

Final Order No. BPR-2006-06338 Date: 8-31-06  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By:

Brandon M. Nuber

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. 2006033578

GEORGE B. MITCHELL, Unit Owner,  
HARBOUR ROYALE CONDOMINIUM ASSOCIATION, INC.

**DS 2006-027**

**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.

**PRELIMINARY STATEMENT**

On June 15, 2006, the Division received a petition for declaratory statement from George B. Mitchell (Mitchell), the owner of a condominium unit in Harbour Royale Condominium Association, Inc. (Harbour Royale) requesting an opinion as to whether under section 718.113(5), Florida Statutes, Harbour Royale Condominium Association, Inc. may amend its rule that has been recorded in the public records to change hurricane shutter specifications without filing the amendment in the public records. Notice of receipt of the petition was published in Florida Administrative Weekly on June 30, 2006. On June 20, 2006, notice of the petition was mailed to the association's registered agent. A second notice was mailed to the association's president in July 2006. The association filed a

request to intervene. The association filed its response on August 3, 2006. No hearing was requested, and none was held.

### FINDINGS OF FACT

The following findings of fact are based on information submitted by Petitioner and Harbour Royale. 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. Mitchell is a "unit owner" as that term is defined in section 718.103(28), Florida Statutes.
2. Harbour Royale is a multicondominium "association," as that term is defined by section 718.103(20), Florida Statutes. Art. IV, § B, Declaration of Condo. Harbour Royale South Condo. Harbour Royale operates the multicondominium as authorized by common law, the corporate laws, the Condominium Act and the governing documents. Art. IX, Declaration; Art. III, Art. of Incorpor.; Art. V, Bylaws.
3. Under the original plan of phase development, Harbour Royale South, North and West were each created as a separate "condominium" as that term is defined by section 718.103(11), Florida Statutes, under the operation of the association. Id.
4. Harbour Royale's condominium declaration incorporates as exhibits the articles of incorporation of the association, the bylaws and the association's rules. Art. IV, §§ D, E, F, Declaration.
5. Mitchell states that the association board adopted hurricane shutter specifications on May 18, 2006 that allows an owner to install either the roll down type of shutter, the fold back type of shutter, or hurricane storm panels. Mitchell states that this conflicts with the specifications adopted under the recorded condominium rules.



6. The restated association rules were recorded in the Public Records of Brevard County, Florida at Official Record Book 3177 and Page 2670 in 1992. Rule XII(3) provides:

Hurricane shutters may be installed either in the roll down type or the fold back type. They must be white in color only. They must meet specifications on file in the Association office. Consult the office before signing any contracts.

7. On May 18, 2006, the board adopted an extensive revision of its hurricane shutter rule that provided greater specificity as to the type of shutters and assembly requirements. The revised rule provides for "roll-up, accordion type or hurricane storm panels." Exhibit A to Rule Adoption Concerning Installation of Hurricane Shutters (May 18, 2006).

8. The declaration authorizes the association to adopt rules related to the use of the common elements. Art. X, § C, Declaration; accord art. V, § K(6), By-laws of Harbour Royale Condo. Ass'n, Inc. (Art. II provides that the association is organized under ch. 711, Fla. Stat., 1963). The board may amend the rules provided "that all such amendments thereto shall be approved by not less than seventy-five (75%) per cent of the votes of the entire membership of the Association before the same shall become effective." Art. IX, § C, Declaration. The board must furnish all owners with a copy of the rules. Id.

9. The declaration provides a method of amending the declaration, the bylaws and the articles of incorporation. Art. IX, Declaration. Amendments to the declaration and articles of incorporation must be recorded in the public records. Art. X, § A(4), Declaration; art. IX, § C, Art. of Incorp. Under section 718.112(1)(b), Florida Statutes, "[n]o amendment to the articles of incorporation or bylaws is valid unless recorded with

identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.”

10. These amendment provisions do not expressly include amendments to the rules. The method of amending the rules is specifically provided in article IX of the declaration. While the first set of regulations is attached to the recorded declaration as an exhibit, and the revised rules in 1992 were recorded, Mitchell indicates that the present rule change to also allow hurricane storm panels was not recorded.

11. The association does not indicate whether the revised hurricane shutter rule was recorded, but does respond that section 718.113(5), Florida Statutes, authorizes the board to enact the rule without a unit owner vote.

