

CHAPTER 61B-3 FEES AND COSTS

61B-3.0001	Definitions.
61B-3.001	Fees, Cost of Inspections and Investigations.
61B-3.002	Cost of Out-of-state Examinations, Inspections and Investigations. (Repealed)
61B-3.005	Fees for Material Changes. (Repealed)
61B-3.007	Jurisdiction. (Repealed)
61B-3.008	Investigations.
61B-3.009	Aggravating and Mitigating Circumstances. (Repealed)

61B-3.0001 Definitions.

As used in Rule Chapters 61B-3 through 61B-13, Florida Administrative Code, unless the context otherwise requires:

(1) "Adequate information" means all pertinent information or documentation necessary to enable the division to render an informed decision required or permitted under Chapter 498, Florida Statutes, and the rules promulgated thereunder.

(2) "Agreement for deed" or "contract for deed" means any written contract utilized in the disposition of subdivided lands which does not provide for the conveyance of fee simple title to the purchaser by means of a warranty deed until the contract price has been paid in full and the conveyance of title does not occur within 180 days of the date of execution of the agreement.

(3) "Clear or marketable title" means the fee simple title subject to no liens or encumbrances other than generally acceptable conditions, covenants and restrictions, reservations, limitations and easements, of record, if any, taxes for the current year, and zoning ordinances, if any.

(4) "Consolidation" means an additional filing covering lands which are contiguous or part of the same plan of development or promotion with lands which have already received an order of registration under a common promotional plan of sale, advertising, and common ownership.

(5) "Contract" means any written agreement for the disposition of subdivided lands which provides for the conveyance of title within 180 days or less, and provides that the deposit shall be held in escrow until closing, at which time fee simple title is conveyed to the purchaser.

(6) "Contracts receivable" means unpledged, non-delinquent contracts receivable as defined by the SFAS No. 66, Statement of Financial Accounting Standard No. 66 – Accounting for Sales of Real Estate, incorporated herein by reference, on which at least 10 percent of the contract sales price has been collected.

(7) "Cost of promised improvements" means the projected cost of all uncompleted promised improvements, certified to the division by the registrant through a registered engineer who is certified and in "good standing" pursuant to Chapter 471, Florida Statutes. The projected cost shall include an inflation factor computed annually by the division at a rate determined by averaging the inflation factors of the immediately preceding five (5) years of consumer price index of all items for all urban consumers, based year (1967) unadjusted, as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(8) "Current public offering statement" means a public offering statement which incorporates the following:

(a) All amendments to the promotional plan, plan of disposition, or plan of development as required by statute;

(b) All information required for accurate disclosure to purchasers or prospective purchasers of all facts material to the offering of subdivided lands; and

(c) All statutory and rule requirements for form sufficient to disclose all facts material to the offering of subdivided lands.

(9) "Delinquent receivables" means receivables that are delinquent pursuant to their contractual terms and on which no payment has been made for at least 90 days, or where an aggregate of twelve monthly payments are delinquent.

(10) "Development abilities" means the nonfinancial strength of a registrant such as personal, subdividing experience, etc.; those characteristics of a subdivider which are indicative that a project can be completed as promised.

(11) "Development period" or "Estimated life of the project" means the period from the date of the Order of Registration to the date of delivery of final improvements as set forth in the registration.

(12) "Encumbrance" means any claim, lien, charge, liability, right, or interest, whether recorded or unrecorded, which attaches to and may bind real property. Examples of encumbrances would include mortgages, judgment liens, leases, agreements for deed (whether possessory or non-possessory), security interests, accrued unpaid taxes and any certificate issued thereon.

(13) "Estimated cost of completion of promised improvements" means the projected cost certified to the division by the subdivider and certified as reasonable by a professional engineer, including such inflation factors for increases in cost as shall be utilized by the subdivider's independent public accountants in determining its deferred improvement revenue or estimated liabilities for improvements and also including provisions for unrecoverable costs of offsite improvements, facilities and amenities (including operating losses of utility operations and recreational and club facilities), and of other support activities to the extent not chargeable to selling costs under the subdivider's cash flow forecasts, expected to be borne by a future purchaser or estimated to be recovered from the proceeds of the future sale or operation of utility facilities and the like with such proceeds to be discounted to present value as of the date the net unrecoverable costs are forecast to be recognized.

(14) "Financial statements" means statements which have been prepared in accordance with Rule 61B-5.003, Florida Administrative Code.

(15) "Improvement trust agreement" means an agreement entered into between the division, the registrant, and a financial institution acceptable to the division, whereby monies for specifically stated improvements are deposited by the registrant with the financial institution for the purpose of assuring promised improvements. The frequency of the deposits shall be stated in the agreement and the rate of deposit, based upon sales, will be calculated by a formula set forth by paragraph 61B-6.006(2)(b), Florida Administrative Code.

(16) "Individual or investor mortgages" means those mortgages on individual subdivided units or parcels of land, which are offered to the public at large.

(17) "Interest on deferred payments" or "Finance charges" as used in computing an improvement trust agreement deposit rate means the product of projected sellout of the project multiplied by 1/2 of the interest rate on contracts receivable, multiplied by the maximum number of years the contracts receivable shall run.

(18) "Irrevocable letter of credit" means a contract to pay on compliance with its terms, drawn on any financial institution which is a member of the Federal Reserve System, and is acceptable to the division.

(19) "Notice of filing" means the form DBPR 304 NOTICE OF FILING (REGISTRATION), incorporated herein by reference and effective August 1986, which may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031; and which shall notify the applicant that the registration application has been received by the division and accepted for review pursuant to Section 498.029, Florida Statutes.

(20) "Personal bond (Corporate bond)" means a written undertaking by the registrant or its guarantor, or both, to a governmental entity, for a specific amount to support the registrant's commitment to complete promised improvements. Pursuant to subsection 61B-6.006(5), Florida Administrative Code, after January 24, 1991, no personal or corporate bond as defined in this subsection shall be an acceptable assurance for the completion of promised improvements.

(21) "Professional engineer" shall mean a person registered with the proper licensing board or agency of a state or territorial jurisdiction of the United States. If the professional engineer is not licensed by the Board of Professional Engineers of the Department of Business and Professional Regulation of the State of Florida, then the Professional Engineer shall provide proof of a temporary certificate in accordance with Chapter 471, Florida Statutes, and any rules promulgated thereto. A copy of such temporary certificate shall be submitted with any engineering statements submitted.

(22) "Project" means a subdivision or portion of subdivision with promised improvements that have contractual delivery dates to all lots therein.

(23) "Projected sellout of the project" means the gross cash purchase price to be paid if all subdivided lands in the project were sold, based upon the registrant's pricing at the time the improvement trust agreement is executed.

(24) "Promised improvements" means all improvements which the registrant is committed to provide pursuant to the registration statement filed with the division, such as:

(a) Public promised improvements which are those improvements for public use, convenience and necessity; and

(b) Private improvements which are those improvements not comprehended in paragraph (a) above.

(25) "Re-filing" means a filing covering previously registered lands wherein the title to the registered land has been transferred to or acquired by a new owner or owners.

(26) "Registration application" means the registration statement, offering statement, forms, exhibits, and all other supporting data pursuant to Chapter 498, Florida Statutes, and the rules of the division.

(27) "Sale" shall occur when the registrant has entered into a binding contract with a purchaser to sell any interest in subdivided lands or has offered to sell any interest in subdivided lands and has accepted deposit monies from the purchaser.

(28) "Subordinated debt" means any and all debt that is specifically subordinated or by its terms and conditions lower in priority to:

(a) Claims by secured and general creditors.

(b) Claims arising from failure to complete promised improvements.

(29) "Surety bond" means an accessory promise by which a bonding company binds itself on behalf of another party already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. The bonding company shall be licensed to do business in the state wherein the bond is written.

(30) "Vacation certificate" means a program authorized by a registrant whereby a prospective purchaser is entitled to lodging, food, or other amenities and the purpose of the plan is to induce the prospective purchaser to attend or submit to a presentation offering, promoting, or inducing the purchase of subdivided lands. Rule 61B-9.036, Florida Administrative Code, sets forth the requirements relating to vacation certificates.

Specific Authority 498.007(1) FS. Law Implemented 498.023, 498.024, 498.025, 498.027, 498.029, 498.031, 498.033, 498.039, 498.047 FS. History—New 2-16-93, Formerly 7D-3.0001, Amended 9-28-93, 1-26-97, 5-31-98.

61B-3.001 Fees, Cost of Inspections and Investigations.

(1) In the event unregistered subdivided lands are being consolidated to an existing registration, the registration fee will apply only to the unregistered subdivided lands included in the proposed consolidation. For renewal purposes, all originally registered and consolidated subdivided lands will be considered part of a single registration.

(2) The cost of inspections which are to be paid by an applicant or practitioner pursuant to Section 498.017(4), Florida Statutes, shall be paid prior to the issuance of any final order or authorization of the division; however, if the expense has not been paid within 30 days from the billing date, the division shall reject the application or request.

(3) Cost of Inspections and Investigations. Expenses charged pursuant to this Rule are computed in the manner prescribed by Section 112.061, Florida Statutes. When the amount paid by an applicant, registrant, or other person for an inspection or investigation is in excess of the actual cost, the division shall refund the excess amount.

(4)(a) Each application for approval of a material change by the Bureau of Land Sales Registration shall be accompanied by the applicable initial fee. The initial fee shall be determined from the following schedule by selecting the material change category involved in the application and then applying the fee from the pertinent category:

1. Sale of business entity \$1,000
2. Merger of legal entities \$1,000
3. Modification of mortgage, based on the present balance of the note or the maximum credit line
 - a. If \$0 – \$999,999.99 \$500
 - b. If \$1,000,000.00 – \$9,999,999.99 \$750
 - c. If \$10,000,000.00 or more \$1,000
4. Modification of improvement completion dates \$750
5. Sale of business assets \$750
6. Sale of receivables \$750
7. Replat of registered property \$750
8. All others \$200

(b) Pursuant to subsection 498.017(5), Florida Statutes, the division shall determine the actual costs for processing the material change. If the actual cost to the division for processing the material change exceeds \$1,000, the approval or disapproval of the material change shall be accompanied by an order of the division documenting the actual costs of processing and charging the registrant with the balance remaining after subtracting the applicable initial fee from the total actual cost of processing, and that the registrant is entitled to a hearing under Chapter 120, Florida Statutes, upon request.

