

Final Order No. BPR-2005-00025 Date: Jan. 4, 2005
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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

DS 2004-033

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2004054845

Schooner Village Condominium Association, Inc.
_____ /

DECLARATORY STATEMENT

Schooner Village Condominium Association, Inc. (Schooner Village), through its agent Mark R. Benson, filed a Petition for Declaratory Statement requesting an opinion as to whether the association may charge a transfer fee for a lease renewal for a seasonal tenant who returns each year under section 718.112(2)(i), Florida Statutes.

STATEMENT OF FACTS

The following facts are based on information submitted by Schooner Village. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this declaratory statement. A hearing was not requested or held.

1. Schooner Village filed its petition with the Division on November 12, 2004. Notice of the petition was published in Florida Administrative Weekly on November 15, 2004. The 90-day time period for the Division to respond to the petition was temporarily stayed while Schooner Village provided further information.

2. Schooner Village is an "association" as that term is defined by section 718.103(2), Florida Statutes, which operates Schooner Village, a condominium.

3. According to the six sample leases provided by Schooner Village, one seasonal tenant leased unit #2A in Schooner Village for a six week time period for the last three years, and another tenant leased unit #2A in Schooner Village for a four week time period for the last three years. The sample leases did not include renewal option provisions. According to the petition, at least one seasonal tenant is returning again to lease the same unit.

4. Assuming the "admin fee" listed on the various sample leases is a transfer fee, the transfer fee was \$30 in 2001 and 2002, while it was \$40 in 2003 and 2004.

5. According to the petition, "the Association documents provide for charging an application fee for tenants and the Association would like to charge the fee for this tenant this year." However, Schooner Village is concerned that the "return of a tenant on a seasonal basis could be considered a lease renewal" subject to section 718.112(2)(i), Florida Statutes.

6. The Schooner Village Declaration provides the following:

17.1 Transfers Subject to Approval.

(b) Lease. No unit owner may dispose of a unit by lease (grant of use for consideration) without approval of the Association. The maximum duration of any lease shall be one year and the minimum is thirty (30) days. Options to renew leases will be allowed, provided they are subject to the lessee being reviewed by the Board of Directors and approved again as a lessee, prior to the exercise of the option to renew.

17.6 Transfer Fee. In connection with the approval of the sale, lease or other transfer of a unit, the Association may charge a fee as preset by the Board of Directors in connection with such approval.

CONCLUSIONS OF LAW

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

2. Schooner Village has standing to seek this declaratory statement.

3. Section 718.112(2)(i), Florida Statutes, provides, in part (emphasis added):

No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made.

4. Thus, section 718.112(2)(i), Florida Statutes, permits associations to charge a fee for approving the transfer of an interest in a condominium if the condominium documents require the association to approve such transfers and the documents provide for the levy of a transfer fee. The section does not require a fee, but does set a maximum of \$100 for a transfer fee. However, the section states that a transfer fee cannot be charged in connection with a lease/sublease renewal involving the same lessee/sublessee.

5. The Schooner Village declaration quoted above requires the association to approve transfers of interest in condominium units. Therefore, the first requirement of section 718.112(2)(i) is met. The declaration quoted above also provides for the levy of a transfer fee, so the second requirement of section 718.112(2)(i) is satisfied. The transfer fees charged by Schooner Village disclosed in the sample leases never exceeded \$40, which is below the statutory cap of \$100.

6. The only question then is whether the seasonal leases involving the same

lessees and the same unit are lease renewals or new leases. If the subsequent leases are renewal leases, then they fall within the prohibition of charging a transfer fee under section 718.112(2)(i), Florida Statutes.

7. “A lease renewal involves a continuation of the landlord-tenant relationship on the terms specified in the option to renew, or if no terms are specified, then ‘a lease renewal connotes a continuation of the landlord-tenant relationship on the same terms as the original lease.’” Woodward Tire Co. v. Hartley Realty, Inc., 596 So. 2d 1114, 1116 (Fla. 3d DCA 1992). Further, “the word ‘renewal’ . . . imports the giving of a new lease like the old one, with the same terms, stipulations, at the same rent, and with all the essential covenants.” Strano v. Reisinger Real Estate, Inc., 534 So. 2d, 1214, 1215 (Fla. 3d 1988) (quoting G. Thompson, 3 Thompson on Real Property, § 1120, 412-13 (1980)).

8. Thus, one must compare the subsequent lease with the prior lease on a case-by-case basis. If the subsequent lease and the prior lease continue the same landlord-tenant relationship and contain the same terms, then the subsequent lease is a renewal lease rather than a separate new lease. If the terms vary substantially, the subsequent lease would clearly constitute a new lease. The terms of a lease are those to which the parties agree, and “a lease generally must contain the following essential terms: (1) the names of the parties; (2) a description of the demised realty; (3) a statement of the term of the lease; (4) the rent or other consideration.” 34 Fla. Jur. 2d Landlord and Tenant § 32. Variations on the spectrum between leases with identical terms and leases with substantially different terms require an interpretation of contracts, which is beyond the scope of a Division declaratory statement.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that the association must determine on a case-by-case basis whether a subsequent lease for a seasonal tenant is a renewal of a prior lease or whether it is a new lease. If the subsequent lease is a renewal of a lease with the same lessee the association may not charge a transfer fee pursuant to section 718.112(2)(i), Florida Statutes.

DONE and ORDERED this 29th day of December, 2007.4





MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominiums, and Mobile Homes
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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 Mark R. Benson, Schooner Village Condominium Association, Inc., C/O Benson's, Inc. 12650 Whitehall Drive, Fort Meyers, FL 33907-3619 on this 6th day of January, 2005.


Robin McDaniel, Division Clerk

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