



DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
OFFICE OF INSPECTOR GENERAL

CHARLIE CRIST
GOVERNOR

CHARLES W. DRAGO
SECRETARY



MEMORANDUM

TO: Charles W. Drago, Secretary

FROM: Ron Ferguson, Acting Inspector General *RF*

SUBJECT: Six-month Status of Corrective Actions, OPPAGA Report No. 08-21, Steps Could Be Taken to Improve the CILB Complaint Process and Increase Homeowner Protection

DATE: October 27, 2008

In accordance with the provisions of s. 20.055(5)(h), Florida Statutes, we have reviewed the status of agency corrective actions taken in response to recommendations made by OPPAGA in the above-referenced report. A copy of the original OPPAGA report is included for your review.

The findings, recommendations, and the current status of actions as of September 2008 are attached. Input for the current status was provided by the Division of Professions, Division of Regulation, and Office of the General Counsel.

Please contact me if you have any questions.

Thank you.

RF/vbh

cc: Maureen Olson, Deputy Secretary of Professional Regulation
Legislative Auditing Committee

Attachment

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

Finding 1:

Greater use of electronic documents could improve the complaint process.

Recommendation:

The department could improve the complaint process by developing procedures to use the department's new electronic document management system to allow homeowners to file complaints electronically with digital signatures. Department officials indicate that they will work to implement electronic signatures in the next phase of the document management system, in late 2008.

Agency Response:

As indicated in the recommendation, the Division of Regulation is in the process of adopting the electronic document management system (DDMS) with funding provided by the Legislature. This new system will enable us to digitize much of the paper which is currently transferred between offices. We, along with the Division of Technology, will explore opportunities to receive complaints electronically using the DDMS. Under the current web-based system, one area of concern for the division is with duplicate complaints. When the department previously enabled complainants to be filed via the department's website, duplicate complainants were frequently generated for the same incident. This resulted in additional workload for complaint analysts. Prior to enabling the DDMS capability of electronic complaint filing, the inability of the system to identify duplicate complaints needs to be addressed.

Status of Corrective Actions, September 2008:

The new electronic document management system has streamlined the consumer complaint process by allowing Department personnel to scan paper documents received from complainants into our database; however, we are currently not yet able to support the process of allowing consumers to submit electronic construction-related complaints. Complainants are able to print and mail a Portable Document Format (PDF) complaint form found on the Department's website, along with all pertinent documentation, for processing by Department personnel.

The Department previously accepted electronic complaints, but due to the lack of adequate business rules and procedures, we found that we were unable to fully maintain that early initiative. One of the initial business rule challenges we encountered included not properly defining how to electronically identify and handle multiple complaint submissions sent by a single individual. This often resulted in a duplication of effort caused by staff working simultaneously on the same case. Because the Florida Statutes require that complaints be legally sufficient for investigation, supporting documentation must be provided with each complaint.

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

The department is very interested in pursuing the initiative of implementing a successful electronic consumer complaint process in the future, and we will begin planning for the required work effort after the Digital Document Management System (DDMS) implementation process is complete in June 2009.

Finding 2:

Few contractors receive extreme discipline; the board could consider increasing penalties.

Recommendation:

The board should consider imposing enhanced penalties for first time offenders involving these more serious offenses. Currently, financial mismanagement or misconduct causing financial harm carries a minimum penalty of a \$1,500 fine and/or probation or suspension. Given the increase in these types of violations, the board should consider increasing the minimum penalty.

Agency Response:

The department has found no evidence to support the proposition that raising the minimum penalties will have a deterrent effect on those contractors who have never offended or on those contractors who have re-offended. Although the recommendation appears to suggest that the increase in contractor violations correlates to the low minimum penalties, it appears not to take into account the increase in overall construction activity due to the demands and health of the Florida construction industry.

