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Grand Jury Calls for Criminal Charges to Rein in 'Wild West' of Condo Boards

Samantha Joseph, Daily Business Review

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Criminal charges could soon be in store for misbehaving condominium board members and managers if recommendations in a [Miami-Dade grand jury report](#) gain traction.

Self-dealing, destroying accounting documents, withholding records, participating in kickbacks, interfering in elections and other "willful" violations of Florida's condominium statute could leave individual board members criminally liable for the first time.

"Miami is the Wild Wild West for condo living," said David Haber, a 20-year real estate attorney at Haber Slade in Miami. "The things that happen are just beyond comprehension."

Disputes and personality clashes among unit owners have turned condominium associations into a [hotbed of infighting](#) over [sales](#), elections, contracting and administrative issues. But the call for criminal charges would disrupt a regulatory system that largely penalizes associations — and by extension their dues-paying membership — and not individual volunteer board members.

"What people get away with is akin to highway robbery," Haber said.

The question isn't whether there's fraud and abuse among some of the boards, according to the grand jury report, which cites thousands of annual reports of alleged wrongdoing to Florida's Department of Business and Professional Regulation. The question is how to police it and shore up a regulator described as a toothless tiger.

"Our investigation exposed ... severe weaknesses within the current laws and regulations," the grand jury concluded. "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."

The report took aim at the Department of Business and Professional Regulation—an allegedly understaffed agency with broad jurisdiction over condo associations and more than 1 million businesses and professionals, including accountants, contractors, cosmetologists, veterinarians and real estate agents.

"The DBPR seems ill-suited to resolve, correct or prevent many of the recurring problems that have been brought to their attention," it stated.

DBPR spokesman Stephen Lawson said the agency is reviewing the report.

"The Department takes very seriously its statutory obligations regarding the enforcement of condominiums," he said in a statement.

Longtime community association counsel Gary Mars, shareholder at Siegfried, Rivera, Hyman, Lerner, De La Torre, Mars & Sobel in Miami, applauded the agency's efforts in juggling thousands of complaints that would otherwise clog civil courts, but suggested an overhaul to place criminal cases beyond the department's purview.

"Ultimately these should end up in a court proceeding, rather than going through a state agency," he said.

The grand jury found "delay and inaction" amid a growing number of unresolved complaints.

"There's not a strong motivation for a criminally minded person to adhere to the rules," said Assistant State Attorney John Perikles.

But that could soon change, according to Miami-Dade State Attorney Katherine Fernandez Rundle, who said her office is working with state lawmakers, including Sen. Rene Garcia, R-Hialeah, to change state legislation following the grand jury's findings.

"It's been a real problem for our community," said Fernandez Rundle, who estimates her staff fields 500-1,500 complaints from condo owners each year. "It's very frustrating for us that we have no answer for them."

The grand jury recommendations would create criminal charges for tampering with association elections and a second-degree misdemeanor for first-time offenders who destroy or fail to maintain accounting records, with a bump to first-degree level for subsequent violations. It would also levy charges for withholding records to conceal fraud and other criminal behavior, a \$1,000 daily fine for management companies that fail to turn over association records within 10 business days, and expand election monitors' powers, among other changes.

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