Specific Authority 498.007(1), 498.017 FS. Law Implemented 498.007(1), 498.011, 498.017, FS. History—New 10-8-68, Amended 12-9-69, Revised 12-17-71, Amended 12-19-74, 9-22-77, 12-24-80, 4-17-85, Formerly 7D-3.01, Amended 1-4-87, 2-16-93, Formerly 7D-3.001, Amended 9-28-93, 1-26-97, 5-31-98.

61B-3.008 Investigations.

For the purpose of any investigation under Chapter 498, Florida Statutes, any real estate development specialist, supervisor, or chief of the Bureau of Land Sales Registration, is designated to administer oaths or affirmations, take evidence, and require the production of any matter which is relevant to the investigation.

Specific Authority 498.007(1) FS. Law Implemented 498.047(2) FS. History—New 2-16-93, Formerly 7D-3.008.

CHAPTER 61B-5 PROCEDURE FOR REGISTRATION

61B-5.001	Definitions. (Repealed)
61B-5.002	Registration. (Repealed)
61B-5.0021	Notice of Filing. (Repealed)
61B-5.0022	Registration.
61B-5.0023	Notice of Change. (Repealed)
61B-5.0024	Application and Order of Registration. (Repealed)
61B-5.0025	Duties and Obligations. (Repealed)
61B-5.0026	Material Changes; Termination of Registration.
61B-5.003	Financial Statements.
61B-5.0031	Requesting Waiver of Audited Financial Statements. (Repealed)
61B-5.004	Consolidations. (Repealed)
61B-5.010	Inactive Registration. (Repealed)
61B-5.012	Material Change - Termination of Registration. (Repealed)

61B-5.0022 Registration.

(1) The division shall maintain a registration packet for distribution to prospective applicants. The registration packet shall contain forms DBPR 317 Registration Application Instruction; DBPR 314A Applicant Certificate of Registration (within Florida); DBPR 314B Applicant Certificate of Registration (outside Florida); DBPR 315 Registration Statement; DBPR 313 Permitting Information; each incorporated herein by reference and effective 1-26-97, and which may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031.

(2) Required exhibits. Each exhibit shall be accounted for with an exhibit cover sheet appropriately tabbed on the right hand side. If an exhibit is not applicable, then the words "not applicable" shall appear on a separate page behind the exhibit cover sheet accompanied by an explanation of why the exhibit is not applicable. Exhibits required as part of the registration are as follows:

(a) Exhibit A. A legal description of each lot by lot and block numbers, section, township and range designation, government lot, if applicable, and the county within which the subdivision is located.

(b) Exhibit B. A Florida Department of Transportation county map, if available, or a general county map showing the total subdivided area to scale and related to the nearest section, township and range lines. Plat maps shall not be accepted for this exhibit.

1. Those sections of the overall master plan which are the subject of the lands contained in the application shall be colored red.

2. Those sections of the overall master plan which have been previously registered or exempted, if any, shall be colored green.

3. Those areas which are reserved for future expansion shall be colored yellow.

4. In addition to the bound exhibit contained in the application file, applicant shall submit one (1) copy of this exhibit in a separate folder.

(c) Exhibit C. Copies of recorded deeds, conveyances or other instruments by which title to the subdivided lands was acquired.

(d) Exhibit D. Copies of all existing recorded mortgages, financing agreements, or other instruments creating liens, reservations or exceptions upon the use or title of the subdivided land included in this filing. The mortgages must include a subordination clause or the registrant must establish and maintain an escrow or trust account as required by Section 498.039(1), Florida Statutes, and Rule 61B-6.001, Florida Administrative Code. In addition to any recorded mortgages as set forth above, any unrecorded mortgages or liens existing on the property shall be submitted as part of this exhibit. If there are no existing unrecorded mortgages or liens, the applicant shall so state.

(e) Exhibit E. A current title insurance policy or a current title opinion from an attorney independent of the applicant covering the subdivided land described in Exhibit A of the registration application. The title policy or attorney's title opinion shall be dated within 30 days prior to the date of submission of the registration application to the division. The title insurance policy or attorney's title opinion shall include but not be limited to the following:

1. A legal description of the land on which the lots, common areas, and facilities covered by the title evidence are located. If the land covered by the title policy or attorney's title opinion is platted, the lot numbers, recording place, book name, book number and page number shall be stated in the description. If the land covered by the title policy or attorney's title opinion is not platted, a metes and bounds description of the land shall be included and shall be accompanied by a certification from a professional engineer or surveyor stating that all lots, common areas and common facilities are included within the metes and bounds legal description.

2. The name of the person(s) or other legal entity(ies) holding fee title to the property described.

3. A listing of all exceptions to the title including encumbrances, liens, easements, covenants, conditions, reservations, limitations, outstanding taxes or tax certificates and restrictions.

4. Any encumbrances, liens, easements, covenants, reservations, limitations, restrictions or conditions of record set forth in the title policy or attorney's title opinion shall be identified by book, page number and public record wherein they may be found.

5. When an encumbrance, lien, exception, restriction, condition, reservation or covenant affects less than all of the property covered in the registration application, the title policy or attorney's title opinion shall specifically note what portion of the property is so affected.

6. Copies of all instruments referred to in Paragraph 3. above shall accompany this exhibit with the exception of mortgages contained in Exhibit D.

7. A statement shall be included regarding the consequences for a purchaser of the applicant's failure to discharge each lien or encumbrance affecting more than one lot, parcel or unit, and the steps taken by the applicant to protect the purchaser in the event of default. In the event such a statement is not included in a title insurance policy submitted for this exhibit, this requirement may be satisfied by also submitting an attorney's signed statement of the required facts.

8. If the Registration Application covers subdivided land on which a title policy or attorney's title opinion has already been given to the division pursuant to a previously approved registration application, an applicant may submit an attorney's updated opinion covering the time period between the date of the last title policy or attorney's title opinion to within 30 days prior to the submission of the present registration. Such updated policy or opinion shall contain all elements required in Paragraphs 1. through 6. above.

9. A title insurance policy which insures the title for less than the owner's purchase price of the land shall not be deemed acceptable.

(f) Exhibit F. Copy of the applicable zoning restrictions, if any, which affect the property which is the subject of the registration application. In lieu of the zoning restrictions, the division will accept a letter from the County Zoning Director, which letter shall include the following:

1. The applicable zoning designation covering the subject property.
2. List of allowable uses.
3. List of uses prohibited, if specifically set forth.
4. Any moratoriums on allowed uses.
5. Whether or not the declared use of the subject property is in compliance with the applicable zoning ordinance.

(g) Exhibit G. Copy of any deed restrictions imposed by the applicant. No deed restriction shall prohibit or impair the property from its intended use. As such, it is advantageous to the applicant to submit the deed restrictions in unrecorded form for review. Such restrictions, however, must be recorded and the Division must receive recorded copies prior to the issuance of an Order of Registration.

(h) Exhibit H. A copy of the sales documents to be employed in the disposition of the subject property, which sales documents shall include the applicable provisions required by Chapter 61B-7 of the Florida Administrative Code and shall be in recordable form. For those applications covering subdivided lands not within the State of Florida, this exhibit shall include an opinion from an attorney independent of the applicant, licensed to practice in the state within which the subdivision is located, indicating whether the contract submitted is recordable.

(i) Exhibit I. Copy of the deed or lease to be used by the subdivider to convey to the purchaser, which shall be recordable and shall have scrivener's information as part of the form. The use of any instrument other than a general or statutory warranty deed in the conveyance of subdivided land to a purchaser is subject to division approval. If the property to be conveyed is not within the State of Florida, an opinion from an attorney independent of the applicant licensed to practice in the State within which the subdivision is located that the deed or lease form is recordable in that state shall accompany this exhibit.

(j) Exhibit J. In the event that the mortgage or mortgages submitted with this application are not in compliance with Rule 61B-6.001, Florida Administrative Code, and the subdivider is unable to secure the required subordination, a Mortgage Trust Agreement shall be substituted in accordance with subsection 61B-6.001(2), Florida Administrative Code.

(k) Exhibit K. A schedule for completion of all improvements promised by the developer or other persons including but not limited to:

1. Streets or roads;
2. Drainage systems;
3. Water and sewer systems;
4. Utilities and street lights;
5. Recreational facilities and common areas; and
6. Security acceptable to the division to assure the completion of all promised improvements not complete as required by Section 498.031, Florida Statutes. This exhibit shall include:

a. A certified statement from a professional engineer stating his or her estimate of the percentage of total improvements now complete, a list, and an itemized cost breakdown of the promised improvements. The inflation factor required by subsection 61B-3.0001(7) and Rule 61B-6.006, Florida Administrative Code, should be indicated separately.

b. A phased development schedule for all improvements promised by the subdivider, showing each type of improvement, with start and completion by month and year. A bar graph is the most acceptable method of demonstrating the completion schedule.

c. Types of assurance documents acceptable to the division for initial review are as follows:

I. Improvement Trust Agreements. The division shall maintain model ITA forms for use by the applicant. Any model ITA's submitted under this exhibit shall be in triplicate, duly executed by the subdivider and the appropriate financial institution.

II. Other types of assurance documents described in subsections (3) through (7) of Rule 61B-6.006, Florida Administrative Code, may be submitted and shall be reviewed for adequacy pursuant to the applicable rule.

(l) Exhibit L. A true copy of the official plat as recorded in the public records of the county within which the subdivision is located. The plat submitted shall disclose the following:

1. Delineation and identification of all lots being offered within the subject subdivision.
2. Legal description of the property covered by the plat.
3. All easements including drainage, powerline, telephone and any special easements.

4. All streets, roads and cul-de-sacs. For subdivisions located within this state, this exhibit shall include a duly recorded plat prior to the issuance of an Order of Registration. For subdivisions located in counties or local jurisdictions which do not require the recordation of a plat, or where the appropriate governing body has not passed any platting ordinances, this exhibit shall include a plat prepared in accordance with the specifications of Part 1 of Chapter 177, Florida Statutes, and shall be duly recorded in the public records of the appropriate governing body, unless the appropriate governing body expressly prohibits the recordation of plats. In that event, this exhibit shall include an attorney's opinion stating that the recordation of plats is expressly prohibited within said jurisdiction and citing the applicable authority evidencing such prohibition.

