

Department of Business and Professional Regulation
AGENCY CLERK

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By: Brandon M. Nichols

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. 2006009516

JOSEPH WHITE, Unit Owner,
Sea Brook Place Condominium Association, Inc.

DS 2006-010

DECLARATORY STATEMENT

Joseph White (White) filed a Petition for Declaratory Statement requesting an opinion as to whether The Sea Brook Place Condominium Association, Inc. (Sea Brook) may solicit member approval by written agreement under section 718.112(2)(d)4, Florida Statutes, without giving notice to all unit owners and without designating a time in which to vote.

PRELIMINARY STATEMENT

On March 30, 2006, the Division received a petition for declaratory statement from White. On March 21, 2006, the Division sent notice of the petition to the association by mail to its registered agent. The association did not file a response.

On April 20, 2006, the Division received White's amended petition. The Division received the further information that it requested from White on May 4, 2006. Notice of receipt of the petition was published in Florida Administrative Weekly on May 5, 2006. The time in which to answer the petition was stayed

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pending the amended petition and additional information. A hearing was not requested or held.

FINDINGS OF FACT

The following findings of fact are based on information submitted by White. 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. White is a unit owner of Sea Brook, a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.

2. According to White's petition, the Sea Brook board is conducting votes by written agreement without giving notice to all unit owners of the vote.

3. White's petition alleges that "[r]ecently, one homeowner was approached by a Board Member who was waiting for her to return from work, and the homeowner was asked to change her vote on an issue that was done by this solicitation procedure."

4. White's petition explains that the Sea Brook board is relying on a legal opinion in conducting votes by written agreement without notice. The legal opinion is based upon a reading of section 617.0701(4)(a), Florida Statutes, and concludes that "[s]ince the Articles of Incorporation for The Sea Brook Place Condominium Association, Inc., do not provide otherwise, the Association is permitted to follow the above procedure." The above procedure to which the letter refers includes the following quotation from section 617.0701(4)(a), Florida Statutes, with emphasis added:

Unless otherwise provided in the articles of incorporation, action required or permitted by this act to be taken at an annual or special meeting of

members may be taken without a meeting, without prior notice, and without a vote if the action is taken by the members entitled to vote on such action and having not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote on such action were present and voted.

5. Article VIII of Sea Brook's declaration provides the following, in part:

VOTING RIGHTS OF UNIT OWNERS

8.00 The owner or, if there is more than one owner, the owners collectively of a Unit shall be entitled to one (1) vote with respect to all matters on which a vote by Unit Owners is to be taken under the Condominium Documents or the Condominium Act.

6. Section 3.4 of the bylaws of Sea Brook includes the following:

A written notice of all meetings of Members (whether the Annual Members Meeting or a special meeting of the Members) shall be mailed by regular mail or delivered to each Member entitled to vote at the address as it appears in the Address Register not less than fourteen (14) days nor more than thirty (30) days prior to the date of such meeting. The post office certificate of mailing shall be proof of such mailing and shall be retained. The notice shall state the time and place of such meeting and the object for which the meeting is called and shall be signed by an officer of the Condominium Association. Notice of all meetings of Members shall be posted in a conspicuous place on the Condominium Property at least fourteen (14) days prior to any such meeting. Any provision herein to the contrary notwithstanding, notice of any meeting may be waived by any Member before, during or after such meeting, which shall be in writing.

7. Section 3.5 of Sea Brook bylaws contains the following:

The Membership may, at the discretion of the Board, act by written agreement in lieu of a meeting provided that written notice of the matter or matters to be determined by such Members is given to the Membership at the addresses and within the time periods set forth in Section 3.4 hereof or is duly waived in accordance with such Section. Any determination as to the matter or matters to be determined pursuant to such notice by the number of persons that would be able to determine the subject matter at a meeting shall be binding on the Membership, provided a quorum of the Membership responds in writing to such notice in the manner set forth in the notice. Any notice shall set forth a time period during which time a response may be made thereto.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
2. White has standing to seek this declaratory statement.
3. Condominium associations are corporations, incorporated as for profit or not for profit corporations in this state. § 718.111(1), Fla. Stat. Sea Brook is incorporated as a not for profit corporation under chapter 617, Florida Statutes. Art. IX, § 9.00, Sea Brook Declaration. It has the powers and duties set forth in chapter 617, Florida Statutes, to the extent its corporate powers and duties are not restricted or limited by the Condominium Act. § 718.111(2), Fla. Stat.
4. Section 718.112(2)(d)4, Florida Statutes, provides the following (emphasis added):

Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), shall be made at a duly noticed meeting of unit owners and shall be subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any statute that provides for such action.

5. Section 718.112(2)(d)2, Florida Statutes, requires written notice of all unit owner meetings, which notice must include an agenda, to be mailed or hand delivered to all unit owners at least 14 days before the meeting.
6. Section 718.112(2)(d)4, Florida Statutes, permits the use of written agreements if the voting procedure is expressly allowed in the condominium's documents. Here, Sea Brook's bylaws do expressly allow the use of written

agreements in lieu of a meeting, but not in lieu of notice, if the voting procedure is expressly allowed in the condominium documents. Sea Brook's bylaws do expressly allow the use of written agreements that satisfy certain requirements, namely when "written notice of the matter or matters to be determined by such Members is given to the Membership at the addresses and within the time periods set forth in Section 3.4. . . . " § 3.5, Sea Brook Bylaws. The Seabrook bylaws also require that the board notify unit owners of a time period in which to respond. Id.

7. In order to utilize written agreements in lieu of unit owner meeting votes, the Sea Brook board must comply with its bylaw that expressly permits written agreements and section 718.112(2), Florida Statutes. Therefore, if the board wishes to solicit member approval by written agreement, it must give written notice to all unit owners and designate a time in which to respond.

8. Further, section 718.106(2)(d), Florida Statutes, provides that "[m]embership in the association designated in the declaration, with the full voting rights appertaining thereto" is an appurtenance to a unit.

9. Sea Brook's declaration provides that the owner of each unit "shall be entitled to one (1) vote with respect to all matters on which a vote by Unit Owners is to be taken under the Condominium Documents or the Condominium Act." Art. VIII, § 8.00, Sea Brook Declaration.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that The Sea Brook Place Condominium Association, Inc. may solicit unit owners'

approval by written agreement under section 718.112(2)(d)4, Florida Statutes,
after the board provides notice to all unit owners of the matter on which a vote by
written agreement is being taken and the time in which to vote.

DONE and ORDERED this 2nd day of June, 2006, 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 Joseph White, 130 Seabreeze Circle, Jupiter, Florida 33477, and Steve Inglis, Registered Agent for The Sea Brook Place Condominium Association, Inc., 1930 Commerce Lane, Suite 1, Jupiter, Florida 33458, this 2nd^{8th} day of June, 2006.

Robin McDaniel
ROBIN MCDANIEL, Division Clerk

Copies furnished to:

Janis Sue Richardson,
Chief Assistant General Counsel

Mary Ann Campbell, Director and President
The Sea Brook Place Condominium Association, Inc.
134 Seabreeze Circle
Jupiter, FL 33477