IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE

FINAL REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY

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ADDRESSING CONDO OWNERS' PLEAS FOR HELP: RECOMMENDATIONS FOR LEGISLATIVE ACTION

I. INTRODUCTION

South Florida, the land of sun and fun, is not only a major tourist destination. It is also one of the premier destinations for persons looking to retire and the perfect location for foreigners and others who are seeking to own a second residence or invest in real estate. Add to this mix, parents who have become empty-nesters looking to downsize from their single-family homes and you have the perfect storm for an explosion of new condo construction in the real estate market.

Condominiums have become one of the primary sources of home ownership in the South Florida area, both before and after the housing bubble began to burst in 2007. However, with the increase in the number of properties has also come an increase in the number of problems for persons purchasing, living in and managing condominiums. So too has there been an increase in the number of issues, problems and complaints lodged against the agency assigned to conduct investigations of fraud, wrong-doing and violations committed by condominium associations. That agency is the Department of Business and Professional Regulation, generally referred to as "DBPR."

This Grand Jury decided to conduct an investigation looking specifically at some of the problems and issues confronting condo owners and how well those problems and issues are being resolved by DBPR. As set forth below, our investigation reveals that for condo owners, there are a great number of problems. Unfortunately, the DBPR seems ill-suited to resolve, correct or prevent many of the recurring problems that have been brought to their attention. Included within this Grand Jury Report are recommendations we believe will address both areas of our inquiry.

For starters, we must point out that Chapter 718 of the Florida Statutes, also known as the Condominium Act, governs condominiums and establishes procedures for the creation, sale, and operation of condominiums in this state. Among other topics, the statute contains sections addressing General Provisions (Part I); Rights and Obligations of Association (Part II); and Regulation and Disclosure Prior to Sale of Residential Condominiums (Part V). As defined in the statute, " 'Condominium' means that form of ownership of real property created pursuant to

this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."[1] Each condominium is governed by a board of directors in accordance with the bylaws of its association. The board members are elected by the condo owners to run the association and manage condominium property, which the board may do directly or indirectly, by hiring a manager.

The Condominium Association

The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. Any association that was in existence on January 1, 1977, need not be incorporated.[2] The condominium is run by a board that oversees operation of the association. "Association" is defined in Chapter 718 as "any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership."[3] The owners of units shall be shareholders or members of the association.[4]

The Board

The "Board of Administration" or "board" means the board of directors or other representative body, which is responsible for administration of the association.[5] The officers and directors of the association have a fiduciary relationship to the unit owners.[6] Notwithstanding good intentions and motives, a unit owner does not have any authority to act for the association by reason of being a unit owner.[7]

II. CONDOMINIUM OWNERS AND THEIR ASSOCIATIONS

Problems between condo owners and their boards and associations are not new. In fact, many of the complaints, concerns, and criticisms described by our witnesses are the same or

[1] Florida Statute, 718.103 (11)
[2] Florida Statute, 718.111 (1) (a)
[3] Florida Statute, 718.103 (2)
[4] Florida Statute, 718.111 (1) (a)
[5] Florida Statute, 718.103 (4)
[6] Florida Statute, 718.111 (1) (a)
[7] Florida Statute, 718.111 (1) (c)

similar to those reflected in the Florida House of Representatives' Final Report of the Select Committee, issued almost nine (9) years ago.[8] The charge given to that Select Committee was to examine "the governance of condominiums . . . to include accounting, budgeting, audits, theft by officers and directors, elections . . . access to records and the state regulation of condominiums by the Department of Business and Professional Regulation."[9]

Over a 3-month period, starting in January, 2008, the Select Committee convened in five locations throughout the state to hear public testimony about condo associations.[10] At the end of 2007, the year before they received testimony, there were 1,394,467 condominium units in Florida.[11] In 2007, DBPR received 2,482 complaints about condominiums and cooperatives.[12] Fast forward to 2016 and there are now thousands more condominium units (and more under construction) in Florida as a result of the new building boom. These were the most prevalent and problematic issues Florida citizens discussed with the Select Committee in 2008:

- **Access to Records.**[13] Associations were failing to comply with the law that requires them to make records of the association available to unit owners.[14] Specifically, as provided in Section 718.111 (12)(b), "The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee." Too often, unit owners were making requests to the association for copies of documents and those requests were being denied or the replies significantly delayed;

- **Association Management Problems.** This category included concerns voiced about maintenance and repair contracts and was most probably related to major repairs that had to be done due to damage caused by several hurricanes and tropical storms which

[8] The "Select Committee" was the Select Committee on Condominium & Homeowner Association Governance. The Final Report was issued on March 4, 2008.
[9] Id. at p. 1.
[10] The five locations were Pembroke Pines, Miami Beach, Orlando, Tampa and Tallahassee.
[11] Final Report of the Select Committee, p. 2.
[12] [12] Id, at p.3.
[13] Final Report of the Select Committee, p. 4.
[14] Florida Statute, 718.111 (12).

impacted Florida in 2005 and 2006.[15] Such damage would have resulted in Special Assessments.[16] Another major concern raised in this category involved "insider contracts." The complaints involving insider contracts included both management companies employing firms with which they have related business associations to provide maintenance and repair work at inflated prices and officers and board members (directors) of the association entering into contracts with corporations and/or businesses in which they were part owner;

- **Perceived Lack Of Enforcement By The DBPR.** Rounding out its top three categories of complaints from unit owners' comments, the Select Committee noted a "perceived lack of enforcement by the DBPR." More specifically, "numerous speakers at the hearings discussed their perception of DBPR delay and inaction."[17] Some unit owners testified to the Select Committee that their complaints filed with DBPR had been pending for over a year.[18]

Sadly, nine (9) years later, this Grand Jury heard testimony from unit owners that mirror the complaints identified in the Select Committee's Final Report. Unfortunately and almost irrationally, some of the problems seem to have gotten worse.

III. CURRENT PROBLEMS

A. Access to Records

One complaint that has not improved, and may have gotten worse, is the response to requests for documents or **access** to official records of the association by condo unit owners.

Florida Statute 718.111(12)(b) provides that the official records of the association must be maintained within the state for at least 7 years.[19] The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes a member's right to make or

[15] Hurricanes Katrina and Dennis made landfall in Florida in 2005. Tropical Storms Ernesto and Alberto made landfall in Florida in 2006.
[16] 718.103(24) "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.
[17] Final Report of the Select Committee, p. 5.
[18] Final Report of the Select Committee, p. 11.
[19] Florida Statute 718.111 (12)(b)

obtain copies, at a reasonable cost. Each association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.[20]

We are mindful of the fact that some unit owners may become nuisances and abuse their right to request official records of the association. For that reason, we believe it is perfectly reasonable that the Florida Legislature gave the association the authority to "adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying."[21] However, we find the remedy afforded by the statute to unit owners when the association fails to comply to be totally ineffective. We must explain this position.

In summary format, Section 718.111 (12)(c) provides, in part:

- Failure to provide records within ten (10) working days of receipt of a written request constitutes a violation;
- That violation creates a rebuttable presumption that the association willfully failed to comply with this provision;
- A unit owner is entitled to actual damages or minimum damages for the association's willful failure to comply;
- On the 11th working day after receipt of the written request, minimum damages are $50 per calendar day for up to ten (10) days (for a maximum of $500 in minimum damages);
- The unit owner who requested the documents may file an enforcement action. If the unit owner is successful and prevails in the enforcement action, the unit owner is entitled to recover reasonable attorney fees from the person in control of the records who directly or indirectly, knowingly denied access to the records.