5. In the event a recorded plat is not required pursuant to the above, Exhibit A shall contain a metes and bounds description of each lot which is the subject of the registration application. For subdivisions located outside of the State of Florida, this exhibit shall contain a subdivision plat which is recorded in the public records of the appropriate jurisdiction within which the subject subdivision is located. If the state, county, or local jurisdiction has no platting ordinance or does not require platting within its jurisdiction, this exhibit shall contain an unrecorded subdivision plat map, prepared in accordance with items 1.-4. above.

(m) Exhibit M. Contracts entered into by the subdivider for the provision of utilities to the subject subdivision, if any. This exhibit shall also contain the following documentation from the agencies responsible for providing telephone, electric or fire protection to the subdivision:

1. A letter from the applicable electric company wherein it agrees to provide the installation and servicing of electric lines and equipment, showing projected costs to the purchaser. If underground electric lines are part of the subdivider's planned improvements, this exhibit shall also include the agreement entered into between the electric company and the subdivider and if required, any escrows placed with the electric company to assure completion of installation.

2. A letter from the applicable phone company wherein it agrees to provide telephone service lines to the subdivision and showing the projected cost to the purchaser. If underground telephone lines are part of the subdivider's planned improvements, this exhibit shall also include the agreement entered into between the telephone company and the subdivider and if required, any escrows placed with the telephone company to assure completion of installation.

(n) Exhibit N. Letters and documentation from the supplier of water to the subdivision attesting to the availability of water to the subdivision and a letter from the appropriate local governing authority or professional engineer that the water meets requirements for safe drinking water. If the water source is to be by central water system, this exhibit shall include:

1. Copies of all permits required for the construction of a water plant.

2. Certification from a professional engineer as to whether plant capacity can be provided to handle the projected population of the subject subdivision currently registered or sought to be registered.

(o) Exhibit O. Letters and documentation attesting to the acceptability of the proposed sewage disposal facilities within the subject subdivision.

1. If sewage disposal is by septic tank, percolation tests taken at representative areas in the subject subdivision are required. If it appears to the division that the percolation tests submitted are not "representative" of the entire subdivision, further percolation tests may be required. This exhibit shall therefore include:

a. A subdivision or plat map showing the location of the percolation tests.

b. Laboratory results of the percolation tests.

c. Letter from county sanitarian, county health department, or a professional engineer attesting that the percolation tests taken meet county requirements for the installation of septic tanks. Such letter shall also include a statement that the subdivision area is generally suitable for septic tank use and whether there are any moratoriums on the use of septic tanks or a limit to the number of septic tanks that can be installed in the subdivision.

2. If sewage disposal is by central system, this exhibit shall include:

a. For on-site sewage treatment plants, copies of construction or operating permits when required, and a letter from a professional engineer attesting to whether the sewage treatment plant has or will have the capacity necessary to serve the projected population of the subdivision currently registered or sought to be registered.

b. For off-site municipal or county operated sewage treatment plants, a letter from the appropriate authority which is responsible for the operation of the sewage treatment plant, certifying whether the plant has received all construction and operating permits and whether the plant has the capacity to serve the projected population of the subdivision currently registered or sought to be registered.

(p) Exhibit P. Drainage facilities. The drainage system for the subject subdivision shall be adequate to render the lots useable as homesites. This exhibit shall include:

1. A letter from the county engineer or, if none, from a professional engineer, stating that the proposed drainage plan meets local specifications. Such a letter will not be required if the drainage facilities were expressly approved by the appropriate governmental entity in the process of approving the plat of the property; and

2. A letter from a professional engineer describing the proposed drainage system and stating that the system, if built to specifications, will make the lots useable as homesites.

(q) Exhibit Q. All roads within the subdivision shall be constructed to the specifications of the appropriate local governing body. Unless compliance with this requirement is expressly confirmed in the approval of the subdivision plat, this exhibit shall contain a letter from a professional engineer employed by the appropriate local governing body stating:

1. Whether the existing and proposed roads within the subdivision meet local specifications and are acceptable to the local governing body to serve the planned use of the lots within the subdivision; and

2. Whether the local governing body plans to accept the roads for maintenance and, if so, when.

(r) Exhibit R. Flooding and muck conditions. If flooding and muck conditions exist, this exhibit shall contain a letter from a professional engineer identifying the lots within the areas of the subdivision which are affected by the conditions cited above.

(s) Exhibit S. Maintenance of Improvements. The subdivider shall provide for the perpetual maintenance of the streets or roads in a manner acceptable to the division. This exhibit shall contain a letter from the subdivider setting forth the planned method for maintenance and supporting documentation as follows:

1. For perpetual maintenance provisions arranged with the appropriate local governing body, a letter from, or other evidence of official action by, the appropriate local governing body accepting or agreeing to accept the improvements for maintenance. The letter or other evidence shall include:

a. A list of improvements accepted or to be accepted;

b. The date accepted or when the appropriate local governing body will begin its maintenance responsibility; and

c. If there is a waiting period between the completion date of improvements to be accepted by the appropriate local governing body and the time the appropriate local governing body actually accepts maintenance, this exhibit shall include a copy of the agreement between the appropriate local governing body and the subdivider including any bonding arrangement entered into with the appropriate local governing body. The subdivider shall be responsible for the maintenance of all improvements until the appropriate local governing body assumes maintenance.

2. For those improvements which will be perpetually maintained by a home owners' association, this exhibit shall include:

a. Copy of the home owners' association articles and by-laws. These documents shall include, provisions for when prospective purchasers become members of, and obtain control of, the association and the method of computation of any assessments which may be levied upon members. The association articles need not be filed with the Secretary of State prior to submission as part of this registration. Prior to the issuance of an Order of Registration, however, the division shall receive duly filed articles.

b. A statement as to whether the subdivider participates in the payment of association assessments on a pro-rata basis as owner of unsold lots. If the subdivider does not participate in the payment of assessments, alternative provisions acceptable to the division may be used.

c. List of improvements which will be maintained by the association and when such improvements will be deeded to the association.

d. A certification from the subdivider that a separate account has been set up for the receipt of association assessments collected, which shall not be commingled with the developers funds. Separate books shall be set up to account for all income and disbursements. Such accounts and books shall be made available for the inspection of the association members at reasonable hours and shall be turned over to the association when the subdivider relinquishes control.

e. A pro forma operating budget which specifies the amount of any association assessments which are expected to be levied upon association members.

3. If any improvements will be constructed or maintained by an improvement district, water control district, maintenance district or road and bridge district, this exhibit shall contain the completed Improvement District Questionnaire, Form DBPR 318 effective July 1982, herein incorporated by reference and all documentation required therein.

(t) Exhibit T. If the lots sought to be registered are subject to the permit requirements of Chapters 253, 373, 380, or 403, Florida Statutes, or the state certification requirements of Public Law 92-500, this exhibit shall include:

1. A letter from the Division of Local Resource Management (Chapter 380, Florida Statutes), the Water Management District within whose jurisdiction the subject subdivision lies (Chapter 373, Florida Statutes) and the Department of Environmental Protection (Chapters 253 and 403, Florida Statutes, and Public Law 92-500), each stating whether permits are required for the subject subdivision pursuant to the above named laws. If such permits are required, they must be obtained and a copy of each placed in the exhibit; or

2. The division may also accept the documentation required pursuant to Section 498.027(2)(a) or (b), Florida Statutes, in place of such permits.

(u) Exhibit U. Background information on officers, directors and stockholders. This exhibit shall include a list of the subdivider's officers, directors, and persons controlling 10 percent or more of the outstanding stock or other form of equity interest, together with the following information:

1. For each officer, director, and person controlling 10 percent or more of the outstanding stock or other form of equity interest, one executed Form DBPR 396, Officers, Directors, and Principals with 10 percent or more interest, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division.

2. For each officer, director, and person listed in Form DBPR 396, one Form DBPR 319 Qualification and Background accompanied by one completely executed Form DBPR 319-3 Fingerprint Card, both incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division.

3. One DBPR 396 Form shall be executed for each entity holding fee simple title to the subject subdivision. All DBPR 396 and DBPR 319 Forms must be prepared and executed within 30 days of the date the registration application is submitted to the division.

(v) Exhibit V. Promotional Plan. This exhibit shall include a narrative describing the promotional plan to be used in the disposition of the land subject to the registration application. If lots will be offered by long distance telephone, this exhibit shall contain a proposed long distance telephone script and synopsis as required by Subsection 498.023(3), Florida Statutes.

(w) Exhibit W. Copy of the proposed offering statement prepared in accordance with Form DBPR 312A Florida Public Offering Statement and DBPR 312B Addendum to Offering Statement Format, both incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division.

(x) Exhibit X. Financial Statements. This exhibit shall include financial statements prepared in accordance with Rule 61B-5.003, Florida Administrative Code.

(y) Exhibit Y. Form DBPR 320 Irrevocable Consent to Service of Process, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division, and which shall be executed within 30 days of the submission of the registration application to the division.

(3)(a) Within ten business days after a Registration Application is received in the executive offices of the division, the division shall determine whether the application is in proper form, and shall send to the applicant either a Notice of Filing or a Notice of Form Deficiency. The Notice of Filing shall set forth the date of receipt for the purpose of determining the time limits imposed by Subsection 498.029(1), Florida Statutes.

(b) A Notice of Form Deficiency shall identify all deficiencies in form and shall state the legal authority for the basis of each deficiency. A Notice of Filing shall not be issued and the review time allowed by subsection 498.029(1), Florida Statutes, shall not commence until the registration application is in proper form. If the deficiencies cited in the Notice of Form Deficiency are not corrected to the satisfaction of the division within 20 days, the division shall return the application.

(4) A registration shall be effective as of the date the Order of Registration is issued and shall remain in effect until suspended or revoked, or until all obligations thereunder have been met and the registration has been terminated by the division in writing pursuant to Section 498.041(3), Florida Statutes.

(5) Change in Officers – If there is any change in the status or identity of the principal officers, directors, or stockholders which are listed on the original DBPR 396 form filed with the registration application, within 30 business days from the date of the change the registrant shall notify the division and submit a revised DBPR 396 form and a DBPR 319 form, complete with fingerprint card for each new officer or director, as needed.

(6) Address Change – If the registrant changes its address, it shall notify the division in writing of such address change within 7 business days.

