited a bond when charged with such a crime;
 - (c) Disposed of, concealed, or diverted any funds or assets of any person so as to adversely affect the interest of a purchaser of any interest in subdivided land;
 - (d) Failed to substantially comply with any written agreement made with the division;
 - (e) Made intentional misrepresentations or knowingly concealed material facts in any written communication with the division; or

(f) Failed to meet the requirements of s. 498.031(1).

(2) Findings of fact shall be accompanied by a concise and explicit statement of the underlying factual basis.

(3) The division may issue a cease and desist order as an alternative to revocation or suspension.

(4) The division may, by order, impose civil penalties against any person for violations of this chapter or relevant rules. The imposition of a civil penalty shall not preclude the use of any other appropriate remedy authorized by this chapter.

(5) Each person who materially participates in any offer or disposition of any interest in subdivided lands in violation of this chapter or relevant rules involving fraud, deception, false pretenses, misrepresentation, or false advertising or the disposition, concealment, or diversion of any funds or assets of any person which adversely affects the interests of a purchaser of any interest in subdivided lands, and who directly or indirectly controls a subdivider or is a general partner, officer, director, agent, or employee of a subdivider shall also be liable under this subsection jointly and severally with and to the same extent as the subdivider, unless that person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts creating the alleged liability. Among these persons a right of contribution shall exist, except that a creditor of a subdivider shall not be jointly and severally liable unless the creditor has assumed managerial or fiduciary responsibility in a manner related to the basis for the liability of the subdivider under this subsection. Civil penalties shall be limited to \$10,000 for each offense, and all amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. No order requiring the payment of a civil penalty shall become effective until 20 days after the date of the order, unless otherwise agreed in writing by the person on whom the penalty is imposed.

(6) If the division finds, after notice and hearing, that the registrant has been guilty of a violation for which revocation or suspension could be ordered, it may require the registrant to record any agreements for deed necessary for the protection of the interests of contract purchasers.

(7) If the division finds, after notice and hearing, that the registrant has engaged in repeated instances of deceptive, misleading, or fraudulent practices in the disposition of subdivided lands by long-distance telephone, the division may prohibit the registrant from engaging in further dispositions of subdivided lands by solicitations or offers by long-distance telephone.

History.--s. 16, ch. 63-129; s. 15, ch. 67-229; s. 2, ch. 71-98; s. 1, ch. 72-365; s. 3, ch. 76-168; s. 11, ch. 76-262; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 24, 30, 32, ch. 79-347; ss. 3, 7, ch. 81-172; ss. 16, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; s. 17, ch. 87-102; ss. 23, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 563, ch. 2003-261.

Note.--Former s. 478.161.

498.051 Cease and desist orders.--

(1) The division may issue an order requiring a person to cease and desist, and to take such affirmative action as will carry out the purpose of this chapter, if the division determines that the person has:

(a) Violated any provision of this chapter or any lawful order or rule of the division;

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of any interest in subdivided lands;

(c) Made any material change, alteration, or modification of the offering subsequent to the order of registration without obtaining prior written approval from the division, if such change, alteration, or modification is within the control of the registrant, or, if the change, alteration, or modification is not within the control of the registrant, failed to notify the division of the change within 7 days after its occurrence; or

(d) Disposed of any interest in subdivided lands which have not been registered with the division.

(2)(a) If the division makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order.

(b) Prior to issuing the temporary cease and desist order, whenever possible, by telephone or otherwise, the division shall give notice of the proposal to issue a temporary cease and desist order to the person. Each temporary cease and desist order shall include in its terms a provision that, upon request, a hearing will be held in accordance with chapter 120 to determine whether or not it will become permanent.

(3) The affirmative action to be taken by a person pursuant to an order authorized by subsection (1) may include, but is not limited to:

(a) Notifying any purchaser of subdivided land who has a rescission right that he or she may elect to rescind the purchase transaction as provided by contract or by other provisions of this chapter; and

(b) Establishing a trust or escrow account in a financial institution located within this state to assure the payment of refunds to those purchasers who elect to rescind, or to assure the conveyance of clear and marketable title to those purchasers who do not elect to rescind.

History.--s. 17, ch. 63-129; s. 16, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 12, ch. 76-262; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 25, 30, 32, ch. 79-347; ss. 17, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 24, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 580, ch. 97-103.

Note.--Former s. 478.171.

498.053 Notices to show cause.--In addition to the authority of the division to issue a notice to show cause pursuant to other sections of this chapter or pursuant to chapter 120, the division may issue an order to show cause if it finds that another state or federal agency has suspended, revoked, or taken similar action against the land sales registration of a subdivider. The order to show cause shall provide for a hearing, upon written request, in accordance with chapter 120.

History.--ss. 25, 32, ch. 79-347; ss. 18, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 25, 33, 34, ch. 88-90; s. 4, ch. 91-429.

498.057 Service of process.--

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service may be made by delivering a copy of the process to the director of the division, which shall be binding upon the defendant or respondent if:

(a) The plaintiff, which may be the division, immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his or her last known address, and

(b) The plaintiff files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over him or her cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or his or her successor which grows out of the conduct and which is brought under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

History.--s. 26, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 26, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 581, ch. 97-103.