We have observed that these provisions are not effectively protecting unit owners' right to access records. While we recognize that unit owner records requests can be vexing to the association, associations, in turn, can be antagonistic to the unit owners and act in apparent abrogation and nullification of this statutory provision. Under the law, if the association fails to comply with a valid request, monetary damages can be awarded to the unit owner. The problem is that the source of those funds will come from assessments levied against all of the owners.[22]

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[20] Florida Statute 718.111 (12)(c)
[21] Ibid.
[22] 718.111(4) Assessments; Management Of Common Elements. The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority vote of the

Essentially, any awarded damages paid to the unit owner seeking the documents – will be paid, in part, by the unit owner himself. As the other unit owners will have to contribute, the requesting owner may earn the enmity of the entire association. This arrangement results in no real consequences to the individuals responsible for the violation. They can act with impunity and have others bear most of the costs.[23]

Further, any efforts by the requesting unit owner to initiate an enforcement action will be done with the unit owner footing the bill for his/her attorney to bring that action. The attorney opposing the enforcement action and representing the offending association will be paid from the same source of funds – the assessments. It does not seem right to us that a recalcitrant board, acting against the interests of the association, can take willful action and not personally suffer serious consequences. To the extent that the association can engage in these tactics when a unit owner is making record requests for budget, accounting, audit or other financial records, is most troubling. The willful failure to provide such documents may be part of a broader scheme to cover up embezzlement or other financial wrong-doing committed by the board or association. In furtherance of possible cover-ups, directors may also choose to intentionally deface or destroy accounting records or knowingly or intentionally fail to create or maintain accounting records that are required to be maintained by statute. Even such willful action, which again, may be done to cover-up theft of funds from the association, is only punishable by a civil penalty.[24] Again, the unit owners are the ones who are harmed in these situations. We strongly believe these provisions need to be amended. A right without a remedy is effectively no right at all.

To encourage persons to serve as directors on non-profit boards, the law in Florida provides immunity from civil liability to such officers and directors for any statement, vote, decision or failure to take an action regarding organizational management or policy.[25] However, the availability of that immunity presumes that the directors will act in accordance with another

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association or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

[23] Board Directors have to be unit owners. We recognize that if the Directors of the condo association board are the ones at fault for turning over documents that they will also contribute to the payment of the fine as unit owners. However, we see a huge difference between liability for a $500 fine imposed on a 3-member board versus a $500 fine imposed on 100 unit owners in a condo association.

[24] DBPR records show that for the fiscal year ending June 30, 2016, only $23,064.80 in fines was levied against all of the condominiums in Miami-Dade County for all violations, including those related to records.

[25] 617.0834 (1)(a) & (b)

statutory provision. Section 617.0830 sets forth the general standards for persons who serve as board directors in this state:

> **617.0830 General standards for directors.—**
>
> (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
>
> (a) In good faith;
>
> (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
>
> (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

The marriage of those two statutes provides that if directors discharge their duties in good faith, act with care as ordinarily prudent persons in similar positions and operate in the best interests of the corporation (association), those directors will receive the benefit of immunity from civil liability. However, we must point out that each statute has a caveat. Section 617.0830(4) specifically states: "A director is not liable for any action taken as a director, or any failure to take any action, ***if*** he or she performed the duties of his or her office in compliance with this section." Consequently, if a director did **not** discharge his duties in good faith, did **not** act with care as an ordinary prudent person and against the best interest of the association, he or she should be **personally** liable for those actions.

Similarly, Section 617.0834 provides that directors are not personally liable for monetary damages...***unless*** the directors breached or failed to perform their duties as directors **and** the directors' breach or failure to perform their duties constitutes a violation of the criminal law; or a transaction from which the directors derived an improper personal benefit; or the failure to perform their duties constitutes "recklessness."[26] The statute goes on to say recklessness covers an act or omission that was **committed in bad faith or with malicious purpose** or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.[27]

We have examined these two statutory provisions in great detail to establish two (2) points. First, the Florida Legislature intentionally cloaks directors with immunity when they act in good faith and in the best interests of the corporation they are serving. Second, the Florida Legislature intentionally removes that cloak when directors breach or fail to perform their duties

[26] 617.0834 (1)(a) & (b)
[27] 617.0834 (1)(b) 3

by committing criminal acts, engaging in "self-dealing" or acting with recklessness, i.e., in bad faith or with malicious purpose.

For directors who repeatedly fail to provide official records and documents to unit residents, the cloak needs to be removed. The statute covering this area already provides that "the failure of an association to provide the records within ten (10) working days after receipt of a written request creates a rebuttable presumption that the association **willfully** failed to comply with this paragraph."[28] Such repeated willful behavior by the directors and their associations fly in the face of the protections afforded by the immunity statutes. Similarly, directors who engage in fraudulent activity with regard to the annual election are also acting "in bad faith or with malicious purpose." Moreover, they are not "acting in good faith," nor are they acting in the best interests of the [association].[29] The cloak on immunity should be removed from directors engaging in such behavior. In both scenarios, the directors should be subject to **personal** liability for damages caused by their actions. Any fines levied against the directors for such violations should be paid by the directors personally. Such directors should also be precluded from using <u>any</u> association funds to pay for fines, damages, penalties or attorney's fees to defend claims for such wrong-doing by those directors.

Some might say this could have a chilling effect on those who would otherwise be willing to volunteer their time and serve on these boards. We are mindful of that concern. However, our position is that the only persons who have to be concerned about these recommendations are those directors who have engaged in or who intend to engage in wrongful, fraudulent, willful behavior that is contradictory to the fiduciary responsibility they owe to the association and its unit owners. Accordingly, we make the following recommendations:

- *That Florida Statute 718.111 (12) (c) be amended to provide that Directors and members of the board or association who wilfully and repeatedly fail to comply with their statutory obligation to appropriately and timely respond to written requests for official records of the association (more than two (2) violations within a rolling twelve (12) month period) shall be personally liable for payment of damages to the requesting unit owner(s);*
- *That Directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records that are required by law shall be criminally liable for such conduct. We recommend that each*

[28] Section 718.111 (16)(c) (emphasis added)
[29] Section 617.0830 (a) and (c) and 617.0834 (1)(b)(3)

such act will constitute a 2nd degree misdemeanor for a first offense, and that any subsequent offenses or violations will constitute a 1st degree misdemeanor;

- *That any association, board director, management company or management company employee who willfully, knowingly or intentionally refuses to release or otherwise produce official association records, and such refusal is done to facilitate or cover-up the commission of a crime, shall be criminally liable for such conduct. The violation shall be classified as a 3rd degree felony;*
- *That management companies which sever their ties or terminate their contractual agreements with condo associations must turn over all official records of the association to the association within ten (10) business days. A management company that fails to turn over the association's official records within that time-frame shall be fined at a rate of $1,000 per day for up to ten (10) days and then thereafter, shall be subject to a mandatory license suspension until all records are turned over.*

B. Association Management Problems

1. Conflicts of Board Members

One of the other areas of inquiry that concerned the Select Committee and still troubles us today involves board directors who use their position to enrich themselves or their business partners or family members, contrary to the fiduciary duty they owe to the unit owners. As we understand it, directors are authorized to make decisions as to the entities with which they will do business. They can enter into contracts on behalf of the condo association for repairs, maintenance, lawn services, gardening, accounting, etc. The money spent by condominiums for these services is not trivial. At some condominiums, associations routinely authorize expenditures for hundreds of thousands of dollars each year. Every member of this Grand Jury firmly believes that a conflict of interest exists for any board member who has the power to vote for or against awarding a contract that involves the board member, a relative of the board member or any person or entity that has a relationship with that board member or the board member's relative. To our great shock and amazement, what we thought was a basic ethical principle that would prevent such situations apparently does not.