(7) Each subdivision for which an Order of Registration has been granted by the division shall be renewed annually until the registration is revoked or terminated by the division. An application for renewal shall include:

(a) the annual renewal fee as specified in Section 498.017, Florida Statutes, and;

(b) a properly completed Annual Renewal & Report Application, Form DBPR 326, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division, setting forth all facts accurate as of a date no earlier than 30 days from the date of filing the renewal application.

Specific Authority 498.007(1) FS. Law Implemented 498.027, 498.029(1), 498.031, 498.033, 498.037, 498.039(1), 498.041 FS. History--New 12-24-80, Amended 4-17-85, Formerly 7D-5.022, Amended 8-20-86, 2-16-93, Formerly 7D-5.0022, Amended 1-26-97, 5-31-98.

61B-5.0026 Material Changes; Termination of Registration.

(1) The following items, are recognized by the division as being material changes:

(a) Replats (For submission requirements, see DBPR 323-1 Replats, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(b) Changes in the improvement plan or schedule (For submission requirements, see DBPR 323-2 Extension of Completion Dates, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(c) Changes in the plan of sale or promotion as set forth in Exhibit V of the registration application (For submission requirements, see DBPR 323-3 Changes in Plan of Sale or Promotion, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.) Changes in the plan of sale or promotion include the following:

1. Initiation of sales programs in jurisdictions outside of the United States not expressly disclosed in the registration application or prior material change application. Each such initiation or extension of the sales program into a separate nation or external jurisdiction shall constitute a separate material change to the plan of sale or promotion.

2. Initiation of the plan of sale or promotion in a language other than the language in which the plan was originally registered. Each such initiation of the plan of sale or promotion into a single different language shall constitute a separate material change to the plan.

(d) Termination of registration (See subsection (6) of this rule for submission requirements.)

(e) Any refinancing arrangements including additional mortgages, or any change in existing financing arrangements or the assignment or sale of receivables (For submission requirements, see DBPR 323-4 Refinancing or Additional Financing Arrangements, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(f) Name changes of the subdivider or subdivisions (For submission requirements, see DBPR 323-5 Subdivider or Subdivision Name Changes, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(g) Price list decreases when the registrant has established Improvement Trust Accounts, Mortgage Trust Accounts or other escrow accounts with the division (For submission requirements, see DBPR 323-6 Applicable Decreases in Prices, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(h) Any change to the legal ownership of the subdivided land or the legal status of the registrant (For submission requirements, see DBPR 323-7 Changes in the Legal Status of the Registrant, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(i) Bulk sale of registered property (For submission requirements, see DBPR 323-8 Bulk Sale of Registered Property, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.) For purposes of this rule, "bulk sale" does not include the sale of less than 15 registered, contiguous lots, parcels, or units pursuant to a single sale.

(j) Sale of 10% or more of corporate stock or changes in 10% or more of ownership by other than a corporation (For submission requirements, see DBPR 323-9 Sale of 10% or More of Corporate Stocks, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.)

(k) Cash-up programs (For submission requirements, see DBPR 323-12 Cash-Up Programs, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division) involving lots where:

1. A method of assurance is involved;
2. Improvements are not complete; or
3. Outstanding encumbrances exist.

For purposes of this rule, "cash-up program" means a method used by or on behalf of the registrant to encourage or induce a purchaser making payments under an agreement for deed, or deed and mortgage, to complete such payments prior to their scheduled completion under the agreement for deed, or deed and mortgage or to accelerate full payment under the agreement for deed, or deed and mortgage, based upon a discount of the purchase price.

(2) Each material change submission shall be submitted to the Chief of the Bureau of Land Sales Registration.

(3) Each material change submission shall contain the following documentation:

(a) A cover letter which shall reference the subdivision(s), the identification numbers(s) appearing on the Order of Registration, and the registrant's name. Further, the cover letter shall outline the nature and circumstances of the material change.

(b) All proposed documentation pertaining to the material change which shall include the following:

1. Resolutions;
2. Loan commitments;
3. Loans;
4. Mortgages;
5. Contracts;
6. Plats;
7. Engineer's reports;
8. Promotional plans;
9. Affidavits as may be required;
10. Agreements, other relevant instruments; and
11. Revised offering statements as they may relate to the material change.

With regard to any of the documents cited above not in existence at the time of submission, the registrant shall submit a detailed statement containing all material terms and conditions of the documents which are being or will be prepared and describing with specificity all material terms and conditions of the material change. After the division has conceptually approved a requested material change, having relied on proposed documents, the registrant shall deliver true copies of the completed documents to the division within 10 business days after the date the documents are executed, or, if applicable, recorded and returned to the registrant.

(c) Each material change submission shall include the applicable initial fee as required under Rule 61B-3.001, Florida Administrative Code.

(4) The division shall review the material submitted to it and shall approve or disapprove the material change within 20 days after receipt of adequate information as defined in subsection 61B-3.001(1), Florida Administrative Code. A material change shall be approved only if it has not or will not impair the rights of the purchasers or the registrant's ability to perform its obligations to the purchasers.

(5) A termination of a registration is not a material change except for those terminations pursuant to Section 498.041(4), Florida Statutes.

(6) A registration may be terminated upon application on Form DPBR 303 Application for Termination of Registration, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.

Specific Authority 498.007(1) FS. Law Implemented 498.017(5), 498.033, 498.039, 498.041, 498.047 FS. History--New 12-31-80, Amended 4-17-85, Formerly 7D-5.026, Amended 8-20-86, 2-16-93, Formerly 7D-5.0026, Amended 9-28-93, 2-27-97. 5-31-98.

61B-5.003 Financial Statements.

(1) All financial statements, information, and reports required of registrants and applicants for registration, pursuant to Chapter 498, Florida Statutes, must be presented in accordance with generally accepted accounting principles and the Statement of Financial Accounting Standard No. 66 – Accounting for Sales of Real Estate. As used in this rule the terms “generally accepted accounting principles”, “standards for accounting and review services”, and “generally accepted audited standards” shall have the same meaning as set forth in Chapter 61H1-20, Florida Administrative Code.

(2) The term “financial statements” as set forth in Section 498.033(4), Florida Statutes, is defined to include the following statements:

- (a) Accountant's or auditor's report;
- (b) Balance sheet;
- (c) Income statement;
- (d) Statement of retained earnings;
- (e) Statement of cash flows;
- (f) Statement of changes in owner's equity;
- (g) Notes to financial statements.

(3) If statements to be submitted to the division are examined by a Certified Public Accountant not licensed by the Florida Department of Professional Regulation, such Certified Public Accountant shall comply with all requirements of Chapter 473, Florida Statutes, pertaining to practice of accounting in this state.

(4) The filing of audited consolidated financial statements of a parent company may be permitted if the parent company is the registrant, applicant, co-registrant or guarantor.

(5) If a registrant or applicant is included in a consolidated group of companies and the parent of the group is not a guarantor of the obligations of the registrant or applicant under the registration, the registrant or applicant must submit its own separate audited financial statements.

(6) If a registrant or applicant is included in a consolidated group of companies and the parent company of the group is a guarantor of the obligations of the registrant or applicant under the registration or application for registration, the registrant or applicant must submit either:

- (a) Audited consolidated financial statements for the group and compiled or reviewed financial statements prepared by an independent Certified Public Accountant for the registrant or applicant; or
- (b) Separate audited financial statements for the registrant or applicant.

(7) Upon the filing of a registration application, an applicant must submit comparative audited financial statements. If the date of the latest financial statements, referred to above, is more than 6 months but less than 17 months from the date of filing the Registration Application then the applicant must submit compiled or reviewed financial statements, as defined in subsection 61B-5.003(2), Florida Administrative Code, as of the most recent quarter.

(8) For the purposes of this rule, the term “guarantor” means any person who has entered into a legally binding agreement guaranteeing the performance of all obligations of an applicant or registrant under a proposed or existing Order of Registration.

(9) While the foregoing is established as a general guideline for financial statements, the division shall require the filing of additional financial information when consistent with the protection of purchasers.

Specific Authority 498.007(1) FS. Law Implemented 498.033, 498.007 FS. History—New 12-31-80, Formerly 7D-5.03, Amended 2-16-93, Formerly 7D-5.003, Amended 5-31-98.

CHAPTER 61B-6 ENCUMBRANCES AND IMPROVEMENTS

61B-6.0001	Definitions. (Repealed)
61B-6.001	Mortgages and Other Encumbrances.
61B-6.0021	Investor Note Programs. (Repealed)
61B-6.0031	Interim Maintenance. (Repealed)
61B-6.004	Encumbrance Reports.
61B-6.005	Refund Escrow Account. (Repealed)
61B-6.006	Assurances for Uncompleted Improvements/Interim Maintenance of Subdivided Lands.
61B-6.009	Registrant and Financial Institution Reporting Requirements. (Repealed)
61B-6.010	Modification or Release of Assurances.

61B-6.001 Mortgages and Other Encumbrances.

(1) Subdivided lands, or any portion thereof, encumbered by liens, mortgages or other encumbrances, shall not be accepted for registration and shall not be offered for disposition to the public unless the encumbering instrument contains the subordination provision required by Section 498.039(1), Florida Statutes.

(2) If the encumbering instrument does not contain a subordination provision as described in subsection (1) of this rule, the liens or encumbrances shall be considered objectionable unless funds are maintained in a trust or escrow account to ensure that all purchasers will obtain the legal interest or other interest provided in the purchase contract or lease, free and clear of the encumbrance, upon their compliance with the terms, provisions, and conditions of the purchase contract or lease. All trust or escrow accounts established pursuant hereto shall satisfy the following:

(a) The escrow or trust agreement shall provide that the purpose of the agreement is to protect the purchaser or prospective purchaser in the event of default on any lien or mortgage obligation.

(b) Funds shall be kept and maintained in an account in a financial institution and no other funds from any source shall be commingled in the account.

(c) The division shall require monthly statements to be furnished for mortgage trust or escrow accounts on form DBPR 393 Mortgage Trust Report, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division.

(3) An acknowledgement of Termination of Agreement will be executed by the director or the director's designee upon receipt of a certified copy of the mortgage satisfaction which was recorded in the county or counties where the land encumbered by the mortgage is located.

Specific Authority 498.007(1) FS. Law Implemented 498.027, 498.039 FS. History—Revised 12-17-71, Amended 12-19-74, 4-14-76, 7-1-76, 9-22-77, 12-31-80, 6-9-82, Formerly 7D-6.01, Amended 8-20-86, 2-16-93, Formerly 7D-6.001, Amended 1-26-97, 6-9-98.

