

Department of Business and Professional Regulation  
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By:

*Brandon M. Niche*

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. 2006044670

JAMES M. TAVSS, Community Manager,  
RO-MONT SOUTH EXECUTIVE COUNCIL, INC.

**DS 2006-037**

DECLARATORY STATEMENT

James M. Tavss (Tavss), Community Manager, Petitioner, filed a Petition for Declaratory Statement requesting an opinion as to whether a condominium association may opt out of installing a fire alarm system under section 718.112(2)(l), Florida Statutes (2006).

PRELIMINARY STATEMENT

On August 18, 2006, the Division received a petition for declaratory statement from Tavss. Notice of receipt of the petition was published in Florida Administrative Weekly on September 1, 2006. The Division received the additional information it requested from Tavss on October 19, 2006. The time in which to respond to the petition was stayed while Tavss provided the additionally requested information. No hearing was requested or held.

### FINDINGS OF FACT

The following findings of fact are based on information submitted by Tavss. 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. Tavss is the Community Manager of Ro-Mont South Executive Council, Inc. (Ro-Mont)
2. Ro-Mont is a master association governing a federation of 15 condominium associations within the Ro-Mont South complex. Art. Two(1), Art. of Incorp.
3. Ro-Mont is authorized to contract for management services for the collective associations, collect funds for its operation and maintenance of condominium common facilities of the condominiums, and deal with the developer under the long-term recreational lease. Art. Two, Art. of Incorp. Ro-Mont Executive Council, Inc.
4. Ro-Mont's membership is composed of 15 condominium associations, which operate 15 condominiums within the Ro-Mont South community. Art. Four-Five, Art. of Incorp. The 15 condominium association members are Ro-Mont South Condominiums "A" through "H," "J" through "N," "P" and "Q." The president and vice-president of each association serve on the board as voting members for their respective associations. Id.; art. II, By-Laws of Ro-Mont South Executive Council, Inc. (1998 Revised).
5. All unit owners are mandatory, non-voting members of Ro-Mont. Id., art. I(4), By-Laws. Membership transfers with the transfer of title to the unit. Art.

IV(2), Art. of Incorpor. Ro-Mont does not currently and cannot in the future contain noncondominium members.

6. Ro-Mont's bylaws require it to propose a budget with expenses to be proportionately assessed against the 15 condominium associations. Art. V(10), By-Laws. Assessments are collected to operate Ro-Mont, maintain the recreation areas, the common elements, and the limited common elements of the condominiums that are to be "maintained and repaired by the respective Associations as set forth in the respective Declarations, including landscaping, relandscaping, pool maintenance and repair, painting, roofing, cleaning and such other normal maintenance and repair work as it may be necessary." Id. art. V(10)(h), art. X(4).

7. Common expenses include the operational expenses for Ro-Mont, "the expenses for the maintenance, operation, repair or replacement of the common elements and limited common elements, insurance and extended coverage, and any other expenses designated as common expenses from time to time by the Board." Art. X(4)(a), By-Laws. Ro-Mont assesses each condominium association responsible for the operation of the respective condominium where the expense was incurred. Id. The association then assesses its members according to each unit's percentage share of common expenses under the declaration. Id.

8. Ro-Mont is authorized "[t]o do generally any and all things appropriate and necessary for the welfare, interests and benefits of the members, pursuant to and in accordance with the terms and provisions of the

Articles of Incorporation, and those By-Laws, the Condominium Documents and any statutes and laws of the State of Florida and any other governmental unit or agency; subject to limitations on said authority as may be made by the respective Associations." Art. V(i), By-Laws.

9. Ro-Mont must approve all additions or alterations of the common elements of a condominium in addition to the 75% approval of the unit owners in the condominium in which the addition or alteration is to be made. Art. X(7), By-Laws. Once approved, the unit owners in the condominium are assessed a percentage share of the cost of the improvement in the same percentage as their share of common expenses. Id.

10. The Miami-Dade County Fire Rescue Department has ordered Ro-Mont to install a fire alarm system in each of the 15 condominiums. Pet. at 1-2.

11. Twenty-six of thirty-two unit owners in Ro-Mont South Condominium J, Inc. voted to forego the installation of a fire sprinkler system or other lifesafety system in the condominium in July 2005. The association recorded a Certificate of Compliance with section 718.112, Florida Statutes, attesting to the opt-out vote in the public records on August 3, 2005 at Official Record Book 23640, Page 4370. Pet. (certificate attached). The attorney for condominium J notified Ro-Mont that it had opted out of the lifesafety system installation and advised Ro-Mont that the association was not to be charged for any costs related to the installation. Pet. (exhibit attached: Letter from Eric M. Glaser, Esq. to Charles Otto, Esq. (Aug. 4, 2005).