Under Florida Statute 617.0832,[30] a board member of a condo association can vote to award a contract that directly benefits the board member or a relative and not violate any laws. The statute permits a condo association director to be present at the meeting, to have his presence

[30] Section 617.0832 covers all Florida corporations, including those set up to run condominiums.

counted in determining the presence of a quorum for that meeting and to vote in favor of entering into a contract with a corporation or entity where that director is an officer or director of that corporation and has a financial interest in that corporation. The contract or transaction will be valid and the law will uphold it as long as "the fact of such relationship or interest is disclosed or known to the board of directors or committee" which ratifies the contract without counting the vote of the interested director. If the fact of such relationship or interest is disclosed or known to the members certified to vote on such contract...and they authorize...it by vote "then the transaction is legitimate." Finally, even absent knowledge or disclosure, it appears that approving such a contract may still be permissible if "the contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee or the members." But, who determines the "fairness" and "reasonableness" to the corporation? The very board of directors who approved the contract! Given the current state of the law, unit owner complaints to DBPR and to local law enforcement about conflicts of interest are usually met with some variation of, "Well, you voted for the board."

We were repeatedly told by witnesses that many of these transactions and contracted arrangements are <u>not</u> in the best interest of the unit owners. Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position.[31] Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced. No board member should be given free rein to engage in self-serving behavior to the detriment of those whom they should be serving. Our Florida Legislature should not encourage such behavior. For that reason, we *recommend that the legislature amend Florida Statute 617.0832 to make the provisions of that statute inapplicable to directors of condominium associations.*

[31] Section 718.112(2)(a)1 Florida Statutes, states that "Unless otherwise provided by the [condo] bylaws, the officers shall serve without compensation..." The vast majority of Florida condominiums do not compensate their board members.

2. Conflicts of Property Management Companies

A similar situation presents itself when we look at some of the property management companies.[32] For those associations who decide not to self-manage their condominiums, Florida law requires the hiring of a licensed management company or licensed community association manager when the size of the condominium association exceeds ten (10) units or when the budget for the condo association exceeds $100,000.[33] The board of directors of the condo association hires the property management company or an individual property manager. Although the manager services the unit owners, the property manager reports to the board of directors. The board is the liaison between the unit owners and the manager, so the unit owners have little direct input into the routine affairs of management.

The purpose of the property manager or property management company (PMC) is to handle the community and lifestyle management of all unit owners in the association. The duties of the PMC may include handling the accounting and corporate financing for the association. On the financial side, the duties include paying the bills, handling the bookkeeping, and the receipt and processing of payments from residents. In addition, they send out monthly bills and notices to residents for condo dues and assessment.

Although the PMC can assist the association by recommending support staff for the association, i.e., engineers, janitors, gardeners, etc., large PMCs can contract with the board to provide those services by the PMC. The problem with this, as we see it, is the PMC has a

[32] Section 468.431(2), Florida Statutes states "Community association management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, determining the number of days required for statutory notices, determining amounts due to the association, collecting amounts due to the association before the filing of a civil action, calculating the votes required for a quorum or to approve a proposition or amendment, completing forms related to the management of a community association that have been created by statute or by a state agency, drafting meeting notices and agendas, calculating and preparing certificates of assessment and estoppel certificates, responding to requests for certificates of assessment and estoppel certificates, negotiating monetary or performance terms of a contract subject to approval by an association, drafting pre-arbitration demands, coordinating or performing maintenance for real or personal property and other related routine services involved in the operation of a community association, and complying with the association's governing documents and the requirements of law as necessary to perform such practices.

financial interest in these situations similar to those raised in the section above involving the directors. The PMC will receive a financial benefit in this scenario, if it can convince the condo Board to enter into a contract with the PMC for those services.

Our concern is that witnesses advised us that when operating in these situations, the PMC charged inflated prices for the services. The unit owners are at a loss because there is nothing they can do to undo the contract. And, what can they do if the work being done is substandard, or worse, not being done at all? Clearly, this is a very frustrating predicament for the unit owners to be in.

One of the other troubling aspects of this entire arrangement is often times the PMC is the entity involved with conducting elections for the condo association. As revealed by a horrendous election process discussed later in this report,[34] they are supposed to be unbiased. The PMC (and/or the property manager provided by the PMC) may have a vested interest in seeing an existing board of directors re-elected. The PMC might even be willing to go to great lengths to try to accomplish that – even to the extent that they might participate in or turn a blind eye to those involved in fraudulent election activity that results in double ballots for scores of residents.[35] Is this the reward for securing a cozy and lucrative contract with the association via the approval and authorization of the Board of Directors? We do not know, but is that a reasonable conclusion that one can reach, looking at this from the outside? We think it is.

For these reasons, we *recommend that the DBPR create a new rule that requires PMCs to provide notification and disclosure to the Board and condo association residents of any financial dealings* and/*or interests the PMC has with any company, corporation or entity being recommended to the Association Board by the PMC. Failure to provide such notice shall result in cancellation of any contractual agreement entered into with the association without such notification or disclosure.*

We further recommend that in any situation where a PMC is recommending that a condo association enter into a contractual agreement with any company, corporation or other entity with which the PMC is affiliated or has some other type interest or relationship, prior to voting on any such contract, the Board of Directors for the association shall first be required to obtain

[34] See pgs. 21-23 herein.
[35] Id.

at least three (3) bids from unrelated companies, corporations or entities providing those same services. Such information shall be provided to all unit owners at the board meeting where the voting on said contract will take place.

C. Perceived Lack of Enforcement by the DBPR

The Select Committee heard numerous speakers at its hearings express their frustration with DBPR "delay and inaction." In fact, the Grand Jury had its issues with the DBPR during its investigation. When we extended our initial invitation to DBPR witnesses to testify, we were notified that General Counsel for DBPR actually challenged our jurisdiction and authority to conduct this investigation. Unlike other public officers and officials who appeared voluntarily, to obtain the appearance of two (2) DBPR investigators we were required to issue subpoenas. Further, all the DBPR witnesses who testified were accompanied to the Grand Jury by attorneys sent from Tallahassee. Collectively, their testimony was guarded and strained. Not one DBPR witness offered a criticism or suggestion for improvement of any DBPR practices. Based on our examination of the problems plaguing many Florida condominium associations, we believe the **perceptions** of "inaction and delay" in 2008 have become the **realities** in 2017.