61B-6.004 Encumbrance Reports.

(1) Every registrant shall file a DBPR Form 329 Quarterly Encumbrance Report, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division, no later than 45 days after the end of each reporting period.

(2) The reporting period shall be January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of each year and shall commence within the second quarter after a registration or consolidation becomes effective.

(3) A report shall be submitted for each registered subdivision, identified by registration number. A consolidated report may be submitted if the information is identified for each subdivision. In such case, each subdivision name and registration number shall be listed on the consolidated report.

(4) The reports completed in accordance with DBPR 386-1 Quarterly Encumbrance Report Instructions, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division, shall be filed on Department of Business and Professional Regulation Form DBPR 329.

(5) A registrant offering property with no encumbrances must execute and file according to DBPR 386-2 Annual Encumbrance Report Instructions, DBPR 384 An Annual Encumbrance Report, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division. The reporting period shall be from July 1 through June 30. The report shall be submitted no later than 45 days after the end of the reporting period.

(6) The applicable reports submitted to the division shall be originals.

(7) The name and title of the person submitting the report shall be typed below his or her signature.

(8) The applicable reports shall include the required information concerning any encumbrance which could affect the marketability of the title of the property.

Specific Authority 498.007(1) FS. Law Implemented 498.039(6),(7) FS. History—New 12-31-80, Amended 6-9-82, Formerly 7D-6.04, Amended 8-20-86, 2-16-93, Formerly 7D-6.004, Amended 1-26-97, 6-9-98.

61B-6.006 Assurances for Uncompleted Improvements/Interim Maintenance of Subdivided Lands.

(1) Subdivided lands, or any portion thereof, on which the construction of promised improvements has not been completed, shall not be registered for disposition unless the promised improvements are completed and paid for or such improvements are assured in a manner that will reasonably protect purchasers. The methods of assurance described in subsections (2) through (8) of this rule shall be considered by the division for the reasonable and proper protection of purchasers.

(2) The division shall consider the establishment of an Improvement Trust Account meeting the following requirements as a form of assurance:

(a) The Improvement Trust Agreement shall provide that the purpose of the agreement is to protect the purchaser or prospective purchaser in the event the registrant fails to complete the construction of promised improvements. DBPR Form 388 Improvement Trust Agreement, shall be the standard form, which shall be submitted with DBPR Form 389 Certificate of Improvement Trust Agreement, both incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division.

(b) The deposit rate shall be computed in the following manner:

Number of Lots Referred to in the Application for Registration	\$ _____
Lowest Priced Lot in Subdivision	× \$ _____
(Subtotal)	\$ _____
Less 25%	\$ _____
MINIMUM SELL-OUT	\$ _____
Professional Engineer’s Estimate of Cost to Complete Subdivision	\$ _____
1. Rate of deposit when improvements will be completed within one year = 110% × Est. of <u>Cost to Complete</u> Minimum Sell-Out	= __ %

2. Rate of Deposit when the improvements will not be completed within 1 year shall be derived as follows: Calculate the yearly inflation factor for each year in excess of the first year of construction, as specifically detailed in the formula set forth in Rule 61B-3.0001(7), Florida Administrative Code.

Inflation Percentage × Est. of Cost <u>to Complete</u> Minimum Sell-Out	= __ %
--	--------

(c) Funds shall be kept and maintained in a trust account established with a financial institution, located within the State of Florida, and no other funds from any source shall be commingled in this account.

(d) The division shall execute an acknowledgement on each agreement established pursuant hereto which shall indicate approval of the form and content of the agreement.

(e) In determining whether the provisions of an assurance are adequate, the division shall be guided by the facts and circumstances of each individual case.

(f) When the amount of money in escrow equals 110 percent of the adjusted cost of uncompleted promised improvements, and if requested, the division shall determine whether to consider the cessation of further deposits and allow withdrawals from escrow to commence. After each withdrawal from the escrow account, the amount remaining in escrow shall not be less than 100 percent of the adjusted projected cost of uncompleted promised improvements. Improvement Trust Report, DBPR Form 390, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division, shall be submitted as required by the Improvement Trust Agreement.

(3) The division shall consider as a form of assurance a surety bond which:

(a) Shall be written on a bonding company which is licensed to do business in the state wherein the bond is written. The bonding company shall be required to file a Consent to Service with the division; otherwise, the bonding company shall be a Florida company.

(b) Shall be bound unto the division or another governmental entity.

(c) Shall be written in the amount of the cost of the improvements for which it covers, plus the inflation factor as indicated in subsection 61B-3.0001(7), Florida Administrative Code.

(d) Shall bind the bonding company to the obligation to construct the improvements should the registrant default in its obligation.

(e) Shall specifically state the improvements for which it covers.

(f) Shall indicate:

1. Effective date; and
2. Term of bond.

(g) Shall indicate a method by which the division can enforce specific performance.

(4) The division shall consider as a form of assurance an irrevocable letter of credit which:

(a) Shall be drawn on a federal or state chartered financial institution.

(b) Shall specifically state the improvements for which it covers.

(c) Shall bind the financial institution to honor all drafts presented by the holders, accompanied by a signed statement from the director stating that the registrant has defaulted in its improvement obligation.

(d) Shall be written in the amount of the cost of improvements for which it covers, plus the inflation factor as indicated by subsection 61B-3.0001(7), Florida Administrative Code.

(e) Shall indicate effective date and expiration date.

(5) After January 24, 1991 the division shall not accept any type of personal bond (corporate bond), as defined by Rule 61B-3.0001(20), Florida Administrative Code, as a form of assurance for the completion of improvements under the provisions of Section 498.039(5), Florida Statutes. This subsection of the rule will continue to apply, as appropriate, to bonds accepted by the division prior to January 24, 1991. In regard to such bonds, whichever of the following sets of criteria under which the bonds were initially accepted, shall continue to apply until the time such bonds are discharged, replaced with other security, revoked, or otherwise terminated:

(a) Criteria for Irrevocable Corporate Performance Bonding:

1. Total liabilities to stockholders' equity shall not exceed a 6 to 1 ratio with subordinated debt being excluded from liabilities.

2. Estimated costs of completion of promised improvements to unsold lots for all projects owned by the registrant to stockholders' equity shall not exceed a 4 to 1 ratio. Stockholders' equity may include among other things, subordinated debt, at the director's discretion.

3. Contracts receivable from the sale of lands registered with division, plus cash and marketable securities less specified liabilities must exceed 110 percent of the projected costs of promised improvements on sold lots. The specified liabilities include all liabilities of those corporations substantially engaged in the sale and development of the property registered with the division except projected costs of promised improvements of land sold, deferred revenue, non-liability purchase money mortgages on non-registered property, liabilities which are specifically and adequately collateralized by real estate assets which have not been promised to purchasers in the registration on file with the division, debt on capital assets such as utility facilities, and other liabilities which are specifically subordinated to the projected cost of future improvements.

4. Cash flow, as forecasted, should be sufficient to complete the proposed project, all uncompleted projects, and maintain other business activities.

5. Developmental abilities as determined by the division must exist.

6. If only the criteria in subparagraphs (5)(a)3., 4., and 5. are met, registrant may continue to qualify under this section, provided the cumulative total of the ratios in subparagraphs (5)(a)1. and 2. do not exceed 10.0.

(b) Criteria for Alternative Corporate Bonding on Collateralized Basis:

1. Criteria subparagraphs (5)(a)4. and (5)(a)5. above must be met.

2. The ratio in subparagraph (5)(a)2. above does not exceed 5 to 1.

3. Collateralization is required by pledging contracts receivable from the sale of registered lands. These contracts receivable must have an outstanding balance, equal to 150 percent of the estimated costs of completion of promised improvements and the balance due on superior mortgages or other liens against the lots which are the subject of the pledged receivables.

4. If contracts receivable are not available, other assets easily convertible and otherwise acceptable may be substituted.

(c) If corporate bonds of a registrant are guaranteed by a parent company or affiliate, the guarantor's financial statements will be used to determine if the registrant shall meet the criteria of paragraph 61B-6.006(5)(a), Florida Administrative Code, except that with regard to subparagraph (a)3. thereof, the financial statements of the registrant, excluding financial information of subsidiary corporations that are not substantially engaged in the sale and development of the property registered with the division and not the guarantor, shall be the determining factor.

(d) In order for the division to determine whether corporate bonds accepted as assurances by the division prior to January 24, 1991, continue to meet the criteria set forth in paragraphs 61B-6.006(5)(a), or (b), Florida Administrative Code, the following information is required to be submitted by the registrant to the division:

1. Quarterly unaudited comparative financial statements within 45 days after the end of the quarter;

2. Audited financial statements in accordance with Rule 61B-5.003, Florida Administrative Code;

3. If corporate bonding collateral was required, an analysis of receivables that were pledged on the corporate bonding shall be prepared quarterly by the registrant and submitted to the division for monitoring to ascertain that the receivables are current and outstanding balances are sufficient collateral for the unexpended costs of completion of promised improvements. Each quarter, delinquent receivables will be replaced by current receivables. Additional receivables will be collateralized if necessary to maintain the established ratio of receivables to unexpended project costs. It is required that contracts be substituted if any pledged receivables become delinquent receivables. In addition, unexpended costs of promised improvements for all projects with costs for each reflected separately must be submitted quarterly. Concurrently with the submission of annual audited financial statements, a letter of certification must be submitted by the independent accountants that they have used standard auditing procedures to verify

the amount of the corporate bonding collateral (receivables) and that the use of such standard auditing procedures has indicated that the collateral is in a sufficient amount to cover the unexpended estimated cost of completion of promised improvements in accordance with the percentages established in these regulations;

4. Annual cash flow forecast of the entire activity of the registrant, with comparison of prior year between actual and forecast cash flow, and projection of the next year on a quarterly basis and succeeding years on an annual basis for the estimated life of the project;

5. Interim disclosures of any material changes to be filed immediately; and

6. For publicly held companies, copies of all reports furnished the Securities and Exchange Commission.

(e) If the division determines that the registrant can no longer meet the criteria prescribed above or other material factors exist which adversely affect corporate bonding capacity of the registrant, the division may take necessary action to require the registrant to provide another form of assurance.

