

Department of Business and Professional Regulation  
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By: Brandon M. Nichol

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. 2005030000

NICHOLAS P. KARAMESSINIS, Unit Owner,  
Pelican Bay Yacht Club Condominium, Building A, Inc.

**DS 2005-028**

DECLARATORY STATEMENT

Nicholas P. Karamessinis (Karamessinis), Petitioner, filed a Petition for Declaratory Statement requesting an opinion as to whether under Florida Administrative Code Rule 61B-23.0021(8) and (10), the management company for Pelican Bay Yacht Club Condominium (Pelican Bay), after receiving the outer envelopes containing ballots for the election at the annual meeting, may: (a) contact unit owners and permit unit owners to correct deficiencies, such as signing the outer envelope; (b) return the envelope to the owner for signature; and (c) verify the outer envelopes at the meeting before giving the verified envelopes to the committee to count the ballots.

PRELIMINARY STATEMENT

On June 3, 2005, the Division received a petition for declaratory statement from Karamessinis, unit owner. Notice of receipt of the petition was published in Florida Administrative Weekly on June 17, 2005. The 90 days for the Division to

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respond to the petition was stayed while the petitioner provided additional information. No hearing was requested or held.

### FINDINGS OF FACT

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

1. Karamessinis is a unit owner of Pelican Bay, a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.
2. In March 2005, the Pelican Bay board secretary distributed election procedures to the management company, the candidates, and the impartial committee in preparation for the upcoming board election. The election procedures at issue in this proceeding are listed below:

Ballots will be received by Resource Management up to a final call for ballots at the annual association meeting on Monday March 28, 2005. Ballots will be submitted in the gray envelopes provided to unit owners and will not be opened until the annual meeting. If the information on the gray envelope indicates the ballot could not be counted, Resource Management will contact the unit owner and advise the unit owner how the deficiency can be corrected, but ballots will be retained by Resource Management unless they are unsigned, in which case they will be returned for a signature. If a Designated Voting Certificate is required for a ballot to be counted, Resources will accept submission of the Designated Voting Certificate, but not ballots, by facsimile transmission.

On March 28, 2005 at the annual meeting Resource Management will verify the voter information on the gray envelopes. The gray envelopes will then be given to the Canvassing Committee which will open those that are verified and properly signed and separate them from the brown envelopes containing the ballots in order to maintain a secret ballot.

3. Karamessinis questioned in writing sent to the secretary of the board whether the election procedures complied with rule 61B-23.0021, Florida

Administrative Code. Karamessinis wondered whether having the management company verify and check the outer envelope rather than the impartial committee violated rule 61B-23.0021(10), Florida Administrative Code. Also, Karamessinis questioned whether allowing unit owners to correct deficiencies in the outer envelope conflicted with rule 61B-23.0021(8), Florida Administrative Code. Further, Karamessinis stated that the election procedures would permit “the management company, were they invested in any particular candidate or group of candidates, to selectively correct or repair errors, and privately.”

4. In response, Doug MacGregor (MacGregor), board secretary, sent a memorandum via e-mail to the candidates explaining how he thought the election procedures were in compliance. MacGregor reasoned that the outer envelope is not the ballot, and a change in the outer envelope would not constitute rescinding or changing the ballot. Also, MacGregor stated that assistance by the management company in properly completing the outer envelope does not constitute verification of the outer envelope. He reasoned that the term “verify” as used in the rule “means to check the signature and unit identification on the outer envelope against the list of qualified voters and then check the voter off on the list as having voted.” Then MacGregor stated that the Canvassing Committee, rather than the management company would, “check the signature and unit identification on the outer envelope against the list of qualified voters and then check the voter off on the list as having voted. . . .” Further, MacGregor stated that the management company would not be able to alter the election by

choosing which outer envelope deficiencies to correct since the management company would inform him of every deficiency.

5. After further correspondence on the subject from Karamessinis, the president of the Pelican Bay board called Karamessinis and stated that the portion of the procedures allowing the return of unsigned outer envelopes would not be utilized. Instead, unit owners would be notified and would be allowed to sign the outer envelopes in the management office.

6. In his petition Karamessinis states that “[n]o written revision of these election procedures has been received thus these same, pre-meeting procedures, overall, would likely be used in future elections.”

7. Karamessinis does not dispute the election procedures on the night of the March 2005 annual meeting. However, he seeks a declaratory statement regarding whether the election procedures as outlined above are in compliance with rule 61B-23.0021, Florida Administrative Code.