12. The Declaration of Condominium for Ro-Mont South Condominium J includes the following regarding Ro-Mont:

In order to provide for the unified maintenance and upkeep of the entire development and for the economical discharge of the management and maintenance functions of the common elements and limited common elements of each condominium and of the recreational facilities for the benefit of the Condominium unit owners, the Condominium Association is authorized to and shall together with the other condominium associations of other condominiums in the development and the owner of the fee simple estate in the recreational facilities appoint and/or enter into a contract with any person, firm, corporation or other real estate management agent to provide for the unified and uniform maintenance and repair of the condominium property to the effect that there shall be one general supervising directorate for the maintenance and repair of the condominium properties of all condominiums in the development and the recreational facilities. . . . Any such unified managing agent may be granted any and all powers of the Association which are exercisable by the Board of Directors as provided for in the By-Laws of the Condominium Association, and in accordance therewith. The terms of said contract with any unified managing agent shall conform to the requirement of the By-Laws of the Association in all regards.

Art. XXVIII, Declaration of Condominium Ro-Mont South Condominium J.

13. Ro-Mont Condominium J was created in 1971 and adopted all provisions of the Condominium Act as it existed and as it was amended from time to time. Art. I, Declaration J.

14. Ro-Mont Condominium J consists of 32 units in a two-story garden style building of approximately twenty-feet in height. Letter from Jim Tavss to J. S. Richardson (Oct. 13, 2006).

15. The common expenses for Ro-Mont Condominium J include, but are not limited to, the cost of maintenance and management, property taxes and assessments, insurance, professional services, repair and replacement of the common elements, utilities, reserves, recreational lease expenses, and "other

expenses declared by the directors of the Association to be common expenses.”

Art. XIV, Declaration J.

16. The association is authorized to make material alterations to the common elements upon a 2/3 vote of the unit owners. Art. XIX, Declaration J.

#### CONCLUSIONS OF LAW

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

2. Ro-Mont is a condominium master association. Section 718.103(2), Florida Statutes (2004), provides:

“Association” means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

3. Therefore, to be subject to regulation under chapter 718, Florida Statutes, an association must (1) function like a condominium association in that it must operate real property in which condominium owners have use rights, and (2) have a membership constituency that is (a) exclusively composed of unit owners or their representatives, and (b) mandatory as a condition of condominium ownership. See Downey v. Jungle Den Villas Recreation Ass'n, Inc., 525 So. 2d 438 (Fla. 5th DCA 1988) (applying both the “constituency” and “function” tests to define a master association as a condominium association under the jurisdiction of the chapter 718, Florida Statutes), review denied, 536 So. 2d 244 (Fla. 1988).



4. Ro-Mont is a master condominium association subject to chapter 718, Florida Statutes. It operates and maintains real property in which condominium unit owners have use rights. Ro-Mont has the power to collect assessments and use the proceeds of assessments. Its membership is comprised exclusively of condominium owners and their representatives. Each unit owner is required to be a member of Ro-Mont with his or her membership transferring upon transfer of title to the condominium unit.

5. The question of whether Ro-Mont South Condominium J Association, Inc. may opt-out of the firesafety requirements, is governed by section 718.112(2)(l), Florida Statutes, which was amended in 2003,<sup>1</sup> and which provides in pertinent part:

(l) *Certificate of compliance.*—There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest

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<sup>1</sup> The 2003 amendment applies to Ro-Mont South Condominium J as the declaration has expressly adopted all amendments to the Condominium Act as they are enacted from time to time. Kaufman v. Shere, 347 So. 2d 627 (Fla. 3d DCA 1977).

level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. . . .

§ 718.112(2)(l), Fla. Stat. (emphasis added).

6. The purpose of section 718.112(2)(l), Florida Statutes,<sup>2</sup> is to provide unit owners with "a procedure to exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system." Fla. S. Comm. on Judiciary, Reg'd Indus., Com., Econ. Op., Consumer Servs., CS for CS for CS for SB 59(2003) (Staff Analysis 2) (2003) (Apr. 15, 2003) (available at <http://flsenate.gov>).