(f) In any application in which the corporate bond guarantor is different from the registrant, the guarantor will be required to furnish audited annual financial statements and may be required to file interim information, cash flow forecasts, and other information similar to the registrant, if the director determines such information is required.

(6) After 1-24-91 the division shall not accept a corporate guarantee as a form of assurance for the completion of improvements under the provisions of Section 498.039(5), Florida Statutes. As used in this rule, a corporate guarantee is a written undertaking, by a corporation authorized to do business in Florida, to the division agreeing to be held liable for both the specific costs necessary to fulfill the obligation of a registrant for completing all improvements premised to purchasers under a registration and all costs incurred by the division to enforce such obligations. This subsection of the rule will continue to apply, as appropriate, to corporate guarantees accepted by the division as an assurance prior to 1-24-91. The corporate guarantee shall meet the same criteria as an irrevocable corporate performance bond. The guarantor's financial statements shall be used to determine if the registrant shall meet the criteria of subsection 61B-6.006(5), Florida Administrative Code. The guarantee shall include:

(a) Wording stating that the guarantee is in favor of the Division of Florida Land Sales, Condominiums and Mobile Homes.

(b) Guarantee is made for the benefit of the registrant, registrant's successors, assignees, or transferees, if any.

(c) That guarantor has a continuing financial interest in the success of the registrant's business.

(d) That guarantor's financial strength is being used for the benefit of the registrant to assure obligations promised.

(e) Disclose specifically which properties are covered by the guarantee.

(f) State that the guarantee is authorized by the articles of incorporation and by-laws of the corporation and that the board of directors, by resolution, has authorized the undersigned officer to execute the guarantee on behalf of the corporation.

(g) State the method by which the division may enforce the guarantee.

(h) State that the guarantor waives all rights to revoke the guarantee until such time as all promised improvements are completed.

(7) Notwithstanding the above forms of assurances, subject to subsections 61B-6.006(5) and (6), Florida Administrative Code, the division shall consider any other financial security in ensuring the plan of development has adequate safeguards and assurances. In determining the security required, the division shall examine the status of improvements, the overall cost of improvements, the terms of the purchasers' contracts, the financial condition of the registrant and such other data deemed necessary. The division shall consider whatever financial security has been posted with other governmental authorities in making its determination.

(8) If at any time during the term of a registration, there has been a material change in the registrant's commitment or ability to complete promised improvements, the registrant shall be required to submit a material change pursuant to paragraph 61B-5.0026(1)(b), Florida Administrative Code. The division shall require additional or substitute assurances where necessary for the reasonable and proper protection of purchasers. In determining materiality, the division shall consider the following:

(a) The registrant's bonds or other assurances filed or posted with a public authority.

(b) The number of purchasers affected in relation to the number of purchasers who bought property in a particular area registered with the division.

(c) The amount of uncompleted promised improvements in a particular area registered with the division in relation to the length of the development period and the total commitment of promised improvements in such area.

(d) The effect of force majeure on the registrant's ability to complete promised improvements.

(9)(a) If the division determines that assurances for interim maintenance of promised improvements are necessary, the registrant shall be required to establish a Maintenance Trust Account for the purpose of providing proper maintenance of promised improvements during the interim period between completion of promised improvements and the time wherein the responsibility for perpetual maintenance has been assumed by either:

1. A local governmental authority; or

2. A duly formed home owner's association which requires membership of each lot owner pursuant to recorded deed restrictions.

(b) All Maintenance Trust Accounts required to be established pursuant hereto shall satisfy the following:

1. The Maintenance Trust Agreement shall provide:

a. A description of the property for which it covers.

b. The purpose of the agreement.

c. The period for which the agreement covers.

- d. The amount of monies to be deposited into the account.
- e. A method by which the division can require specific performance.
- 2. DBPR Form 379 Maintenance Trust Agreement, incorporated herein by reference and effective 2-27-97, which may be obtained by writing to the division, shall be the standard agreement form.
- 3. The amount of monies to be deposited into the account shall be determined by the cost to maintain the completed improvements for a one year period, as indicated by the certification of a professional engineer.
- 4. The maintenance obligation shall be reviewed annually and the amount of monies required in the escrow fund shall be adjusted, based upon the actual cost of maintenance for the previous year, as indicated by the certification of a professional engineer.
- 5. Escrow funds may be deposited as follows:
 - a. On a lump sum basis.
 - b. On a monthly basis.
- (c) Funds shall be maintained in a financial institution as that term is defined in Section 655.005(1)(h), Florida Statutes, and no other funds from any source shall be commingled in this account.
- (d) The division shall execute an acknowledgment on each agreement established pursuant hereto which shall indicate approval of the form and content of the agreement.
- (e) As an alternative to a Maintenance Trust Account, the division shall also accept the following forms of assurance:
 - 1. A surety bond meeting the following requirements:
 - a. Shall be written on a bonding company which is licensed to do business in the state wherein the bond is written. The bonding company shall be required to file a Consent to Service of Process with the division; otherwise, the bonding company shall be a Florida company.
 - b. Shall be bound unto the division.
 - c. Shall be written in the amount of the cost to maintain the completed improvements for a one year period, as determined by the certification of a professional engineer.
 - d. Shall bind the bonding company to the obligation to perform the necessary maintenance work, should the registrant default in its obligation.
 - e. Shall specifically state the improvements for which the maintenance obligation covers.
 - f. Shall indicate:
 - I. Effective date.
 - II. Term of bond.
 - g. Shall indicate a method by which the division can enforce specific performance.
 - 2. An Irrevocable Letter of Credit meeting the following requirements:
 - a. Shall be drawn on a federal or state chartered financial institution.
 - b. Shall bind the financial institution to honor all drafts presented by the holders accompanied by a signed statement from the director stating that the registrant has defaulted in its maintenance obligation.
 - c. Shall be written in the amount of the cost to maintain the completed improvements for a one year period, as determined by the certification of a professional engineer.
 - d. Shall specifically state the improvements for which the maintenance obligation covers.
 - e. Shall indicate effective date and expiration date.
- (f) Notwithstanding the above forms of assurances, the division shall accept any other financial security which it deems adequate in ensuring that the maintenance obligation has adequate safeguards and assurances. The division shall consider financial security posted with other governmental entities in making its determination.

Specific Authority 498.007(1) FS. Law Implemented 498.027, 498.039 FS. History—New 6-9-82, Amended 4-17-85, Formerly 7D-6.06, Amended 8-20-86, 1-24-91, 2-16-93, Formerly 7D-6.006, Amended 9-28-93, 2-27-97, 6-9-98.

61B-6.010 Modification or Release of Assurances.

- (1) No improvement escrow account shall be reduced below 10 percent of the total costs of improvements until an entity acceptable to the division has accepted perpetual maintenance of such improvements, provided perpetual maintenance of the improvements was promised.
- (2) Request for release of escrow funds shall be substantiated by the following:
 - (a) Release fee, as required by Section 498.017(6), Florida Statutes.
 - (b) Original, sealed certification of completion of improvements by a professional engineer. If the improvements are not 100 percent complete, the engineer’s statement shall indicate the cost to complete.
 - (c) Affidavit of registrant stating that certain improvements are completed and paid for. If the improvements have not been paid for, the contractor’s statement should be submitted, itemizing the work performed and amount of monies owed. In such case, the release of funds shall be made jointly to the registrant and contractor.
 - (d) A copy of the current Improvement Trust Report.
 - (e) A copy of the current bank statement.

(f) If the request is for a final release of funds, submit a letter of acceptance from the entity responsible for perpetual maintenance of improvements.

(3) Request for release of surety bond shall be substantiated by, but not limited to, the following:

- (a) Release fee, as required by Section 498.017(6), Florida Statutes.
- (b) Original, sealed certification of completion of improvements by a professional engineer.
- (c) Affidavit of registrant stating that certain improvements are completed and paid for.
- (d) A letter of acceptance from the entity responsible for perpetual maintenance of improvements.

(4) Request for Reduction of Bond shall be substantiated by the following:

- (a) Release fee, as required by Section 498.017(6), Florida Statutes.
- (b) Original, sealed certification of completion of improvements by a professional engineer. Statement should indicate cost to complete.

(c) Affidavit of registrant stating that certain improvements are completed and paid for.

(5) Request for Release of Corporate Bond shall be substantiated by the following:

- (a) Release fees, as required by Section 498.017(6), Florida Statutes.
- (b) Original, sealed certification of completion of improvements by a professional engineer.
- (c) Affidavit of registrant stating that certain improvements are completed and paid for.
- (d) A letter of acceptance from the entity responsible for perpetual maintenance of improvements.

(6) Request for Release of Corporate Guarantee shall be substantiated by the following:

- (a) Release fee, as required by Section 498.017(6), Florida Statutes.
- (b) Original, sealed certification of completion of improvements by a professional engineer.
- (c) Affidavit from the guarantor that all improvements are complete, perpetual maintenance is being provided as promised in the registration, all improvements are paid for and all obligations of the guarantor are fulfilled.

(d) A certified copy of the corporate resolution authorizing the undersigned officer to request release of the guarantee.

(7) Request for Release of Letter of Credit shall be substantiated by the following:

- (a) Release fee, as required by Section 498.017(6), Florida Statutes.
- (b) Original, sealed certification of completion of improvements by a professional engineer.
- (c) Affidavit of registrant stating that certain improvements are completed and paid for.
- (d) A letter of acceptance from the entity responsible for perpetual maintenance of improvements.

(8) Request for Release of Refund Escrow Account shall be substantiated by the following:

- (a) Affidavit of the registrant indicating the date of the last sale involving the right to a refund of monies.
- (b) Before any re-offers of subdivided lands pursuant to a plan of disposition involving refund monies, a refund escrow account shall be re-established.

(9) Request for Release of Maintenance Trust Funds shall be substantiated by the following:

- (a) Release fee, as required by Section 498.017(6), Florida Statutes.
- (b) Letter of acceptance of the entity responsible for perpetual maintenance of the improvements.

(10) Request for Release of Mortgage Trust Funds shall be substantiated by a certified copy of the mortgage satisfaction which was recorded in the county or counties where the land encumbered by the mortgage is located.