Every condominium created or existing in Florida is subject to the provisions of the Condominium Act enacted by under Chapter 718 of the Florida Statutes. The Department of Business and Professional Regulation is the state agency charged with regulating Florida Condominiums through its Division of Florida Condominiums, Timeshares, and Mobile Homes. In addition to the statutory language outlined in Chapter 718, the division also has authority to adopt administrative rules necessary to implement, enforce and interpret the laws in Chapter 718. The rules for condominiums can be found in Chapters 61B-15 through 61B-24, Florida Administrative Code. The jurisdiction of the division is limited once a condominium has been turned over by the developer to the association. After turnover has occurred, the division may only investigate complaints related "to financial issues, elections, and unit owners' access to records..."[36]

The division is organized into two (2) units: the Bureau of Standards and Registration and the Bureau of Compliance. The first unit, the Bureau of Standards and Registration reviews

[36] Florida Statute, 718.501(1)

public disclosure documentation prepared by those who offer condominiums, cooperatives, timeshares, and leased spaces in mobile home parks to the public. The Grand Jury did not focus on the activities of this unit of the division.

The second unit, the Bureau of Compliance is supposed to ensure compliance with both the statutory and the administrative rule requirements related to financial issues, elections, and unit owners' access to records. The Bureau of Compliance (BoC), therefore, is the primary entity that investigates complaints from condominium owners. In order to initiate a complaint, however, the complaint must be submitted in writing and forwarded to Tallahassee for review. The review for legal sufficiency determines: 1) whether the alleged activity is subject to division jurisdiction; and 2) whether sufficient documentation has been submitted to initiate an investigation. According to the testimony of a Fort Lauderdale-based BoC division Investigator and a BoC Financial Examiner, division employees may not initiate an investigation based upon their own independent observations, no matter how obvious. Unlike police officers that can act on their own initiative, division investigators must receive a written complaint that has been pre-screened in Tallahassee. An investigation can only be opened after the branch office has received the pre-screened written complaint from the State Capitol. The BoC division has offices in Tallahassee, Tampa, Orlando, and Fort Lauderdale to carry out these investigative functions. According to the DBPR website, once "an investigation is opened the division collects evidence to determine whether the alleged violation can be substantiated. The division may use many tools to resolve complaints: education, settlement agreements and formal administrative action including the imposition of penalties." As will be discussed below, the division's "evidence collection" process leaves much to be desired.

Two other units within DBPR impact the regulation and administration of condominiums in Florida. The first, the Division of Regulation, monitors professions and related businesses to ensure that the laws, rules and standards set by the Legislature and professional boards are followed. One of the professions regulated is that of community association manager (CAM). A state license is required to operate as a CAM when an individual receives compensation for management services; or when the association or associations served contain more than ten (10) units, or have an annual budget or budgets in excess of $100,000. The Division of Regulation will investigate complaints against licensed CAMs and will also investigate individuals who act as unlicensed CAMS. As of November 2016, there were 19,155 licensed community association

managers (LCAMS) and 2,065 CAM firms in Florida. Unfortunately, the Division of Regulation has only **53 available investigators throughout the state** to regulate the CAMS as well as the thousands of other professionals in unrelated fields. The responsibilities of the Division of Regulation seem truly daunting.

According to DBPR, the Department does not maintain specific records of the actions brought against licensed and unlicensed property managers so the work product of the Division of Regulation is not easily quantified. A review of a publicly available database of the Florida Division of Administrative Hearings[37] shows hundreds of administrative disciplinary actions against licensed and unlicensed property managers, which indicates that the fifty-three (53) available investigators are very active.

The second unit within the DBPR that impacts the regulation and administration of condominiums in Florida is the Office of the Condominium Ombudsman. This office was created by the Legislature in 2004. The Ombudsman's duties are described in Section 718.5012 Florida Statutes, as follows:

(1) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions;

(2) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience;

(3) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred;

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[37] The Division provides independent administrative law judges to conduct hearings pursuant to sections 120.569 and 120.57(1), Florida Statutes, and other laws, and under contract with governmental entities.

(4) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers;

(5) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association;

(6) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members;

(7) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

As this Grand Jury learned, the Ombudsman is an essentially powerless position. Measuring the success or failure of the office as an institution is quite difficult. As designed, the Ombudsman is a neutral information resource and "facilitator" with no power to investigate or demand compliance. In the one area that the Ombudsman could potentially serve as an ally to condominium owners i.e., monitoring elections, owners express frustration that the power and scope of election monitors are extremely limited.

Although the Ombudsman has the power to appoint a division employee to monitor elections, in practice, only private individuals "specializing in condominium election monitoring" or an attorney licensed to practice in this state are regularly appointed. According to an election monitor who testified before this Grand Jury, even the training is conducted through privately run seminars. These are ad hoc, nongovernmental positions with no official powers. Monitors do not control the location or manner of the election. They cannot collect the ballots or take statements to document potential fraud. The only true power they possess is the potential "threat" of the filing of a bad election report. Unfortunately, as this Grand Jury learned from one

condo election we examined extensively, even a damning election report result carries no weight with the DBPR.

As discussed, the Bureau of Compliance is tasked with investigating complaints against associations related to financial issues, elections, and unit owners' access to records. The DBPR, in response to a public records request, reported that there are thirty-three (33) investigators in the entire state (67 counties) to investigate complaints by condominium owners. Of those thirty-three (33), twelve (12) investigators are assigned to investigate complaints from Miami-Dade County. This Grand Jury heard testimony from two of those investigators, an "Investigation Specialist" and a "Financial Examiner." Both testified concerning their training, policies, and procedures. We found both witnesses to be generally evasive and reluctant to answer basic questions. We observed that both witnesses did not seem to have a firm understanding of their office policies. Curiously and shockingly, both witnesses answered numerous questions with, "I would have to ask my supervisor." We found their lack of knowledge about their own policies, or their unwillingness to share their knowledge, exasperating.

During the questioning of these investigators from the Bureau of Compliance, the Grand Jury explored some specific complaints brought by condo unit owners to the DBPR for investigation. We are troubled by what we learned. The DBPR complaint process seems designed solely to screen out complaints. First, all complaints must be filed in writing, via mail or email. The complaints are all forwarded to Tallahassee where they are reviewed to determine whether the complaint is subject to division jurisdiction and to verify whether "sufficient documentation" has been submitted. Once pre-screened, the case is sent to a local area office for investigation. After the pre-screening one might anticipate that the investigation could begin. However, in the case of one complaint, alleging the failure of an association to turn over records, the Investigation Specialist "rescreened" the complaint and sent the complainant a closeout letter because the complainant did not have "standing."[38] The investigator made this determination after he conducted a records search and concluded that the complainant was **not** a unit owner. Why he believed there was a need to "weed out" a perfectly straightforward complaint was never made clear. In the close-out letter, the investigator wrote, "It is my understanding that the prior Board of Directors has resigned. The new board is you, C. C., and L. P. A. I tried to get in

[38] The Investigation Specialist testified that he subsequently learned that the complainant did have standing and reopened the investigation.

contact with you via E-mail and also via telephone, with no success. Your new position as President of the Association provides you with access to the association's records." To serve on the Board of Directors one must be a unit owner. In what can only be described as baffling, in the following paragraph the investigator wrote that he could not find any record that the complainant was a unit owner, and that as a result, the complainant had "no standing" to file a complaint. The investigator admitted that at the time he closed out the case, he took no independent action against the complainant that he had determined was "not a unit owner," but was now the President of the association! Even though he was proven ultimately wrong about the complainant's standing, it makes little sense to us that the investigator could not, or did not, open a new investigation into a condo association being run by an unauthorized person.