#### CONCLUSIONS OF LAW

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

2. Mitchell has standing to seek a declaratory statement.

3. Harbour Royale has standing to intervene.

4. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

5. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over



which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

6. "A declaration of condominium is 'the condominium's constitution'."

Beachwood Villas Condo. v. Poor, 448 So. 2d 1143 (Fla. 4th DCA 1984) (board adopted rules regulating rental of units and use by guests in owner's absence are valid and within scope of board's authority). Often, it contains broad statements of general policy with due notice that the board of directors is empowered to implement these policies and address day-to-day problems in the condominium's operation through the rulemaking process. It would be impossible to list all restrictive uses in a declaration of condominium." Id. at 1145. The articles and bylaws must be consistent with the declaration. S & T Anchorage, Inc. v. Lewis, 575 So. 2d 696 (Fla. 3d DCA 1991) (bylaws and articles must be consistent with declaration, which is the superior document governing the corporation, so homeowner's association could not sell or convey dock area despite a vote of approval under the bylaws), review denied, 626 So. 2d 2107 (Fla. 1993). The rules must be consistent with all of these documents. See Parkway Gardens Condo. Ass'n, Inc. v. Kinser, 536 So. 2d 1076 (Fla. 4th DCA 1988) (declaration controls over more restrictive rule passed by board, which attempts to totally preclude pets and is therefore invalid).

7. Section 718.113(5), Florida Statutes, provides in part:

Each board of administration shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board shall comply with the applicable building

code. Notwithstanding any provision to the contrary in the condominium documents, if approval is required by the documents, a board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the board.

8. The Condominium Act specifically requires the recording of amendments to the declaration and amendments to the bylaws. §§ 718.110(3), 718.112(1)(b), Fla. Stat. (2006). Section 718.113(5), Florida Statutes, does not address recording of rule amendments adopting hurricane shutter specifications. By implication, the Condominium Act does not require rule amendments to be recorded in the public records in order to be valid, although there may be specific instances in which the rules may be unenforceable if not recorded or otherwise distributed to or made available to the owners based upon requirements in the governing documents.

9. The board is required to adopt hurricane shutter specifications. § 718.113(5), Fla. Stat.; see Key West by the Sea Ass'n, Inc., BPR-97-00869; DS96660 (Feb. 24, 1997) (finding that § 718.113(5), Fla. Stat. required condominium boards to adopt hurricane shutter specifications and authorizing a board to install shutters under the statutory procedures regardless of any provision to the contrary in the governing documents).

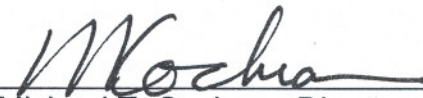
10. Both Mitchell and the board agree that the board has the authority to adopt hurricane shutter specifications regardless of any provision to the contrary in the documents. § 718.113(5), Fla. Stat. The board adopted new hurricane shutter specifications in 2006 that permitted panel type shutters. It has the authority to do so. The question of whether the rule is valid does not require the application of a statute, rule or order to petitioner's particular circumstances; therefore, it is beyond the scope of this statement.



**ORDERED** that Harbour Royale Condominium Association, Inc. may amend its rule setting out hurricane shutter specifications under section 718.113(5), Florida Statutes, without a unit owner vote.

**DONE** this 23<sup>rd</sup> day of August, 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 ORDER DENYING PETITION FOR DECLARATORY STATEMENT 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 George B. Mitchell, 520 Palm Springs Blvd., #309, Indian Harbour Beach, Florida 32937, and Alex C. Costopoulos, Attorney for Harbour Royale

Condominium Association, Inc., Becker & Poliakoff, P.A., 3111 Stirling Road, Fort  
Lauderdale, Florida 33312, this 5th day of September, 2006.

Robin McDaniel  
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson,  
Chief Assistant General Counsel



**DS 2006-027**

George B. Mitchell  
520 Palm Springs Blvd, #309  
Indian Harbour Beach, FL 32937

June 13, 2006

# 2006 03 3578

FILED

Department of Business and Professional Regulation  
Division of Florida Land Sales, Condominiums and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1031

Department of Business and Professional Regulation  
AGENCY CLERK

Dear Sir or Madam:

CLERK *Sarah L. Wachman*  
DATE 6-15-2006

I request a Declaratory Statement on the following matter.