(11) Request for Cessation of Deposits into an Improvement Trust Account shall be granted when the criteria set out in paragraph 61B-6.006(2)(f), Florida Administrative Code, are met. Such request shall be substantiated by the following:

- (a) Letter from registrant requesting cessation of deposits.
- (b) Current bank statement.
- (c) Current Improvement Trust Report.
- (d) Release fee as required by Section 498.017(6), Florida Statutes.

(e) Original, sealed certification of completion of improvements by a professional engineer. Such statement shall indicate the cost of total improvements completed and the total cost of promised improvements not completed.

(f) An affidavit of the registrant indicating that construction of promised improvements shall continue at a rate at least equal to the rate of deposit prior to adjustment.

Specific Authority 498.007(1) FS. Law Implemented 498.017(6), 498.039 FS. History—New 6-9-82, Amended 4-17-85, Formerly 7D-6.10, Amended 2-16-93, Formerly 7D-6.010, Amended 9-28-93, 1-26-97, 6-9-98.

CHAPTER 61B-7 CONTRACTS, AGREEMENTS FOR DEED AND PUBLIC OFFERING STATEMENT

61B-7.004	Refund Privileges. (Repealed)
61B-7.008	Contracts. (Repealed)
61B-7.009	Contracts: Contents and Provisions. (Repealed)
61B-7.010	Agreements for Deed. (Repealed)
61B-7.011	Public Offering Statement.

61B-7.011 Public Offering Statement.

(1)(a) Policy. The proposed offering statement for use in the offer and disposition of subdivided lands must be included with the applicant's registration application. The offering statement shall be submitted as prescribed by Form DBPR 312A, Florida Public Offering Statement and DBPR 312B Addendum To Offering Statement Format, both incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031.

(b) Each registrant shall maintain a current and accurate offering statement at all times provided the registrant is engaged in an active sales program. No offering statement shall be used after the disclosure contained therein becomes materially inaccurate or misleading.

(c) Any amendment to an approved offering statement shall be underlined in red and submitted to the division along with a cover letter explaining the amendments. The division shall approve or disapprove any amendment to the offering statements within twenty days after receipt, unless the registrant has consented in writing to an extension. If neither approval nor disapproval is made within twenty days and the registrant has not consented in writing to an extension, the amendments to the offering statement shall be deemed approved.

(d) The effective date shall appear on the Florida Title page of the offering statement and this date shall not be changed unless an additional order of registration is issued on the lands covered by the offering statement.

(2)(a) Use. The division shall designate the form and content of the public offering statement, and authorize its distribution in conjunction with the offering of subdivided lands described in the application.

(b) Absent the division's approval, no change in a subdivision's plan of disposition or development may be made after an order of registration has been entered.

(c) When a registrant advertises in any language other than English, public offering statements translated in that language shall be made available to prospective purchasers of the subdivided lands so advertised.

(d) Every public offering statement used in conjunction with a plan of promotion conducted outside the territorial jurisdiction of the United States, and every public offering statement distributed to non-citizens of the United States, shall expressly and accurately state that the sale or purchase of the property will have no effect on the immigration or citizenship status of the purchaser in the United States.

(3)(a) General. The information contained in the public offering statement shall be set forth under appropriate captions or headings indicating the principle subject matter set forth thereunder and shall be divided into reasonably short paragraphs or sections.

(b) The public offering statement shall be filed on good quality, unglazed white paper, 8 1/2" × 11" in size.

(c) The public offering statement shall be printed, lithographed, mimeographed, typewritten or prepared by a similar process so that it is easily legible and suitable for permanent record.

(d) The body of the public offering statement shall be in a type at least as large as 10 point modern type. However, to the extent necessary for the convenience of presentation, financial statements and other statistical or tabular data and related notes may be in a type at least as large as 8 point modern type. All type shall have a minimum of 2 point leading.

(e) When a public offering statement is printed in a language other than English, the registrant shall file with the division:

1. A copy of the English language statement, approved by the division;
2. A copy of the foreign language statement; and
3. A Certificate of Translation on Form DBPR 377 Translator's Certification, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the division.

(f) The public offering statement shall set forth on its outside front cover page a statement, substantially as follows, in capital letters printed in boldface Roman type at least as large as 10 point modern type with a minimum of 2 point leading:

"This public offering statement is for informational purposes only. No Florida agency has judged the merits of or value, if any, of this property. The registrant is responsible for the accuracy and completeness of this Public Offering Statement."

(g) The cover page shall include the effective date of the registration or its most recent amendment.

(h) Receipt for the Public Offering Statement shall appear on the Public Offering Statement.

Specific Authority 498.007(1) FS. Law Implemented 498.037 FS. History—New 12-17-71, Repromulgated 12-19-74, Amended 12-24-80, Formerly 7D-8.011, Amended 8-20-86, Formerly 7D-8.0011, 61B-8.0011, Amended 1-26-97, 5-8-98.

CHAPTER 61B-8 OFFERING STATEMENT

61B-8.0011 Policy. (Transferred to 61B-7.011)
61B-8.003 Use. (Repealed)
61B-8.004 General. (Repealed)

CHAPTER 61B-9 ADVERTISING

61B-9.0011	Identifying Designation.
61B-9.002	Requirements; Annual Renewal of Advertising. (Repealed)
61B-9.003	Letter of Transmittal.
61B-9.030	General. (Repealed)
61B-9.032	Standards.
61B-9.0325	Prohibitions and Special Requirements. (Repealed)
61B-9.033	Implied Representations and Presumptions. (Repealed)
61B-9.034	Out-of-state Advertising. (Repealed)
61B-9.035	Long Distance Telephone Solicitation. (Repealed)
61B-9.036	Approval of Vacation Certificates.
61B-9.037	Referral Gift Program. (Repealed)

61B-9.0011 Identifying Designation.

(1) Advertising filed with the division shall be designated in such a way that the division or the registrant may, through the designation, refer to a specific piece of advertising. When advertising relates to more than one subdivision owned by different persons but being sold through a common sales agent, designation shall be assigned the advertising; however, such designation shall not be construed to permit filings relating to separate subdivisions without payment of the appropriate fee for each subdivision to which it relates.

(2) The registrant shall place on advertising approved for use the designation assigned by the Division to that specific piece of advertising.

Specific Authority 498.007(1) FS. Law Implemented 498.035 FS. History—New 12-17-71, Repromulgated 12-19-74, Formerly 7D-9.01, Amended 9-22-77, 12-31-80, Formerly 7D-9.011, 7D-9.0011, Amended 5-18-98.

61B-9.003 Letter of Transmittal.

(1) As provided in Form DBPR 397-1 Notice (Advertising), every ad submitted to the division, including any ad submitted as part of an initial registration application, shall be accompanied by DBPR 397-3 Letter of Transmittal, briefly describing the advertisement and enabling the division to identify the advertisement in future correspondence and orders. The letter of transmittal shall be signed by the registrant or its representative as authorized by DBPR 397-2 Authorization (Advertising), and shall certify that the statements and representations contained in the advertisement have been reviewed and are truthful and correct. The letter of transmittal shall not be accompanied by more than one advertising filing. The statutory fee required by Section 498.017, Florida Statutes, shall be submitted for each advertising filing submitted subsequent to the initial registration of the subdivision to which the advertising relates. Forms DBPR 397-1, DBPR 397-2 and DBPR 397-3 are incorporated herein by reference and effective 1-26-97, and may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031.

(2) An advertising filing shall consist of no more than one advertisement which may include more than one piece of material if each piece is dependent on the others for meaning and relevance. If one piece of advertising material is capable of being used independently from other advertising material it will be considered one advertisement and subject to a separate filing. Examples of one advertisement filing or one advertisement include but are not limited to:

- (a) One film or video tape, each portion of which is reasonably dependent in meaning on the other portions.
 - (b) One advertising mailing which includes response cards and envelopes depending in meaning on the entire mailing package.
 - (c) Vacation certificates filed pursuant to Rule 61B-9.036, Florida Administrative Code.
- (3) An advertising filing which contains more than one piece of advertising material must be submitted in its entirety to be considered one advertising filing.

Specific Authority 498.007(1) FS. Law Implemented 498.035(1) FS. History—New 12-17-71, Repromulgated 12-19-74, Amended 12-31-80, 4-17-85, Formerly 7D-9.03, Amended 8-20-86, 2-16-93, Formerly 7D-9.003, Amended 1-26-97, 5-18-98.

61B-9.032 Standards.

The Division adopts the following standards for advertising:

(1) Advertising shall not misrepresent facts or create false or misleading impressions.

(2) Advertising shall not use such terms as “minutes away,” “short distance,” “only miles,” “near” or similar terms to indicate distances unless the actual distance in road miles is used in conjunction with such terms. This does not mean that distance in road miles must be shown when it would be inappropriate, as might be the case with insular property.

(3) Advertising shall not make predictions of specific or immediate price or value increases of subdivided lands.

(4) Advertising shall not contain statements concerning future price increases by the subdivider which are not specific as to amount and as to the date of the announced increase. Any such date shall be in the reasonable future and the increased price shall be maintained for a reasonable length of time.

(5) Advertising shall not contain asterisks or any other reference symbol as a means of contradicting or substantially changing any previously made statement or as a means of obscuring material facts.

(6) Advertising shall not use a name or trade style which implies that a person is a non-profit research organization, public bureau, group or similar organization, when such is not the case or when it may misrepresent or conceal the true nature of the plan of sale or ownership.

(7) Advertising of uncompleted improvements to the subdivided lands shall not be made unless it is stated in clear terms that the improvements are "proposed" or "under construction" with the date of the promised completion clearly indicated.

(8) Advertising shall not use artist sketches to portray proposed improvements without an indication that the portrayal is an artist's sketch and that the improvements are proposed. Artists' conceptions of existing improvements or scenes must be representative and state that the rendering is an artist's conception.

(9) Advertising shall not use statements, photographs or sketches portraying the use to which land can be put unless the land can be so used without unreasonable cost.

(10) Advertising shall not contain statements, photographs or sketches relating to facilities for recreation, sports or other conveniences which are not presently in existence, or located in the subdivision unless it is clearly stated that such "facilities are not on the land" and the actual distance thereto in miles is given, or that such facilities are merely proposed.

(11) Advertising regarding taxes and the amounts of taxes shall employ the latest figures available from the appropriate governmental authority.

(12) Advertising shall not make reference to predevelopment sales at a lower price because the subdivided land has not yet been developed unless there are plans of development, and a subdivision plat has been recorded, or reasonable assurance is available that such plan will be completed.