The manner in which this complainant's investigation was handled encapsulates many of the concerns that we have with DBPR. The complaint was based on allegations that the association failed to turn over records. The records sought by the complainant unit owner were requested in October 2015, to assist that unit owner as a candidate for the November condo association election. The records were not timely provided and the complainant lost the election. As seen later in this report, this was the same election in which an election monitor found clear evidence of fraud. Following that election, the complainant filed another complaint with the DBPR outlining the election fraud. The complainant and the Investigation Specialist exchanged *numerous telephone calls and emails* between December 2015 and March 2016 concerning both the October records complaint and the newer, election complaint. Thus, it is hard to understand how the investigator could write "I tried to get in contact with you via E-mail and also via telephone, with no success." In March 2016, despite clear evidence that the requested records were not turned over, and clear evidence of election fraud, both investigations were still unresolved. In middle and late March, the complainant emailed the Investigation Specialist and demanded action on the election fraud complaint. Subsequently, independent of any action by the DBPR, the entire board of the condominium resigned. The reasons for the resignations were never offered, but it was likely due to intense media scrutiny of the election. The complainant was installed as President and two other unit owners were also appointed to the board. On April 5, 2016, the investigator wrote the complainant the letter detailed above closing his investigation into the records complaint. On the same date, the investigator wrote a letter closing the election

fraud allegation due to a "lack of clear and convincing evidence." We find this conclusion particularly astounding.

This Grand Jury heard abundant evidence of election fraud, both by the complainant and the election monitor. When questioned as to why the case was closed, the investigator kept repeating that there was "no evidence." Significantly, in addition to the complaint, the investigator *was given a copy of the election monitor's report as well as the names of numerous condo unit owners whose votes were fraudulently cast.* Yet, when asked, the investigator admitted that he never went to the scene and never interviewed witnesses, not even the election monitor. The investigator did not seem to comprehend that the observations of the election monitor and the other unit owners would constitute evidence, were the monitor to testify.

Curiously, the investigator also insisted that the other unit owners needed to file their own complaints about the election fraud for him to consider their accounts.[39] Inexplicably, the investigator could not understand that the other unit owners could simply be viewed as witnesses to the fraud rather than complainants. The investigator acknowledged that he was provided the names of scores of individuals whose ballots were fraudulently prepared, but he placed the burden on the complainant to obtain and provide him with notarized witness statements. This defies understanding. Why would the DBPR place the burden, and the cost, of gathering evidence on the complainant?

DBPR's failure to demand that its investigators utilize, or comprehend, basic investigative techniques is breathtaking. According to the witnesses, the Bureau of Compliance does not have anyone that can take sworn statements. Based on the collective testimony of the DBPR witnesses, as to the investigators, we learned that there was no requirement of prior investigative experience and no formal investigative training was offered. The investigators learned "on the job" and appeared completely dependent upon their supervisors. The investigators expressed no eagerness to root out corruption or solve problems, and did not seem empowered to make any independent decisions. Our clear sense was that the investigators were more intent on closing cases than solving them.

[39] A second unit owner did file a written complaint, but even the addition of a statement from a second unit owner was insufficient to constitute "evidence" to the investigator.

One condo unit owner testified to numerous complaints filed with DBPR about her condo board, alleging acts that were astounding. In 2013, the board voted special assessments of nearly $200,000 in order to obtain a certificate of occupancy for the building. The money was spent, but no certificate was ever obtained. Approximately $60,000 of additional association funds was spent on a lobbyist to ask the City of Miami to reduce or eliminate $54,000 in fines.[40] The unit owner complained that two directors of the board never showed proof that they had paid **their share** of the special assessment. Despite repeated requests to the PMC and the board members personally, no records proving they had made such payments were ever provided. The unit owner later learned that the board was trying to take out a $150,000 loan with the justification that it was to obtain the certificate of occupancy.

When the complaining owner tried to run for a seat on the board to end the antics, the condo board canceled the election! The complainant had to pay over $3,000 for her own attorney to pursue arbitration for the board's failure to hold elections. The directors hired attorneys to defend the actions of the condo association board. While the arbitration proceeding meandered its way through the DBPR, the old board continued to serve. Ultimately, the complainant won the arbitration. However, the association had to pay the $25,000 fee that the attorneys hired by the association charged - to lose the case. The canceled election was not held until a full year later. At the time the witness appeared before the Grand Jury her numerous complaints about being denied access to records remained open with DBPR. The frustration of this witness was apparent to us all. She has written to nearly every major figure at the DBPR, and inside the state government, including the Governor. [41] She cannot understand why the DBPR allows this behavior to go on, and frankly, neither can we!

D. BOARD ELECTIONS

In addition to the three (3) major areas of concern, the Select Committee also noted that there were a number of complaints concerning association election procedures, primarily concerning recall elections.[42] The committee failed to reach a consensus on how to resolve the problems and recommended that the DBPR examine the issues and propose statutory changes.

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[40] There was no evidence that the fees were reduced or eliminated due to the efforts of this "lobbyist." In any event, paying $60,000 to reduce a $54,000 debt seems like a questionable investment.

[41] We have only elaborated on a few of this witness' misfortunes with her condo board and the DBPR.

[42] Final Report of the Select Committee, p. 11. Florida Statute 718.112(2)(j) contains provisions for the recall of board members.

Unfortunately, this Grand Jury has learned that election issues are still a major area of concern for unit owners. We too are concerned and our concerns are several-fold.

First, Section 718.112 of the Condominium Act has very specific processes, procedures and prerequisites for unit owners who intend to run for office and/or vote in the election for new board members at the annual meeting.[43] At least "60 days before a scheduled election, the association shall mail, deliver or electronically submit... to each unit owner entitled to a vote, the first notice" of the date of the election. A unit owner desiring to be a candidate for the board must give written notice of his or her intent at least forty (40) days before a scheduled election. A second notice of the election, together with an agenda and ballot that lists all candidates, must be sent to all unit owners entitled to vote. (Emphasis added)[44] A witness explained that one tactic used by some associations to impact the elections is to intentionally delay notifying unit owners of their delinquent assessments. Unit owners who are delinquent cannot vote in an election nor can that unit owner serve as a board member. To avoid this result, *we recommend that at least 90 days before an election the association shall send out notices of delinquent assessments to all affected unit owners.* This notice gives the unit owner at least thirty (30) days to try to rectify and/or pay any outstanding or delinquent assessments. This change in procedure will allow for greater participation of unit owners in the elections and on the ballots.

Fraud in the election process itself was a major factor impacting unit owners. As previously indicated the election at one condo association was fraught with fraudulent activity that included the following actions:

- A unit owner was so frustrated with the actions of her condo board that she decided to run for a director position;
- An Election Monitor was present for the election. He received sealed ballots from three different sources;
- Sealed ballots were provided by the directors to the Election Monitor;
- Sealed ballots were provided by the condo's management company to the Election Monitor;
- Sealed ballots were provided by the unit owner candidate to the Election Monitor;