OPPAGA Comment

The report does not suggest that the number of violations results from low minimum penalties, but notes that there has been an increase in the number of certain serious allegations in recent years. The recommendation to increase penalties would have the benefit of placing licensees on notice of the increased attention by the board because of the rise in these types of serious infractions. While the report does not address the health of the construction industry in Florida, the background section of the report specifically mentions the recent increase in complaints that resulted in part, according to department officials, from Florida's recent hurricanes (see pages 2 and 3).

Fairly regulating the Florida construction industry and preventing consumer harm are primary goals of the department. Section 455.2273(2), Florida Statutes, requires that professional boards "shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses." Board discipline is utilized to achieve these goals. The statement that "few contractors receive extreme discipline" is confusing because, as the report indicates for the complaints reviewed, approximately 20% of the contractors that received discipline had their licenses revoked, suspended, or relinquished. As defined in the report extreme discipline is license suspension,

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

revocation, or relinquishment, while all other forms of discipline are considered minor. The report notes that there may be a need for a greater emphasis on serious discipline, which is defined in the report as “fines greater than \$5,000.” The department maintains that other types of discipline, such as, to place a licensee on probation where the licensee may be monitored, required to obtain additional training, and required to pay restitution, costs, and fines is serious discipline. The penalty guidelines currently utilized by the board seems to achieve the meaningful range of discipline required by statute.

OPPAGA Comment

As we discussed with department officials, we analyzed the construction complaint data in terms of licensees, rather than complaints, because one contractor can have multiple complaints and one complaint can result in several different disciplinary actions. As stated on page 5 of the report, we identified 7,733 licensees with complaints over three fiscal years. Of those 7,733 licensees, the department and the board took action against 1,876. Of the 1,876 licensees that had disciplinary action, a small portion received a license suspension, revocation, or voluntary relinquishment.

Under penalty guidelines, restitution is required when consumer harm is proven. The department’s data indicates that for complaints originating between July 1, 2004, and July 1, 2007, where probable cause was found, the Construction Industry Licensing Board imposed 680 orders of restitution. This number does not include final orders imposed after June 2007 for complaints that originated during that period or those cases that are still in process. The Construction Industry Licensing Board ordered \$7,699,000 to injured consumers in 2007. Restitution orders are enforced by suspension terms that allow a contractor to work as long as the contractor is making restitution payments. Serious discipline, as defined by the department, supports the goals of the department to aid the harmed consumer, protect future consumers through education of the licensee, and fairly regulate the industry.

OPPAGA Comment

We recognize that the department views restitution orders as an important method for addressing injured consumers, as evidenced by the \$7.7 million in restitution orders that they report for 2007. However, as noted on page 6 of the report, only 179 licensees received restitution orders over the three fiscal years we analyzed—beginning in July 2004 and ending in June 2007.

Status of Corrective Actions, September 2008:

The Department continues to maintain that other types of discipline, such as placing a licensee on probation where the licensee may be monitored, requiring a licensee to obtain additional training, and requiring a licensee to pay restitution, costs, and fines is serious

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

discipline. The penalty guidelines currently utilized by the board achieves the meaningful range of discipline required by statute and corrective action is not necessary.

Finding 3:

The department could take additional steps to enforce sanctions against unlicensed contractors.

Recommendation:

The department could seek judgments in civil court against unlicensed construction contractors who do not pay fines and restitution. Obtaining these judgments would enable the department to take a number of actions to collect monies owed, including seizing personal property and garnishing wages.

In addition, the department could take steps to increase the role of local law enforcement officers in unlicensed contractor sweeps and stings. In Fiscal Year 2006-07, department staff conducted 4 sting operations and 144 sweeps; law enforcement participated in 2 sting operations and 3 sweeps. Because sworn law enforcement officers have the legal authority to arrest individuals who practice unlicensed contracting as well as access to law enforcement databases to confirm names and addresses, this action would enhance the department's ability to obtain personal identifying information needed to pursue legal actions against unlicensed contractors.

