

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND
MOBILE HOMES

IN RE PETITION FOR DECLARATORY STATEMENT

DS 2004-026

Docket No. 2004040806

Nilda C. Hernandez, Unit Owner,
Condominium Association of Plaza Towers North, Inc.

DECLARATORY STATEMENT

Nilda C. Hernandez (Hernandez), petitioner and unit owner, filed a petition for declaratory statement requesting an opinion as to whether the Condominium Association of Plaza Towers North, Inc. may compel a unit owner to provide a duplicate key to the owner's unit under section 718.111(5), Florida Statutes, for the board's unilateral access to the unit.

PRELIMINARY STATEMENT

On June 28, 2004, the Division received a petition for declaratory statement from Hernandez. Notice of receipt of the petition was published in Florida Administrative Weekly on September 14, 2004. No hearing was requested or held.

STATEMENTS OF FACT

The following findings of fact are based on information submitted by Hernandez. The Division takes no position as to the accuracy of the facts, and merely accepts them as submitted for purposes of this final order.

1. Hernandez is a unit owner of the Condominium Association of Plaza Towers North, Inc. (Plaza Towers North), a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.

2. Plaza Towers North wrote Hernandez a letter dated February 27, 2004, informing Hernandez of the amendment to its Declaration requiring unit owners to provide Plaza Towers North with keys to their units and requesting Hernandez to ensure that the office had keys to Hernandez's unit. The letter also indicated that keys are kept in a secure location that Hernandez could inspect. Additionally, the letter stated that if entry into Hernandez's were required, two board members would be present to protect her property.

3. Further, the letter included a copy of the relevant amendment to the declaration, which provides the following:

W. The Association shall have the right to require all unit owners to furnish the Association with functioning keys to the unit, by which keys the Association may gain entry to attend to the requirements of Section 718.111(5), Florida Statutes. In the event a unit owner should fail to provide such keys the Association may, at its discretion, replace the locks, without notice, and assess the unit owner for the expense of same as it would for any maintenance assessment as provided herein, and such expenses shall be collectible as any other assessment such that the Association shall have a lien against each unit for such purpose, as provided in the Declaration with all collection and recovery entitlements therein provided.

4. Hernandez's petition did not request the declaratory statement to address the validity of the assessment/lien portion of the amendment; therefore, it is beyond the scope of this declaratory statement.¹

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

2. Hernandez has standing to seek this declaratory statement.

3. Section 718.111(5), Florida Statutes (emphasis added), provides:

The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.

4. Thus, section 718.111(5), Florida Statutes, gives an association a right of access to individually owned units when needed for the maintenance of the common elements or when needed to prevent damage to common elements or other units. An association's right of access ensures that it has the means to perform its statutory functions of maintaining, repairing, and replacing the common elements. See §§ 718.111(4) and 718.113(1), Fla. Stat.

5. According to the plain language of section 718.111(5), Florida Statutes, the statutory right of access is broad and "irrevocable." The provision does not limit the right of access to emergency situations, but instead allows the association to exercise it "when necessary." In fact, arbitration decisions have

¹ See Elbadramany v. Ocean Seven Condo. Ass'n, Inc., 461 So. 2d 1001 (Fla. 5th DCA 1984) (A fine is not a common expense and cannot be a lien against a unit under section 718.116, Florida Statutes.).

upheld an association's exercise of its broad right of access in a variety of circumstances. See Carmel by the Lake Condo. Ass'n, Inc. v. Mullin, Arb. Case No. 95-0437, Summary Final Order (Jan. 31, 1996) (upholding association's right to enter unit to perform a piping project); Vill. on the Green Condo. II Ass'n, Inc. v. Knaus, Arb. Case No. 93-0388, Final Order (Apr. 7, 1995) (upholding association's right to enter the unit for pest control services); 1800 Atlantic Condo. Ass'n, Inc. v. Golan, Arb. Case No. 94-0134, Final Order (Sept. 17, 1994) (upholding association's right of access in order to inspect/repair water meter).

6. The amendment to the Plaza Towers North declaration quoted above requires each unit owner to provide the association with a key to the owner's unit. This key requirement implements the association's right of entry under section 718.111(5), Florida Statutes. "Arbitration decisions have consistently upheld the ability of associations to require keys of their members." Banana Bay Condo. Ass'n, Inc. v. Valdés, Arb. Case No. 99-0463, Order Granting Motion for Temporary Injunction (Apr. 29, 1999). See also, The Beaches of Longboat Key-South Owners Ass'n, Inc. v. Goldreyer, Arb. Case No. 96-0158, Partial Summary Final Order (Sept. 9, 1996) (upholding association's right to require an owner to disclose security alarm code to ensure its right of access).

7. Because section 718.111(5), Florida Statutes, provides an association with a broad right of access and the requirement to provide the association with a key implements that statutory right of access, the requirement in the amendment to the declaration providing that a unit owner must furnish the association with duplicate keys is valid.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that the Condominium Association of Plaza Towers North, Inc. may compel a unit owner to provide a duplicate key to the owner's unit under section 718.111(5), Florida Statutes, for the board's unilateral access to the unit.

DONE and **ORDERED** this 11th day of October, 2004.



MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Land Sales, Condominiums,
and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Nilda C. Hernandez, Port Liberte Condominiums, 200 West Shearwater Court #31, Jersey City, New Jersey 07305, this 11th day of October, 2004.


ROBIN MCDANIEL, Division Clerk

Copies furnished to:

Michael T. Cochran, Director
Janis Sue Richardson, Chief Assistant General Counsel