

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES  
725 SOUTH BRONOUGH STREET - THE JOHNS BUILDING  
TALLAHASSEE, FLORIDA 32399-1030

DATE 3/1/90

S. Black

In re: Petition for Declaratory  
Statement of Katherine Thibault;  
Kingsley at Century Village Condominium  
III Association, Inc..

DOCKET NO. DS89483  
CASE NO. 89L-211

DECLARATORY STATEMENT

This Declaratory Statement is rendered by the Director of the Division of Florida Land Sales, Condominiums and Mobile Homes, Department of Business Regulation, pursuant to Sections 718.501 and 120.565, Florida Statutes.

FINDINGS OF FACT

1. On or about December 1, 1989, the Division received a petition for declaratory statement from Katherine M. Thibault, unit owner and member in the Kingsley at Century Village Condominium III, Association, Inc.

2. Pursuant to Section 718.501, Florida Statutes, the Division notified the condominium association for Kingsley at Century Village Condominium III, of the pendency of the petition for declaratory statement. The condominium association failed to intervene in his matter.

3. Kingsley at Century Village Condominium III, consists of three (3) buildings identified as Buildings "F", "G" and "H". There are seventy-two (72) units in Buildings "G" and "H" and fifty-six (56) units in Building "F".

4. Kingsley at Century Village Condominium III, Association, Inc., is the condominium association for Kingsley III, and the members of this association elect its directors by class. Each class is comprised of the members of a particular building.

5. On September 28, 1989, the Association's Board certified the recall of Dominick Pedone, a director chosen to represent the class of owners comprised of Association members owning units in Building "H".

6. The approval for recall, broken down by class, was:

Building "F" = 34 of 56 = 61%;

Building "G" = 60 of 72 = 83%;

Building "H" = 25 of 72 = 34%

119 of 200 votes equalling 59%.

The 119 voting interests approving the recall constituted a majority of the total association voting interests. The 25 approvals in the Building "H" class constitutes less than a majority of the class electing Mr. Pedone.

7. Petitioner requests a declaratory statement on whether the term "all voting interests" as used in section 718.112(2)(k), Florida Statutes, requires a majority of the entire condominium association or a majority of the class of unit owners electing the director to effect a recall of a board member.

### CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to 718.501 and 120.565, Florida Statutes.

2. The Petitioner is substantially affected by the statutory provision cited above and has standing to seek this declaratory statement.

3. Section 718.112(2)(k), Florida Statutes, provides for recall and removal of a director by the vote or agreement of a majority of "all the voting interests."

4. Section 718.111(2), Florida Statutes, states that:

The powers and duties of the association include those set forth in this section and those set forth in the declaration and bylaws and Chapters 607 and 617, Florida Statutes, as applicable, if not inconsistent with this chapter.

Although Chapter 718, Florida Statutes, does not define "all voting interests", the meaning of this term is made clear when examined in connection with the provisions of Section 607.117(3), Florida Statutes, and Article 4, Section 4.3 of the Association's Bylaws.

5. Section 607.117(3), Florida Statutes, sets forth the applicable rule for removing directors:

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to removal of a director or directors so elected, to the vote of the holders of the outstanding shares of the class and not to the vote of the outstanding shares as a whole. [emphasis added]

6. Article 4, Section 4.3 of the Association's Bylaws, which states how votes shall be counted, provides in pertinent part that:

(c.) . . . each director shall be elected by a plurality of votes cast from the building in which he resides . . . . To elect a director, each building must have a quorum present in person or proxy.

7. The language of Section 607.111(2), Florida Statutes, and Article 4, Section 4.3 is consistent with the intent of Section 718.111(2), Florida Statutes, and is therefore applicable in defining the term "all the voting interests" as the term is used in Section 718.112(2)(k), Florida Statutes.

8. Pursuant to Section 718.112(2)(k), Florida Statutes, an Association director in this Condominium can only be removed or recalled when a majority of votes are cast in favor of removal or recall by the members of the class who elected the board member.<sup>1</sup>

9. According to the Petition, board members are elected by a majority of each building. The director of Building "H" was recalled by a majority of the condominium association. Thus, his recall and removal from office violates section 718.112(2)(k), Florida Statutes.

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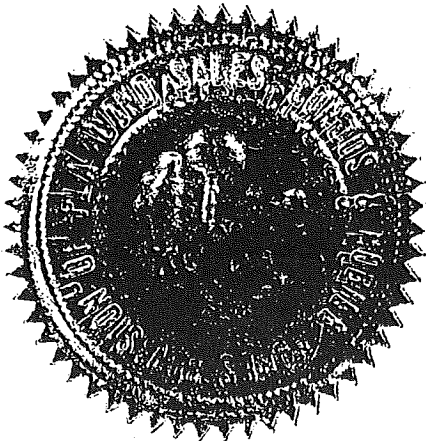
<sup>1</sup>This holding is consistent with the provisions of Rule 23.001(2), Florida Administrative Code, to the effect that only non-developer unit owners may recall non-developer board members and visa versa.

WHEREFORE, the Division declares that application of Section 718.112(2)(k), Florida Statutes, to Kingsley at Century Village Condominium III, entitles the unit owners of Building "H" only to vote on the recall and removal of Dominick Pedone.

RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED 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(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH CONNIE BLACKMAN, CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, WITHIN 30 DAYS OF THE RENDITION OF THIS ORDER.

DONE AND ORDERED this 1st day of March, 1990.



A handwritten signature in black ink, which appears to be "James Kearney", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

JAMES KEARNEY, DIRECTOR  
Department of Business Regulation  
Division of Florida Land Sales,  
Condominiums and Mobile Homes  
725 South Bronough Street  
Tallahassee, Florida 32399-1007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified Mail to Katherine M. Thibault, c/o Louise E. Tudzarov, Sachs and SAX, P.A., Post Office Box 810037, Boca Raton, Florida 33481-0037, this 1st day of March, 1990.

  
CONNIE D. BLACKMAN, DOCKET CLERK

Copies furnished to:

Calvin L. Johnson  
Assistant General Counsel

Kingsley at Century Village Condominium, III