[43] Section 718.112(d)2,3 and 4
[44] Section 718.112(d) 4.a

- The sealed ballots provided by the unit owner were collected by going door-to-door to pick up the ballots from owners who supported her candidacy;
- Before the ballots were opened, the envelope for each sealed ballot was stamped in a certain section based on the source of the ballot (directors, management company or candidate);
- As the Election Monitor counted ballots, he discovered there was some double voting. It **appeared** that many unit owners had submitted two sealed ballots;
- The candidate realized that some of the double votes were of owners from whom she had collected their ballots personally. She contacted those owners and asked them to come downstairs where the votes were being counted;
- Those owners identified their signatures on the true ballots and saw their names on other ballots, purportedly signed by those owners. The signatures on the other ballots were forged, notarized and dated;
- Other owners identified their true ballots and identified forged signatures on ballots containing their names. Those ballots were also notarized and dated;
- All ballots with forged signatures were notarized by the same notary on the same day;
- Some unit owners whose names were on forged ballots were not in the country on the date the notary verified their signature and identity;
- None of the unit owners whose signatures were forged and notarized had ever met the notary;
- The notary who notarized the ballots with the fraudulent signatures later admitted that the ballots were not signed in her presence;
- The existing board members submitted signed, sealed ballots to the Election Monitor that were purportedly from absentee unit owners. Surprisingly, those envelopes from owners who were not living in the condo, were not postmarked;
- Fifty-seven (57) ballots were disregarded for double voting;
- Twenty-six (26) ballots were disregarded as a result of forged unit owner signatures;
- Due to the special type of envelopes that were used by the management company and the ballots submitted in those envelopes, the Election Monitor would be able to identify the source of most of the fraudulently obtained, forged, improperly notarized ballots;
- It would appear that both the existing board members as well as the management company were involved in fraudulent activity in connection with the election. The evidence of the fraud was contained on the ballots as well as on, and within, the envelopes.

The election monitor present at the election meeting where these events occurred filed a report confirming many of the bullet entries above. Further, depending on whether ballots were turned in by the owners, turned in by management or collected en masse and turned in by a unit owner, the election monitor stamped each ballot envelope such that the source of the ballot could be distinguished. Identifying the source of the various double voting ballots and the forged signature ballots could have been accomplished had the election monitor maintained possession of all of the ballots and envelopes. We knew that the notary public engaged in fraudulent behavior as she knowingly notarized purported signatures of some unit owners when she knew those ballots were not signed in her presence. However, even knowing the identity of the notary and being able to prove that she notarized documents that were not signed in her presence is useless; her actions did not constitute a crime because the documents notarized were not done in connection with a statutorily recognized "official election proceeding." We strongly believe this short-coming encourages persons to engage in fraudulent election procedures as a means of obtaining or retaining a seat on the board of the association.

The facts surrounding this event were so outrageous that details of certain aspects of this election ended up being reported in the media. On April 20, 2016, the Miami Herald published an article entitled, Documents Meant To Combat Fraud In Condo Election Raise More Questions. The article described in detail how owners living at **two (2) different condos** managed by the **same management company** ended up with a great number of "notarized" ballots purportedly submitted by unit owners. However, many of the owners stated they never signed those ballots; the signatures affixed to those ballots were not theirs, and they had never met the woman who notarized the signature on the suspect ballots. At one condo association's annual election the presence of fraudulent notarized ballots and the ensuing double ballots reportedly resulted in an illogical and impossible 115 % voter turnout. We received testimony that corroborated many of the facts set forth in the newspaper article. Why do we make note of this article? Because it is further indication of the lengths persons will go to maintain their fiefdoms, often at the expense of those they should be serving.

The existence of this article and the contents therein, underscore the need for a renewed focus that is aimed at ensuring fair elections and filing criminal charges against those who dare to corrupt the process with fraudulent activity.

Accordingly, we recommend that any person or entity that engages in any fraudulent activity conducted in connection with the election of board members for the association shall be subject to criminal liability.

We further recommend that any director, LCAM, management company, notary, attorney or any other person who engages in, or who conspires with another person to engage in fraudulent election activity shall be subject to criminal charges classified as a 3rd degree felony.

We further recommend that any Board Director of a condo association who enters a plea of guilty or nolo contendere, or who is found guilty of any such criminal violation or fraudulent conduct, including election fraud or intentional destruction of official records of the association, shall be permanently barred by the DBPR from serving on any other condo board in the State of Florida.

We further recommend that any LCAM who enters a plea of guilty or nolo contendere, or who is found guilty of any such criminal violation or other fraudulent conduct, shall be issued a mandatory license suspension by the DBPR of no less than twelve (12) months for a first violation. For any subsequent violation, the DBPR shall permanently revoke their license.

Election Monitors

In the above-described fraudulent election, an election monitor was present. The monitor was requested because some unit owners were concerned about the upcoming election. Under Chapter 718, if unit owners have concerns about the integrity of an upcoming election for the board of directors, they may request that an election monitor attend the election. An election monitor will be appointed if 15% of the total voting interests in a condominium association, or six unit owners, whichever is greater, petition for a monitor.

In the above-described fraudulent election, an election monitor was appointed by the Ombudsman. As revealed by his actions in stamping the various stacks of ballots (based on the source from which they came) it appears that he was very knowledgeable about the task he had to perform. Although the election monitor was able to determine that fraud was "afoot," there was nothing he could do to cancel or void the election results. Even though it was clear that there were forces at work trying to rig the election, his charge as election monitor did not

authorize him to try to determine who was responsible for the fraudulent activity. He did not have the power to take possession of the "evidence" of the fraud, namely, all of the envelopes and ballots. Absent the evidence, there was nothing law enforcement could have done to determine whether any crimes were committed and who committed them. We believe this is a tremendous oversight.

This Grand Jury recommends that if circumstances are such that an election monitor needs to be present, that the election monitor has the power and authority to:

1) *Ensure the integrity of all ballots submitted;*
2) *Ensure the integrity of the process used at the Annual Election;*
3) *Confirm that all notice requirements and prerequisites were met in advance of the Annual Election;*
4) *Take possession of all envelopes, ballots and other election-related material;*
5) *Provide copies of all such documents to the law enforcement agency that has jurisdiction over the location where the Annual Election was held;*
6) *Cancel and invalidate Annual Election results when there is a clear demonstration of fraudulent activity;*
7) *Where fraud has occurred, order another election;*
8) *Attend and serve as election monitor for the "do-over" election;*
9) *Prepare and submit a detailed report of the events and findings and forward to law enforcement and the DBPR;*
10) *Identify in that report any persons found to have engaged in fraudulent activity in connection with the Annual Election;*
11) *Summon law enforcement to the Annual Election, if needed.*

Empowering the election monitor to act in accordance with the mandate above should go a long way to reducing the number of contested Annual Elections shenanigans. Having an election monitor with such powers present for the Annual Election should also help restore integrity to what may have been questionable election practices of the association in the past. And finally, having election monitors who are charged specifically with ferreting out any inappropriate or fraudulent activity should be a comfort to unit owners and an encouragement to

those who had thought about running for office, but who failed to do so out of fear that the election would be rigged.

We received information that years ago DBPR had a certification process for all election monitors. It is our understanding that the certification process is no longer utilized. However, in light of the expanded powers that we have recommended, we believe that those serving as election monitors should be required to undergo training and certification.

Therefore, we recommend that the DBPR restore the certification process for election monitors. We also recommend that the training portion of the certification be modified to provide specialized training for the expanded duties recommended above.

During our term, we became aware of a television news report that was published online on October 25, 2016, entitled "Condo Crime Family" Pleads Guilty To Felonies. The news report describes members of a family (a married couple and their daughter) who, for close to twenty (20) years, were engaged in illegal behavior and took actions that were injurious to the associations for which they were serving. According to the article, more than thirty (30) complaints were filed with DBPR ranging from "rigging elections to stealing funds." The defendants were able to commit fraudulent acts due to the positions they held with the association. They were able to hold on to those positions due to their ability to rig the elections. Despite all the complaints to DBPR, family members were also able to keep their property manager licenses. Were it not for a lead generated by local law enforcement in an unrelated criminal matter, the family may not have been stopped.