7. At the time the legislature considered these amendments, county governments were authorized to enforce the fire protection code adopted by the State Fire Marshall. *Id.* at 7. Because of "the practical limits to retrofitting existing structures, the local fire safety official was authorized to apply the applicable firesafety code to the extent practical to assure a reasonable degree of safety to life and property, or the fire official must fashion a reasonable alternative that affords an equivalent degree of safety." *Id.* Under section 553.895(2), Florida Statutes, any building 3 stories or more must be equipped with a fire sprinkler

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<sup>2</sup> Fla. CS for CS for CS for SB 592, § 5 (2003).



system. Id. Additionally, all "new and existing high-rise buildings must be protected throughout by an approved automatic sprinkler system under the firesafety code. Id. at 8. Condominium associations could rely on a certificate of compliance from a licensed electrical contractor as proof of compliance with the fire safety code. Id.

8. The effect of the amendment on condominium associations and owners was to "exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system, provided that. . . [t]wo-thirds of the unit owners by vote at a noticed meeting or written consent choose to forgo such retrofitting. The vote is effective upon the recording of a certificate attesting to the vote in the public records." Staff Analysis at 11. The economic impact to condominium associations and owners was to exempt them from the cost of retrofitting the condominium buildings. Id. at 14. The impact to the local fire officials was to require them to "determine whether to exempt all condominiums, or unit owners in their jurisdiction from the requirement to retrofit those facilities with fire protection sprinkler systems." Id. at 15.

9. On October 18, 2005, Tavss petitioned the Department of Financial Services for a declaratory statement regarding the opt-out vote by Ro-Mont Condominium J from the lifesafety system installation. In re: Pet. Dec. Stmt., Tavss, Ro-Mont So. Exec. Council, Inc., Case No. 83852-05-FM (Dep't Fin. Servs.) (Jan. 10, 2006). The department found that a fire alarm system by itself, without any other life safety system, feature, or attribute, was not an "engineered

life safety system.” Id. at 4. A fire alarm system may be one component of an engineered life safety system, but would not constitute such a system by itself. Ro-Mont Condominium J appealed the declaratory statement, which was affirmed by the Third District Court of Appeal in a per curiam decision. Ro-Mont So. Condo. J, Inc. v. Dep’t of Fin. Servs., Case No. 3D06-303 (Fla. 3d DCA 2006) (aff’d per curiam). See also Biscayne Cove Condo. Ass’n, Inc. v. Biscayne Cove S.E., Inc., 582 So. 2d 806 (Fla. 3d DCA 1991) (holding that developer was not negligent and did not breach implied warranties of fitness and merchantability by failing to install life safety equipment, which included sprinklers, alarms and smoke removal systems, because development permit was grandfathered under county firesafety code and did not apply).

10. Over two-thirds of the owners in Ro-Mont South Condominium J have voted to forego the installation of “a fire sprinkler or other lifesafety system.” The residential condominium buildings are under three stories in height. Therefore, the vote complies with section 718.112(2)(l), Florida Statutes. Ro-Mont may not require Ro-Mont South Condominium J to install a fire sprinkler or a lifesafety system unless otherwise required under the controlling documents.

11. However, Ro-Mont is asking whether it may install a “fire alarm system” and assess each association for the cost of doing so. According to the Department of Financial Services, a fire alarm system is not an “engineered lifesafety system” by itself, but may be one component of such a system. Because the opt-out provision relies upon the terms interpreted by the State Fire Marshall and applied by the local fire officials, section 718.112(2)(l), Florida

Statutes, would permit condominium associations to opt-out of installing a fire sprinkler system or an "engineered life safety system."

12. The Division takes no position on whether Ro-Mont may have authority under its governing documents to install the firesafety retrofits and assess each association for the cost. The application of these contractual provisions is beyond the scope of this proceeding. Additionally, the Division has no authority to declare a document recorded in the public records valid or invalid or to require its removal or amendment.

#### ORDER

Based upon the findings of fact and conclusions of law, it is declared that Ro-Mont South Condominium J Association, Inc. has voted to opt-out of the fire sprinkler and other lifesafety system retrofit under section 718.112(2)(I), Florida Statutes, but may not opt out of the installation of a fire alarm system if the fire alarm system is installed by itself rather than as a component of an engineered lifesafety system.

DONE and ORDERED this 19<sup>th</sup> day of December, 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 32399-2202 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 James Tavss, Ro-Mont Executive Council, Inc., 20314 Northeast 2nd Ave., Miami Gardens, Florida 33179, this 29<sup>th</sup> day of December, 2006.

Robin McDaniel  
ROBIN MCDANIEL, Division Clerk

Copies furnished to:  
Janis Sue Richardson,  
Chief Assistant General Counsel