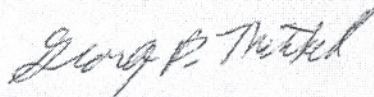
The Board of Directors for the Harbour Royale Condominium Association (HRCA) adopted specifications for hurricane shutters on 18 May 2006 that would allow the installation of shutters that are "either in the roll down type or the fold back type" in accordance with paragraph XII.3 of the HRCA Rules and Regulations as well as "hurricane storm panels" which do not comply with our documents and come in many different configurations.

It is my understanding that Section 718.113(5) of the Florida Statutes gives the board the authority to adopt shutter specifications whether the condominium documents permit hurricane shutters or not. However, I did not think the statute gives the board the authority to adopt specifications that are in violation of shutter requirements in the formal condominium documents.

Attached are copies of the relevant pages of our Rules and Regulations and the newly adopted Hurricane Shutter Specifications.

I do not request a hearing.

Sincerely,



George B. Mitchell  
Condominium Owner and resident  
HRCA Board Member  
Rules and Regulations Chair

2 Encl

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JUN 20 2006  
DBPR Agency Clerk



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Prepared: Sheila Wohlmann,  
Return HARBOUR ROYALE CONDOMINIUM ASSN., INC.  
510 PALM SPRINGS BLVD.  
INDIAN HARBOUR BEACH, FL 32937 773-8853

RESTATEMENT OF RULES & REGULATIONS

This is your official copy of the Restatement of Rules & Regulations approved 1991-1992 as compiled and recommended by your Board of Directors. They were then submitted to all voting members of the Association and approved by more than 75% of those members. They are official and in effect and supercede prior Exhibits, Rules & Regulations and other promulgations of the Association. They have been recorded in the County of Brevard.

These Rules & Regulations apply to all owners and all tenants. They may be revised or eliminated in the future only with Board approval and a vote of 75% of eligible voters. They apply to all units; North, South, West Building and all common areas of the Harbour Royale Condominium.

We ask for your cooperation and compliance.

A COPY OF THESE RULES & REGULATIONS SHOULD BE KEPT IN EACH CONDOMINIUM UNIT AT ALL TIMES. THIS IS A PART OF YOUR OFFICIAL CONDOMINIUM DOCUMENTS.

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TRUST FUND \$ 7.50 BREVARD CO. FL  
REG FEE 57.00 CLERK CIRCUIT CT.  
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INT TAX % \_\_\_\_\_  
EXCISE TAX \_\_\_\_\_  
SERV CHRG \_\_\_\_\_  
REFUND \_\_\_\_\_

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items, especially fluorescent and incandescent light bulbs, shall be sent through the chutes.

4. No storage of any article is permitted except in your assigned storage bin or your individual unit.

5. Maximum use should be made of electric sink disposals for garbage. If it is necessary to dispose of garbage in the dumpster, it should be placed in a tightly sealed plastic bag.

#### X. OBSTRUCTIONS

1. Sidewalks, entrances, driveways, passageways, vestibules and hallways must not be obstructed in any manner. Small rugs or mats may be placed outside the unit doors but must be maintained in a sanitary condition. No chairs, tables or flower pots are to be placed in corridors or walkways. Decorative plants may be used with Board approval in areas where they in no way block the walkway.

2. Hallways and doorways shall be kept free and clear at all times. No owner shall deposit any object of any kind in any hallway or stairway.

#### XI. DESTRUCTION OF PROPERTY

1. The marking, marring, damaging or destroying of any part of the building will not be tolerated. The cost of any repairs will be assessed against the owner or tenant responsible.

#### XII. EXTERIOR APPEARANCE

1. Changes to the exterior appearance of the building are to be made strictly within the rules and regulations set forth in the Prospectus

2. Sun shades may be installed in a dark fruitwood only.

3. Hurricane shutters may be installed either in the roll down type or the fold back type. They must be white in color only. They must meet specifications on file in the Association Office. Consult the office before signing any



contracts.

4. A screen door or a louvered door may be installed at your unit entrance. Your building manager has the description of the only type permitted.

a. Window coverings visible from the outside are limited to blinds, curtains, drapes or shades normally accepted for intended purpose.

5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any owner on any part of the outside or inside of unit without prior written consent of the Association.

a. No "For Rent" or "For Sale" signs may be displayed on or off the property.

6. No improvement may be constructed on the exterior of the building or the land upon which it is located without the written consent of the Association. This shall include, but not be limited to, any additional buildings, terraces, sidewalks, driveways, walls, fences and shall also include, but not be limited to, any structure attached to or constructed upon the outside roof or exterior of the building, including any awning, window, door, screen, jalousie, wall or other improvement.