Persons who are not acting in fiduciary capacity towards the unit owners should have every possible obstacle placed in their path to prevent them from creating any more havoc or committing other crimes. Directors will be hard-pressed to commit such acts if they are not in those positions of power.

How was the "condo crime family" able to steal money and stay in business without being caught? Did they fail to have the required financial statements prepared on an annual basis? Did they have financial statements prepared that were doctored? Did they fail to respond to unit owners' requests for copies of official records of the association? Based on the reported thirty (30) complaints filed over the years, we can safely assume that they probably engaged in

all that and more. For all of these reasons, it is critically important that DBPR, the associations, the Ombudsman, and the management companies do all they can to maintain the integrity and fairness of board members and board annual elections.

IV. SHOULD ENFORCEMENT OF CONDO LAWS REMAIN WITH DBPR?

One of the problems with DBPR may lie in the sheer number of areas that it regulates. According to information found on its website, "[t]he Department regulates the following businesses and professions: Alcoholic Beverages & Tobacco, Certified Public Accounting, Athletic Agent, Asbestos, Auctioneer, Barber, Building Code, Community Association Manager, Child Labor Program, Cosmetologist, Condominiums, Timeshares, & Mobile Homes, Construction, Electrical Contractor, Employee Leasing, Farm Labor Program, Geologist, Home Inspection, Hotels & Restaurants, Landscape Architecture, Mold Related Services, Professional Engineer, Pari-Mutuel Wagering, Real Estate Appraisers, Real Estate Commission, State Boxing Commission, State Pilot, Talent Agency, Veterinary Medicine, Drug, Devices, and Cosmetics, and Unlicensed Activity."[45] Looking at this wide array of professions and services one cannot help but recall the comment, "a jack of all trades, a master of none."

The present areas of responsibility for DBPR, the inept manner in which they handle this area of responsibility, and an apparent nonchalance from the DBPR witnesses who appeared before us lead us to wonder whether it might be more effective to totally remove this area of oversight from DBPR and place it elsewhere. Although we do not have sufficient information to make a specific recommendation for placement, should the investigative arm of DBPR be reassigned, *we have specific recommendations for the receiving department or agency.*

- *The investigative arm of the new department must have investigators who have training and experience in basic investigative techniques (including criminal investigations);*
- *The new department must have the authority to conduct criminal investigations;*
- *The new department investigators must have the authority to take sworn statements and collect evidence;*
- *The new department investigators must be given the authority to initiate investigations based upon their personal observations.*

[45] http://www.myfloridalicense.com/dbpr/os/OpenGovernment/GovQA.html

V. CONCLUSION

We commenced our investigation of this topic after receiving information about unresolved complaints and issues between condo unit owners, their boards and condo associations. After delving into this area, we discovered that there have been many years of condominium association problems that have affected numerous condo unit owners and residents within the State of Florida. Our investigation exposed, from our perspective, severe weaknesses within the current laws and regulations that govern condominiums, their boards and their associations. Because the condo laws and regulations lack "teeth," board directors, management companies and associations have become emboldened in their willful refusal to abide by and honor existing laws in this area. They even engage in fraudulent activity which goes unpunished.

This Grand Jury has set forth recommendations in this report that are designed to curb that inappropriate behavior. We strongly believe that raising the bar on the possible consequences for such behavior will serve as a deterrent. Accordingly, we have recommended that the legislature make it a crime for directors and officers of the association to engage in certain wilful, reckless or fraudulent acts. Similarly, we have asked the legislature to amend other statutes to preclude directors and officers of condo associations from engaging in self-dealings. Finally, among other things, we have included recommendations that will empower the DBPR to suspend or revoke licenses of LCAMs or condo property management companies that engage in inappropriate behavior.

With these legislative changes, we will need a robust and energized agency to enforce the provisions of the new laws and regulations. Based on our interactions with their employees, the Department of Business and Professional Regulation seems ill-suited to carry out this mission. To effectively address the condo owners' pleas for help, the Department will need investigators who are trained and skilled at conducting criminal investigations. They will need the authority to initiate such investigations if they receive information about wrong-doing or other fraudulent activity occurring.

Notwithstanding the number of complaints from unit owners, for too long, we believe the legislature, the DBPR and local law enforcement have failed to make this a priority. To address

this ongoing problem, we will need focused and continuous coordination and cooperation between and among our various stakeholders on the state and local level. By implementing these recommendations and making this a top priority, we just might be able to finally respond to and resolve the condo owners' pleas for help.

VI. RECOMMENDATIONS

As to access to official records of the association we recommend that:

- *Florida Statute 718.111 (12) (c) be amended to provide that Directors and members of the board or association who willfully and repeatedly fail to comply with their statutory obligation to appropriately and timely respond to written requests for official records of the association (more than two (2) violations within a rolling twelve (12) month period) shall be personally liable for payment of damages to the requesting unit owner(s);*
- *That Directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records that are required by law shall be criminally liable for such conduct. We recommend that each such act will constitute a Second Degree Misdemeanor for a first offense, and that any subsequent offenses or violations will constitute a 1st degree misdemeanor;*
- *That any association, board director, management company or management company employee who willfully, knowingly or intentionally refuses to release or otherwise produce official association records, and such refusal is done to facilitate or cover-up the commission of a crime, shall be criminally liable for such conduct. The violation shall be classified as a 3rd degree felony;*
- *That management companies which sever their ties or terminate their contractual agreements with condo associations must turn over all official records of the association to the association within ten (10) business days. A management company that fails to turn over the association's official records within that time-frame shall be fined at a rate of $1,000 per day for up to ten (10) days and then thereafter, shall be subject to a mandatory license suspension until all records are turned over.*

As to conflicts of interests for condo board directors and conflicts of interests for PMCs we recommend that:

- *The legislature amends Florida Statute 617.0832 to make the provisions of that statute inapplicable to directors of condominium associations.*
- *The DBPR create a new rule that requires PMCs to provide notification and disclosure to the Board and condo association residents of any financial dealings and/or interests the PMC has with any company, corporation or entity being recommended to the*

Association Board by the PMC. Failure to provide such notice shall result in cancellation of any contractual agreement entered into with the association without such notification or disclosure;

- *In any situation where a PMC is recommending that a condo association enter into a contractual agreement with any company, corporation or other entity with which the PMC is affiliated or has some other type interest or relationship, prior to voting on any such contract, the Board of Directors for the association shall first be required to obtain at least three (3) bids from unrelated companies, corporations or entities providing those same services. Such information shall be provided to all unit owners at the board meeting where the voting on said contract will take place.*

As to condo association annual elections and fraud connected thereto, we recommend that:

- *At least ninety (90) days before an election the association shall send out notices of delinquent assessments to all affected unit owners;*
- *Any person or entity that engages in any fraudulent activity conducted in connection with the election of board members for the association shall be subject to criminal liability;*
- *Any director, LCAM, management company, notary, attorney or any other person who engages in, or who conspires with another person to engage in fraudulent election activity shall be subject to criminal charges classified as a 3rd degree felony;*
- *Any Board Director of a condo association who enters a plea of guilty or nolo contendere, or who is found guilty of any such criminal violation or fraudulent conduct, including election fraud or intentional destruction of official records of the association, shall be permanently barred by the DBPR from serving on any other condo board in the State of Florida;*
- *Any LCAM who enters a plea of guilty or nolo contendere, or who is found guilty of any such criminal violation or other fraudulent conduct, shall be issued a mandatory license suspension by the DBPR of no less than twelve (12) months for a first violation. For any subsequent violation, the DBPR shall permanently revoke their license.*