8. Section 5.2 of Pelican Bay’s Articles of Incorporation provide that “Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the Bylaws.” Section 10 of the Pelican Bay Bylaws provides in part the following:

Voting. At every meeting of the members, the owner or owners of each unit, or combination of units, either in person or by proxy, shall have the right to cast one vote as set forth in the Declaration. The vote of the majority of those present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute, or of the Declaration of Condominium, or of the Articles of Incorporation, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control.

## CONCLUSIONS OF LAW

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

2. Karamessinis has standing to seek this declaratory statement.

3. In 1991, the Condominium Study Commission prompted the legislature to give the Division authority to promulgate rules to ensure the protections of democratic elections of condominium association board members.

The Condominium Study Commission's Final Report found:

One of the most compelling issues discussed at all public hearings conducted by the Commission was the sense of alienation many unit owners feel within their condominium associations. This sense of alienation occurs because the current method of electing directors by proxies does not afford the unit owners the protections of democratic elections. The Commission believes democratic elections are essential in fostering a sense of community within the thousands of condominium associations in the State.

4. Section 718.112(2)(d)3, Florida Statutes, currently provides in part the following:

The members of the board shall be elected by written ballot or voting machine. . . . The division shall by rule establish voting procedures consistent with the provisions contained herein, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. . . . A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot.

5. Section 101.051, Florida Statutes, states that a person "who requires assistance to vote by reason of blindness, disability, or inability to read or write may request" assistance.

6. Rule 61B-23.0021 provides in part (emphasis added):

(8) In accordance with the requirements of Section 718.112(2)(d), Florida Statutes, the association shall mail or deliver to the eligible voters at the addresses listed in the official records a second notice of the election, together with a ballot and any information sheets timely submitted by the candidates. The association shall mail or deliver the second notice no less than 14 days and no more than 34 days prior to the election. The second notice and accompanying documents shall not contain any communication by the board that endorses, disapproves, or otherwise comments on any candidate. Accompanying the ballot shall be an outer envelope addressed to the person or entity authorized to receive the ballots and a smaller inner envelope in which the ballot shall be placed. The exterior of the outer envelope shall indicate the name of the voter, and the unit or unit numbers being voted, and shall contain a signature space for the voter. Once the ballot is filled out, the voter shall place the completed ballot in the inner smaller envelope and seal the envelope. The inner envelope shall be placed within the outer larger envelope, and the outer envelope shall then be sealed. Each inner envelope shall contain only one ballot, but if a person is entitled to cast more than one ballot, the separate inner envelopes required may be enclosed within a single outer envelope. The voter shall sign the exterior of the outer envelope in the space provided for such signature. The envelope shall either be mailed or hand delivered to the association. Upon receipt by the association, no ballot may be rescinded or changed.

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(10) Envelopes containing ballots received by the association shall be retained and collected by the association and shall not be opened except in the manner and at the time provided herein.

(a) Any envelopes containing ballots shall be collected by the association and shall be transported to the location of the duly called meeting of the unit owners. The association shall have available at the meeting additional blank ballots for distribution to the eligible voters who have not cast their votes. Each ballot distributed at the meeting shall be placed in an inner and outer envelope in the manner provided in subsection (8) of this rule. Each envelope and ballot shall be handled in the following manner. As the first order of business, ballots not yet cast shall be collected. The ballots and envelopes shall then be handled as stated below by an impartial committee as defined in paragraph (b) below appointed by the board. The business of the meeting may continue during this process. The signature and unit identification on the outer envelope shall be checked against a list of qualified voters, unless previously validated as provided in paragraph (b) below. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted. The voters shall be checked off on the list as having voted. Then, in the presence of any unit owners in

attendance, and regardless of whether a quorum is present, all inner envelopes shall be first removed from the outer envelopes and shall be placed into a receptacle. Upon the commencement of the opening of the outer envelopes, the polls shall be closed, and no more ballots shall be accepted. The inner envelopes shall then be opened and the ballots shall be removed and counted in the presence of the unit owners. Any inner envelope containing more than one ballot shall be marked "Disregarded", or with words of similar import, and any ballots contained therein shall not be counted. All envelopes and ballots, whether disregarded or not, shall be retained with the official records of the association.