Note.--Former s. 478.29.

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 she or he willfully:

- (1) Offers, disposes of, or participates in an offer or disposition of subdivided lands in violation of s. 498.023(1);
- (2) Disposes of or participates in the disposition of any interest in subdivided land without providing a current public offering statement in violation of s. 498.023(2);
- (3) Offers, disposes of, or participates in any offer or disposition of any evidence of indebtedness secured by a mortgage or deed of trust of any interest in subdivided land in violation of s. 498.023(4);
- (4) Fails to obtain written approval of the division for any material change to a registered offering of subdivided lands in violation of s. 498.033(2);
- (5) Removes or diverts, or otherwise impairs, without approval, any moneys or other security or assurance established under s. 498.039;
- (6) Makes any material misrepresentation, commits any fraudulent act, or conceals any material fact in the offer or disposition of subdivided lands; or
- (7) Disposes of, conceals, or diverts any funds or assets of any person so as to substantially and adversely affect the interest of a purchaser of subdivided land.
- (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.

History.--s. 21, ch. 63-129; s. 18, ch. 67-229; s. 426, ch. 71-136; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 27, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; s. 2, ch. 84-71; ss. 27, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 582, ch. 97-103; s. 18, ch. 97-192.

Note.--Former s. 478.211.

498.061 Civil remedy.--

- (1) Any subdivider who disposes of any interest in subdivided lands in violation of s. 498.023, or who in disposing of any interest falsifies a material fact, or who in a registration statement or public offering statement falsifies or omits a material fact required to be stated is liable as provided in this section to the purchaser unless it is proved that:
 - (a) The purchaser knew of the untruth or omission;
 - (b) The subdivider did not know, and in the exercise of reasonable care could not have known, of the untruth or omission; or
 - (c) The purchaser did not rely on the untruth or omission.
- (2) In addition to any other remedies, the purchaser may sue in a court of competent jurisdiction to recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands, together with interest at the rate of 9 percent per year from the date of payment, property taxes paid, and court costs and reasonable attorney's fees to the prevailing party, upon proper proof, less the amount of any income received from the subdivided lands. The purchaser shall tender all appropriate instruments of reconveyance prior to the entry of judgment.

(3) Each person who materially participates in any disposition of any interest in subdivided lands in the manner specified in subsection (1), and who directly or indirectly controls a subdivider or is a general partner, officer, director, broker, salesperson, agent, or employee of a subdivider, shall also be liable jointly and severally with and to the same extent as the subdivider, unless that person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts upon which the liability is alleged to exist. A right of contribution shall exist among persons so liable.

(4) Each person whose occupation gives authority to a statement which with her or his consent has been used in an application for registration or public offering statement is liable only for false statements and omissions in her or his statement if she or he knew or in the exercise of reasonable care could have known of the existence of the facts upon which the liability is alleged to exist, and she or he is not otherwise associated with the subdivision and development plan in a material way.

(5) Any stipulation or provision purporting to require any person acquiring any interest in subdivided lands to waive her or his rights under this chapter or any rule or order under it is void.

(6) Any sale or contract for sale of any interest in subdivided lands, which is in violation of this chapter or applicable rules or orders, is voidable by the purchaser, and she or he may, in addition to any other remedy provided by law, recover from the subdivider the total amount the purchaser has paid on the contract or sale plus a reasonable attorney's fee, if she or he sues and prevails.

No action shall be maintained to enforce any liability created under this section unless brought within 3 years after the discovery of the violation or after discovery should have been made by the exercise of reasonable diligence.

History.--s. 19, ch. 63-129; s. 17, ch. 67-229; s. 26, ch. 74-382; s. 3, ch. 76-168; s. 13, ch. 76-262; s. 1, ch. 77-457; ss. 28, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 28, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 583, ch. 97-103.

Note.--Former s. 478.191.

498.063 Saving clause.--

(1) Any application for registration of subdivided lands for which the division has issued a notice of filing before the effective date of this act shall be required to meet the registration requirements in existence at that time.

(2) Any order of registration issued before the effective date of this act shall be valid until suspended, revoked, or terminated.

(3) Any application for exemption from the requirements governing the registration of subdivided lands which is received by the division in proper form before the effective date of this act shall be subject to the requirements in effect at that time.

(4) Any exemption from the requirements governing the registration of subdivided lands granted by the division prior to the effective date of this act shall remain valid until terminated.

(5) Any violations of ¹chapter 478 or of this chapter shall be subject to the proceedings and penalties provided by law on the date the violation occurred, and the division and the courts of this state shall have continuing jurisdiction over such actions until final judgment and satisfaction.

History.--ss. 29, 32, ch. 79-347; ss. 19, 21, ch. 81-177; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 29, 33, 34, ch. 88-90; s. 4, ch. 91-429.

¹**Note.**--Transferred to chapter 498 by the reviser incident to the compilation of ch. 79-347.