(13) Advertising which makes reference to "roads" shall disclose the nature of the roads, that is, paved, gravel, dirt, or other descriptive terms. To be described as improved or paved, roads shall be constructed and surfaced according to county, city or other acceptable authority specifications.

(14) Advertising shall not contain "before" and "after" pictures for comparative purposes without an accurate, detailed, comparative analysis of such pictures.

(15) Advertising shall not contain an excerpt from a publication unless the information contained in the excerpt is consistent with the text of the publication and is representative and truthful as to the advertised subdivision.

(16) Advertising shall not compare land values unless the comparison is accurate, relevant and fair, and it is clear who is making the comparison.

(17) Advertising shall not make reference to a public facility unless:

(a) The facility is in existence; or

(b) The money for its construction has been budgeted, and is available to the public authority responsible for construction; or

(c) It discloses the facility's status, whether under study, merely proposed, or otherwise planned. This disclosure shall accompany each reference to the public facility, and shall not refer to any location or route to the facility unless such has been decided by the responsible public authority.

(18) Advertising which refers to the purchase price of any subdivided land must also state any additional compulsory or special assessments or costs to the purchaser.

(19) Advertising which refers to a property exchange privilege must state clearly any qualification concerning the exchange privilege.

(20) Advertising shall be considered misleading if it infers or implies that the subdivider will at some future time resell or repurchase the subdivided lands being offered, unless the subdivider has undertaken to resell or repurchase subdivided lands for or on behalf of purchasers and has demonstrated to the Division its ability to perform.

(21) Advertising shall be deemed misleading if it represents that the subdivided lands being offered for sale may be subdivided or resubdivided unless the advertising includes all necessary and relevant information regarding the costs and feasibility of future subdividing.

(22) Advertising which refers to a watercourse, whether by the term "canal," "waterway," "channel," or other term, shall disclose the usability of the watercourse.

(23) A newsletter which is distributed by a subdivider and includes predictive information concerning a place or facility in excess of ten miles from a subdivision shall carry a disclaimer substantially as follows:

"The events or predictions contained in this newsletter are not within the control of the subdivider and may not at any foreseeable time affect the value of property in (name of subdivision)."

(24) Forecasts of future events or population trends contained in advertising shall be by qualified persons and pertinent to the offering.

(25) The phrase "guaranteed refund" shall not be included in advertising unless the refund is unconditional.

(26) Advertising which indicates the size of the subdivided lands offered shall state the amount of land available for use by the purchasers, excluding utility easements and any road right-of-way, to which the lot may be subject. If the subdivided land is subject to easements which are unusual in size, then this fact shall also be noted. All maps, plats, representations or drawings shall show either the dimensions of the subdivided land or the amount of acreage, after deduction of easements.

(27) Maps, plats or representations shall state the date when promised improvements are scheduled to be completed. If completion dates are over a period of years, then a series of shadings, outlines, or coding may be used to indicate dates of scheduled completion.

(28) Advertising shall not refer to subdivided lands as waterfront unless the property being offered actually fronts on a waterway or other body of water.

(29) All advertising shall disclose the name and address of the registrant offering the subdivided lands. The division shall waive this requirement when it is not practical or helpful to the purchaser for use in identifying the source of the advertisement.

(30) All advertising shall be published in the language in which the sales campaign is conducted.

Specific Authority 498.007(1) FS. Law Implemented 498.007, 498.024(1)(b), 498.035 FS. History—New 12-17-71, Amended 12-19-74, 12-31-80, Formerly 7D-9.32, 7D-9.032, Amended 1-26-97, 5-18-98.

61B-9.036 Approval of Vacation Certificates.

(1) No subdivider shall issue a vacation certificate without the prior written approval of the division.

(2) Each vacation certificate shall be submitted to the division for approval. The vacation certificate shall be submitted with its component parts, for example; Registration card, letter of congratulations, reservation form, confirmation form, signs, and all other parts. Vacation certificates shall be reviewed by the division in the same manner as advertising.

(3) Each certificate shall have a section labeled “Terms and Conditions,” which shall state the following:

(a) The eligibility requirements such as age, affinity group, residency, marital status, or other requirements.

(b) Disclosure as to whether state taxes are included if in Florida or another jurisdiction in which the recipient is required to pay state taxes.

(c) Disclosure whether transportation is included.

(d) Date of expiration.

(e) A statement substantially as follows: “I have read and understand the terms and conditions. (Signature of recipient).”

(4) Each vacation certificate shall prominently display a statement substantially as follows: “While on your vacation you will be invited to attend a land sales presentation by (name of subdivision) for its Florida registered property. Attendance (is/is not) required to make this certificate valid.”

(a) Each letter of congratulations shall state any seasonal charge, refund deposit, date of expiration, and cost to the recipient of the certificate.

(b) Printed on each vacation certificate and its detachable parts shall be a certificate number and an AD (advertising designation approval) number.

(5)(a) The following provisions apply to all contracts between a subdivider and a certificate company:

1. The contract shall not expire prior to the expiration date of the vacation certificates which are the subject matter of the contract.

2. The contract shall provide that the subdivider is responsible for all units.

(b) The following requirements apply to the contract entered into with the facility providing accommodations to the vacation certificate recipients:

1. The contract with the lodging facility shall not expire prior to the expiration date of the vacation certificates.

2. The contract shall state the number of rooms which the lodging facility is allocating to vacation certificate guest.

(c) The subdivider shall file with the division the following:

1. A copy of the contract between subdivider and the vacation certificate company.

2. A copy of the contract with the lodging facility providing accommodations.

3. A copy of any contracts entered into with vacation certificate distributors and the names and addresses of the distributors.

4. A detailed plan of sale and use of the certificates.

5. The present amount of lots in inventory.

6. The total number of certificates to be printed and the certificate-numbers of the certificates.

7. After the vacation certificate has been approved by the division and printed, a copy of the vacation certificate in its final, printed form shall be submitted to the division for filing.

Specific Authority 498.007(1) FS. Law Implemented 498.035(2) FS. History—New 12-19-74, Amended 12-31-80, Formerly 7D-9.36, 7D-9.036, Amended 5-18-98.

CHAPTER 61B-13 EXEMPTIONS

61B-13.001	Definition. (Repealed)
61B-13.002	Statutory Exemptions. (Repealed)
61B-13.003	Exemption Advisory Opinions.
61B-13.010	Exemption Application. (Repealed)
61B-13.011	Acceptable Permanent Road Maintenance.
61B-13.012	Applications for Recreation Use Exemptions. (Repealed)
61B-13.013	Investigation of Recreation Use Exemption Applications. (Repealed)
61B-13.100	Reservation Programs. (Repealed)
61B-13.101	Reservation Agreements. (Repealed)
61B-13.102	Application for Reservation Program.
61B-13.103	Duration of Reservation Escrow or Trust Account. (Repealed)

61B-13.003 Exemption Advisory Opinions.

(1) An application for an Exemption Advisory Opinion will be considered accepted by the division for determination when the following items are provided:

(a) The required fee pursuant to Subsection 498.017(7), Florida Statutes; and

(b) A comprehensive statement of facts and applicable law under which the applicant believes the method of disposition or offer to exempt. The comprehensive statement of facts should compare the information regarding the subdivision and its offer or disposition to the criteria in the applicable law. The comprehensive statement of facts and applicable law may be prepared for an existing or proposed disposition of subdivided land. When an Exemption Advisory Opinion is requested for a specific existing subdivision, the following shall accompany or be part of the comprehensive statement of facts and applicable law:

1. Name of subdivision;

2. Location of subdivision;

3. Applicable documentation, such as a list of all proposed or completed improvements and amenities in the subdivision, topographic and geographic characteristics of the property, proposed promotional plan, county letters, maps, governmental approvals, letters from utility companies, and contracts which will support the comprehensive statement of facts as it relates to evidence of compliance with the criteria in the applicable law.

Specific Authority 498.007(1) FS. Law Implemented 498.017(7), 498.025(5) FS. History—New 2-16-93, Formerly 7D-13.003, Amended 10-1-93, 5-18-98.

61B-13.011 Acceptable Permanent Road Maintenance.

(1) This rule is intended to allow subdividers to make a determination of their compliance with subsection 498.025(2)(a), or subsections 498.027(1)(a)2., (1)(a)4., or (1)(b)5., Florida Statutes, as they relate to acceptable permanent road maintenance.

(2) Acceptable permanent road maintenance shall be based upon the following:

(a) Road maintenance which has been accepted or agreed to be accepted by a local governmental authority; or

(b) Road maintenance which has been accepted by a duly formed home owners' association which requires membership of each lot owner pursuant to recorded governing documents. The governing documents of the association shall provide for the following:

1. Assessments necessary to maintain the roads and steps necessary to increase the assessments as needed for budget purposes;

2. Participation of the subdivider in all assessments on a pro rata basis as owner of all unsold lots unless the subdivider has guaranteed to each purchaser in the contract, agreement for deed, or governing documents that the assessment imposed upon the purchaser would not increase over a stated dollar amount and the subdivider has obligated himself to pay any amount of expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from purchasers. The guarantee may provide that after an initial stated period the subdivider has an option or options to extend the guarantee for one or more additional stated periods;

3. Assessments collected by the developer or subdivider, prior to the time that control of the association is turned over to the members other than the developer or subdivider, shall be placed in a separate account and not commingled with funds of the developer or subdivider; and

4. Separate records shall be kept to account for all income and disbursements of assessment funds and shall be available at reasonable hours to all members.

Specific Authority 498.007(1) FS. Law Implemented 498.025, 498.027 FS. History—New 2-16-93, Formerly 7D-13.011, Amended 10-1-93, 5-18-98.

61B-13.102 Application for Reservation Program.

The division shall maintain a reservation program application packet for distribution which shall contain DBPR form 32-001, LOT RESERVATION AGREEMENT, and DBPR form 32-002, RESERVATION ESCROW AGREEMENT, incorporated herein by reference and effective 1-26-97, which may be obtained by writing to the Division of Florida Land Sales, Condominiums and Mobile Homes, Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399-1031, together with instruction necessary to provide adequate material with which a prospective applicant may prepare a Reservation Program Application.

Specific Authority 498.007(1) FS. Law Implemented 498.017, 498.024 FS. History—New 2-16-93, Formerly 7D-13.102, Amended 10-1-93, 1-26-97, 5-18-98.