7. No exterior paint shall be applied upon any building without the prior written consent of the Association.

8. All trash, garbage or refuse shall be deposited by the residents in a central location provided by the Association, and no trash, garbage, or refuse shall be deposited or be permitted to stand on the exterior of any building or in all halls or stairways. Residents are responsible for clean-up of debris left by tradesmen employed by them.

9. Laundry, rugs and other articles shall be hung indoors.

10. No radio or television antennae or wiring for any purpose may be installed on the exterior of a building without the written consent of the Association.

11. All screens, windows and exterior doors of units



NOTICE TO OWNER RE: Rule Adoption Concerning Installation of Hurricane Shutters

Dear \_\_\_\_\_ Owner:

The Board hereby adopts the following rule concerning the installation of hurricane shutters. In addition to technical requirements attached as Exhibit "A", the following shall apply to all such requests and approvals thereof.

1. The owner in question must submit a detailed plan to the Board, prepared by an architect or engineer licensed to practice in Florida, or the manufacturer or authorized installer of the shutters, showing the exact location of the shutters.
2. The owner shall reimburse the Association for any and all costs incurred in the approval process, regardless of whether the proposed installation of hurricane shutters is approved or not. This would include, but is not limited to attorney fees.
3. The owner in question must agree to execute a document, which will be recorded among the Official Records and which will become part of the title to that unit, which provides that the owner will maintain the hurricane shutters, indemnify and hold the Association harmless from any costs or liability involved in the installation, maintenance or restoration of the hurricane shutters, provides that the Association has the right to demand that the owner maintain and repair the hurricane shutters and the mechanism for operating same, and to restore the area to its original condition in the event that the shutters are ever removed, and provide that, if the owner fails to undertake any of his obligations under the agreement, the owner and his successors in title agree to allow the Association access to the unit for maintenance, repair or restoration, and to pay the costs of that work, including attorney fees if you are required to bring an action to enforce the provisions of the document.

IN WITNESS WHEREOF, the Board has adopted this rule this 18 day of May, 2006, by a vote of 4 to 0.

Harbour Royale ASSOCIATION, INC.  
By: Tim K. [Signature]  
President, HRCA



## EXHIBIT "A"

Hurricane shutters may be installed on the balcony perimeter or directly on the windows or balcony doors. The preferred method for the best protection is directly on the windows and doors. This also eliminates a lot of penetrations in the waterproof deck coating. The shutters may be the roll-up, accordion type or hurricane storm panels.

Balcony perimeters can have either the roll-up, accordion, or the new Fabric type shutter protection. Windows and balcony doors can either have the accordion type; roll-up type or storm panels. The same three types are permitted for application on all other doors and windows in the unit.

The shutters shall be designed to comply with the requirements of the South Florida Building Code established in 2006. **The color of all shutters and storm panels shall be white.** Shutters may be either operated by hand or by an electric motor.

All connections of shutter assemblies to concrete slab and solid grouted masonry walls shall be made with 3/8" minimum diameter carbon steel zinc coated or stainless steel Hilti Kwik Bolt II System expansion anchors set in drilled holes. The anchors shall be embedded 2" in the concrete. Sikaflex Elastomeric Sealant Adhesive shall be used to seal all holes drilled into concrete or masonry and to coat all anchor bolts and washers. Sikaflex ICSL shall be used in all holes drilled in top of floors. Sikaflex shall be used in holes drilled in walls and ceilings. Fasteners in hollow masonry closet walls can be Hilti-Kwik Con II 1/4" diameter x 2 3/4" coated with Sikaflex Ia. Drilled holes may go through reinforcing steel bars.

Bottom track of shutter assemblies shall be raised 0.125 inch above concrete floor to allow for free drainage. At each anchor bolt location, install a 0.125 inch thick square aluminum plate washer between concrete floor and bottom of shutter track. Washer size shall equal to width of bottom shutter track member. This washer shall be thoroughly cleaned and coated with Sikaflex Elastomeric Sealant Adhesive.

**The false panel facing the street to cover the mechanism of the roll-up or the accordion shutters shall be white only.**

Shutters on the perimeter shall be self-supporting and shall not be attached to screen assemblies.

Adopted by HRCA Board of directors 2006 *AKA*  
*5-18-06*