Agency Response:

The report states that "the department could seek judgments in civil court against unlicensed contractors who do not pay fines" so that the department could collect on the judgments through wage garnishments and property seizure. Between 2001 and 2005, the department pursued such judgments and found the staffing requirements to accomplish this task, the costs, and the time it would take to procedurally progress through the congested civil dockets in the Florida civil court system made it an ineffective solution. The filing fees, which have nearly tripled since 2005, combined with the time and cost of having an attorney pursue, obtain, and record the judgments, significantly enhanced the department's costs. These costs were further increased when measures such as garnishing wages and levying property were undertaken to collect on the judgment. Meanwhile, the recovery of unpaid fines and costs through the judgments remained minimal. Combined with the fact that the department was competing for limited resources with consumers who were harmed by unlicensed contractors, the department found that seeking civil judgments against unlicensed contractors was neither cost-effective for the department nor beneficial to the public.

OPPAGA Comment

We understand that the department, like all agencies in state government, is working with limited funds. Our recommendation regarding the use of civil judgments is made

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

to support the department's future efforts to hold unlicensed contractors accountable for fines assessed by the department.

The report states that the department may “ensure that homeowners are paid first from any civil judgment against an unlicensed contractor.” This statement presupposes the department has the authority to make any judgment against an unlicensed contractor for unpaid fines and costs have priority above any and all other judgments that may exist against that unlicensed contractor. The department does not have jurisdiction to determine the priority of civil claims and judgments, as such jurisdiction lies exclusively with the judicial branch.

OPPAGA Comment

We do not presuppose any department authority regarding judicial matters but rather conclude that the department, in its efforts to pursue the payment of fines, could take steps to ensure that it seeks payment of fines only after homeowners have been compensated.

As noted in the report, the department participates in joint enforcement sweeps and stings with law enforcement personnel. During the current fiscal year we have already increased by over five times the number of sweeps in which we have worked in cooperation with law enforcement personnel. We will continue to work to increase these joint efforts. Additionally, confidential information between agencies is able to be shared pursuant to statute, and is shared by law enforcement agencies and the department to combat illegal activity. While the department cannot seek criminal sanctions against unlicensed contractors, the department, pursuant to section 455.2277, Florida Statutes, reports any criminal violations relating to the practice of contracting to the proper prosecuting authorities.

Status of Corrective Actions, September 2008:

The Department evaluated and restructured the ULA unit within its Legal Section to increase prosecutorial efficiency, including the addition of two law clerks and a part-time OPS attorney position. Additional improvements to the Department's efforts to combat ULA include: (1) revision of the notice to cease and desist unlicensed activity in order to allow the Department better enforcement of its notices through injunctive relief in Circuit Court and an improved means of identification of the unlicensed practitioner; (2) implementation of enforcement proceedings in Circuit Court of ULA multiple offenders, including the development of a plan to target additional ULA “worst offenders;” (3) development of a ULA website (on-going) to provide up-to-date access for the public to a listing of “worst offenders” in order to better protect the health, safety, and welfare of Florida citizens; (4) preparation for submission to outsourced collection (on-going) of fines and costs ordered in ULA cases; and, (5) revision, drafting, and implementation of

Department of Business and Professional Regulation
Status of Corrective Actions
OPPAGA Report No. 08-21
Several Steps Could Be Taken to Improve the
Construction Complaint Process and Increase Homeowner Protection

ULA rules to provide a better structure of fines based upon consumer harm, the number of cases against an offender, and prior ULA activity against the offender (on-going).

The Department continues to work cooperatively with law enforcement. From the period of July 1, 2008 to October 3, 2008, the Department has conducted 40 unlicensed construction-related sweeps throughout Florida. Nine of these operations involved law enforcement. During this same period, the Department also conducted seven stings with law enforcement targeting unlicensed construction contractors in different locations. The Department is currently planning a coordinated action statewide involving law enforcement.