As to expanded powers for election monitors, we recommend that the DBPR amend its rules to ensure that election monitors have the power and authority to:

1) *Ensure the integrity of all ballots submitted;*
2) *Ensure the integrity of the process used at the Annual Election;*
3) *Confirm that all notice requirements and prerequisites were met in advance of the Annual Election;*

4) *Take possession of all envelopes, ballots and other election-related material;*

5) *Provide copies of all such documents to the law enforcement agency that has jurisdiction over the location where the Annual Election was held;*

6) *Cancel and invalidate Annual Election results when there is a clear demonstration of fraudulent activity;*

7) *Where fraud has occurred, order another election;*

8) *Attend and serve as election monitor for the "do-over" election;*

9) *Prepare and submit a detailed report of the events and findings and forward to law enforcement and the DBPR;*

10) *Identify in that report any persons found to have engaged in fraudulent activity in connection with the Annual Election;*

11) *Summon law enforcement to the Annual Election, if needed.*

As to election monitors, we recommend that:

- *The DBPR restore the certification process for election monitors;*
- *The training portion of the certification be modified to provide specialized training for the expanded election monitor duties recommended above.*

If the Bureau of Compliance's responsibilities are separated from the DBPR we recommend that:

- *The investigative arm of the new department must have investigators who have training and experience in basic investigative techniques (including criminal investigations);*
- *The new department must have the authority to conduct criminal investigations;*
- *The new department investigators must have the authority to take sworn statements and collect evidence;*
- *The new department investigators must be given the authority to initiate investigations based upon their personal observations.*

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
JOSE RAMON PRIETO	First Degree Murder	True Bill
LEMAY DORVIGNI SULET	First Degree Murder Murder 1st Degree/With a Deadly Weapon/ Attempt Kidnapping With a Weapon, Firearm or Aggravated Battery/Attempt Burglary With Assault or Battery Therein/While Armed Robbery Using Deadly Weapon or Firearm Robbery Using Deadly Weapon or Firearm	True Bill
(A) DEMETRIUS MARQUIS SAUNDERS, (B) DIAMANTE LAJUANE WARREN	First Degree Murder (A & B) Leaving the Scene of Crash Involving Death (A) Reckless Driving / Damage to Property / Person (A) Vehicular Homicide/Reckless Manner (A) Leaving Scene of an Accident / Property Damage (A) Driving Without License / While License Suspended/Causing Death/Serious Bodily Injury (A) Grand Theft 3rd Degree / Vehicle (A) Burglary / Unoccupied Dwelling (A) Burglary / Unoccupied Dwelling (A) Resisting an Officer Without Violence (A)	True Bill
(B) WILBER GRANDA, also known as LIL BRO (C) JONATHAN STEVEN RICO, also known as ROCO and/or REEK and (D) YSRAEL GRANDA, also known as IZZY	Murder 1st Degree/Conspiracy (B,C,D) First Degree Murder (C&D) Tamper/Wit/Vic/1F/1PBL (B,C,D) Solicitation of 1st Degree Murder (B,C,D) Tampering With or Fabricating Physical Evidence (B&D) Burglary With Assault or Battery Therein/While Armed (C & D)	True Bill

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
KENNETH GEORGE RICHARDSON	First Degree Murder Robbery Using Deadly Weapon or Firearm Firearm/Weapon/Ammunition Possession by Convicted Felon Or Delinquent	True Bill
TYVONTAE J. ROBINSON	First Degree Murder Murder 1st Degree/With a Deadly Weapon/Attempt	True Bill
MICHAEL LIVINGSTON	First Degree Murder Murder/Premeditated/Attempt/Deadly Weapon or Aggravated Battery	True Bill
DEVIN LEWIS	First Degree Murder Robbery Using Deadly Weapon or Firearm Firearm/Weapon/Ammunition/ Possession by Convicted Felon or Delinquent	True Bill
ANTWON LAMAR FAIR	First Degree Murder First Degree Murder First Degree Murder Murder First Degree/With a Deadly Weapon / Attempt Attempted Felony Murder With Deadly Weapon Burglary With Assault or Battery Therein/While Armed Child Abuse/Aggravated Great Bodily Harm/Torture/Deadly Weapon Child Abuse/Aggravated Great Bodily Harm/Torture/Deadly Weapon Firearm Weapon/Ammunition Possession by Convicted Felon or Delinquent	True Bill

ACKNOWLEDGMENTS

On May 9th, 2016, nine months ago, twenty-one citizens representing the broad diversity of our community, were selected to become the next Miami-Dade County Grand Jury. On that day, all of us took an oath. We recognize that jury service is one of the highest duties of citizenship and all of us participated in the administration of justice. Due to our commitment to finalize our present investigation, our initial six-month commitment was extended for an additional three months. Although this extension required substantial professional and personal sacrifice, we are proud to have contributed to the judicial process.

None of us will ever be the same: We take from this experience the heartache and pain caused by others and the hope that justice will be served for them and their families. We hope by the duty we performed, it may help bring some closure to the families who were victims of many senseless crimes. We now have a better knowledge, understanding and appreciation of the many men and women who serve our communities, seeking equal justice for all.

We express our thanks to the following people who all carried out their duties with professionalism and a friendly attitude:

- State Attorney Katherine Fernandez Rundle for her commitment and service to the Miami-Dade County judicial system and her orientation lecture that set this Grand Jury on the right path.
- Our presiding judge, the Honorable Peter R. Lopez, who continued in the same professional footsteps as his predecessor, who recently retired, the Honorable Gisela Cardonne Ely, who stressed the importance of serving on a grand jury and the significance of being involved in our community.
- Chief Assistant State Attorney Don L. Horn, for his professionalism and enthusiasm, dedication and support that made our job easier; the best of the best. Thank you, sir;
- Assistant State Attorney John Perikles, for his professionalism and enthusiasm, dedication and support dealing with difficult cases and uncooperative witnesses;
- Rose Anne Dare, who skillfully took care of all administrative details in a friendly manner and made our tasks easier to perform, always with a smile and a can-do attitude;
- Nelido Gil, our bailiff, who every day greeted us with a smile, made us laugh when sometimes we wanted to cry, and made our days as jurors run as smoothly as possible. His ability to keep us in good spirits was definitely appreciated by all;

- Court Reporter Fernando Subirats, for his professionalism and commitment;
- The witnesses and experts who came before us to present our cases and facilitate our investigations by answering our questions and concerns.

We commenced an investigation into the many years of Condominium Association problems that have affected numerous condominium owners/residents within the State of Florida. This case exposed severe weaknesses within the current law as well as a continued lack of coordination, cooperation and action within many cities, counties and state agencies within the State of Florida. We hope that our recommendations will bring the needed attention to the leaders of our cities, counties and the State of Florida to finally commit the needed resources and personnel to fully resolve this ongoing nightmare for many.

Respectfully submitted,

John C. Ludwig II, Foreperson
Miami-Dade County Grand Jury
Spring Term 2016

ATTEST:

Lisette Montalvo
Clerk

Date: February 6, 2017