

Final Order No. BPR-2005-02777 Date: 5-26-05
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Sarah Wachman

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2005016727

WILLIAM A. GRUBBS,

Petitioner

DS 2005-013

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to section 120.565, Florida Statutes.

STATEMENT OF FACTS

The following facts are based on information submitted by the Petitioner. The Division takes no position as to the accuracy or validity of the facts, but merely accepts them as submitted for purposes of this declaratory statement. The Division reviewed a complete copy of the Association's Amended Articles of Incorporation, Amended Declaration of Condominium, and Amended By-Laws, which were recorded January 23, 2002. A hearing was not requested or held.

1. On March 29, 2005, the Division received a Petition for Declaratory Statement from Mr. William A. Grubbs, (Grubbs) who is a unit owner of Sandpiper Village Condominium and a member of the Sandpiper Village Condominium

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Association, Inc. The petition asks whether the condominium documents may prohibit multiple owners of a single unit from running for the board or from sitting on the board simultaneously.

2. The Sandpiper Village Condominium Association, Inc., (Sandpiper) is the condominium association that operates the Sandpiper Village, a condominium located in Destin, Florida.

3. On March 30, 2005, the Division requested additional information from the Grubbs and copies of the petition were sent to the Joint Administrative Procedures Committee and to the association. Notice of the petition was published in Florida Administrative Weekly on April 8, 2005.

4. On April 19, 2005, the association submitted its response to the petition. The association argues that the issue is not one of statutory application but strictly an interpretation of ambiguous declaration and bylaw provisions, which ambiguity prevents the Division from issuing a declaratory statement. Peck Plaza Condo. v. Div. of Fla. Land Sales, and Condo., 371 So. 2d 152 (Fla. 1st DCA 1979). The association proffers this ambiguity: (1) "a co-owner with any board member of any unit is not eligible to serve simultaneously on the board with that person"; or (2) "each unit is considered separately and a co-owner of a unit with a board member who owns other units is eligible to serve simultaneously on the board with that person." The association further asserts that the facts are not fully presented because while two board members are co-owners of a unit, one of them also owns another unit outright. Therefore, the restriction does not apply to the case in question.

5. Grubbs, is a “unit owner” as that term is defined by section 718.103(28), Florida Statutes.
6. Sandpiper Village Condominium Association, Inc., is an “association” as that term is defined by section 718.103(2), Florida Statutes.
7. At a recent meeting to elect members to the association’s board of directors, an owner ran for election to a position on the board of directors while another owner *of the same unit*¹ was already currently serving as a director.
8. Article 14.3 of the Sandpiper’s Amended Declaration of Condominium with emphasis added provides:

Board Eligibility. No person who is not the Owner of a Condominium Unit shall be eligible for election to the Board of Directors of the Association. Multiple owners of a single Condominium Unit shall not serve simultaneously on the Board of Directors.

9. Section 3.1 of the association’s Amended By-Laws states in relevant part:
- No more than one (1) natural person from each unit shall be eligible for election to membership on the Board of Directors or serve on the Board.
10. Grubbs provided a copy of a letter from the association’s attorney dated November 4, 2004, wherein the attorney stated that “[t]he relevant provision from Section 3.1 of the By-Laws is capable of more than one interpretation.” Because of this ambiguity in the relevant provision of the association’s bylaws, the association’s attorney opined that, “all owners in Sandpiper Village...are eligible to offer themselves as candidates for election to the board of directors” regardless of co-ownership status.

¹ According to the association, this candidate also owns another unit with no shared interest with the sitting board member. (Sandpiper’s Response at 3)

11. Grubbs requests a declaratory statement clarifying sections 718.112(2)(d)1 and 3, Florida Statutes, and in explanation states “[t]here appears to be a conflict between sections of Sandpiper Village’s By-Laws [section 3.1] and Declaration of Condominium [section 14.3] and F.S. 718.112.” At issue is whether a condominium declaration prohibiting multiple owners of a single unit from simultaneously serving on the board of directors conflicts with section 718.112(2)(d), Florida Statutes.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 718.501, Florida Statutes.
2. Grubbs, a unit owner and association member, is a substantially affected person within the meaning and intent of section 120.565, Florida Statutes, and has standing to seek this declaratory statement.
3. Grubbs seeks a declaratory statement as to the relationship between sections 718.112(2)(d)1, and 718.112(2)(d)3, Florida Statutes, and restrictive provisions of the association’s By-Laws and Declaration.
4. Section 718.112(2)(d), Florida Statutes, provides in relevant part:
 1. ...**Any unit owner** desiring to be a candidate for board membership shall comply with subparagraph 3....
 - * * *
 3. ...**Any unit owner** or other eligible person desiring to be a candidate for the board must give written notice to the association not less than 40 days before a scheduled election.... (emphasis added)
5. Condominiums are created and governed by statute. See, e.g., Suntime

Condo. Ass’n, Inc., v. Division of Fla. Land Sales and Condo., Dep’t of Bus. Reg., 463

So. 2d 314 (Fla. 1st DCA 1984). In Florida, the governing statutes are in chapter 718, which is known as the Condominium Act. Section 718.111(2), Florida Statutes, outlines the powers and duties of the association as “those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws....”

6. The Division has previously interpreted the “any unit owner” language from sections 718.112(2)(d)1 and 3, Florida Statutes. See In re Pet. for Declaratory Statement Hollybrook Golf and Tennis Club Condo., Inc., Case No. 96L-0189 (Ellzey 9/18/96)(declaring that section 718.112(2)(d)3, Florida Statutes (1995) means that every unit owner has a right to be a candidate for a position on the board of directors despite residency requirements in the association’s bylaws); In re Pet. for Arb. Schultz v. La Costa Beach Club Resort Condo. Ass’n, Inc., Case No. 2003-08-3347 (Scheuerman Nov. 21, 2003)(finding that “[t]he statute presently contains no facial qualifications on the right of an owner to run for the board” so “any unit owner is eligible to continue to sit on the board, once duly elected, regardless of the status of an alleged delinquency in the payment of assessments” despite provisions in the bylaws requiring removal for nonpayment).

7. Based on this same reasoning, the Division, in La Costa Beach Club Resort, noted that “there is support for the proposition that a bylaw prohibiting more than one owner of a unit owned by more than one person to sit on the board is invalid.” (Id. at note 2).

8. The language in section 718.112(2)(d)1, Florida Statutes, concerning other eligible individuals is inapplicable to unit owners. The statute provides unit owners with a right to run for election on their association's board of directors.

9. Therefore, the prohibition against more than one unit owner of a single unit serving on the Sandpiper's board of directors, as set forth in the association's Declaration, article 14.3, and bylaws, section 3.1, conflicts with section 718.112(2)(d)1 and 3, Florida Statutes, which permits any unit owner to run for the board of directors.

For the reasons stated above it is hereby:

DECLARED that the Sandpiper Village Condominium declaration and bylaws prohibiting multiple owners of a single unit from simultaneously serving on the board of directors conflicts with section 718.112(2)(d), Florida Statutes.

DONE and ORDERED this 20th day of May, 2005, at
Tallahassee, Leon County, Florida.




MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominiums, and Mobile Homes
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 Mr. William A. Grubbs, 765 Sandpiper Drive, Miramar Beach, FL 32550; and Raymond F. Newman, Jr., Attorney for Association, Becker and Poliakoff, P.A., 348 Miracle Strip Parkway S.W., Suite 7, Ft. Walton Beach, FL 32548 on this 31st day of May, 2005.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Raylene Huls-Strickler,
Assistant General Counsel