(b) Any association desiring to verify outer envelope information in advance of the meeting may do so as provided herein. An impartial committee designated by the board may, at a meeting noticed in the manner required for the noticing of board meetings, which shall be open to all unit owners and which shall be held on the date of the election, proceed as follows. For purposes of this rule, "impartial" shall mean a committee whose members do not include any of the following or their spouses:

1. Current board members;
2. Officers; and
3. Candidates for the board.

At the committee meeting, the signature and unit identification on the outer envelope shall be checked against the list of qualified voters. The voters shall be checked off on the list as having voted. Any exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted.

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(11) Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write, may request the assistance of a member of the board of administration or other unit owner to assist in casting his vote. If the election is by voting machine, any such voter, before retiring to the voting booth, may have a member of the board of administration or other unit owner or representative, without suggestion or interference, identify the specific vacancy or vacancies and the candidates for each. If a voter requests the aid of any such individual, the two shall retire to the voting booth for the purpose of casting the vote according to the voter's choice.

7. Pursuant to rule 61B-23.0021(8) and (10), Florida Administrative

Code, the association is to collect, hold, and retain unit owner ballots cast before

the annual meeting and the ballots' outer envelopes, a duty which the association can assign to its management company. However, only the impartial committee appointed by the board may verify the outer envelopes at the annual meeting or before the annual meeting but on the same day as the annual meeting pursuant to rule 61B-23.0021(10)(a) and (b), Florida Administrative Code.

8. The verification process by the impartial committee includes verifying several pieces of information on the outer envelopes containing the secret ballots. In addition to comparing the signature and unit identification on the outer envelope against the list of qualified voters, "[a]ny exterior envelope not signed by the eligible voter shall be marked "Disregarded" or with words of similar import, and any ballots contained therein shall not be counted." Thus, according to the plain meaning of the above rule, verification of the outer envelopes includes checking to see if the outer envelope has a signature and all necessary information, and only an impartial committee (not a management company who must answer to the elected board members) may verify the outer envelopes.

9. While a unit owner may seek assistance due to disability or inability to read or write as stated in rule 61B-23.0021(11), Florida Administrative Code, the Pelican Bay election procedures go beyond assisting to include verification of the outer envelopes by the management company. Instead of assisting a unit owner in filling out the ballot and outer envelope upon the unit owner's request pursuant to rule 61B-23.0021(11), Florida Administrative Code, the management company verifies that the outer envelope is signed and includes all the necessary information. If the outer envelope is insufficient so that the enclosed ballot could



not be counted at the annual meeting, the management company contacts the unit owner so the unit owner can rectify the outer envelope.

10. By checking to see if the outer envelope contains all of the information necessary for the enclosed secret ballot to be counted, the management company crosses the line into verifying the outer envelope, which only the impartial committee may do pursuant to rule 61B-23.0021, Florida Administrative Code.

11. Further, because only the impartial committee may verify the outer envelopes either at the annual meeting or prior to the meeting but on the day of the annual meeting under rule 61B-23.0021, Florida Administrative Code, the management company may not verify voter information on the outer envelope before giving them to the committee to count the ballots as called for in the Pelican Bay election procedures.<sup>1</sup>

### ORDER

Based upon the findings of fact and conclusions of law, it is declared that under Florida Administrative Code Rule 61B-23.0021(8), (10), and (11), the management company for Pelican Bay, after receiving the outer envelopes containing ballots for the election at the annual meeting: (a) may not contact unit owners and permit the owners to correct deficiencies, such as signing the outer envelope; (b) may not return the envelope to the owner for signature; and (c) may not verify the outer envelopes at the meeting before giving the verified envelopes to the committee to count the ballots.

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<sup>1</sup> This is not intended to address whether an owner may, on his or her own initiative, submit a corrective ballot at or prior to the commencement of the election portion of the annual meeting.



DONE and ORDERED this 24<sup>th</sup> day of July, 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  
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 Nicholas P. Karamessinis, 5950 Pelican Bay Plaza #201, Gulfport, Florida 33707, this 8<sup>th</sup> day of August, 2005.

Robin McDaniel  
ROBIN MCDANIEL, Division Clerk

Copies furnished to:

Pelican Bay Yacht Club Condominium, Building A, Inc.  
Resource Property Management  
5901 Sun Blvd., Suite 200  
St. Petersburg, FL 33715

Janis Sue Richardson,  
Chief Assistant General Counsel