

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
725 SOUTH BRONOUGH STREET - JOHNS BUILDING
TALLAHASSEE, FLORIDA 32399-1007

In re: Petition for Declaratory Statement
Las Casas Owners' Association, Inc.

DOCKET NO. DS89455
Case No. 89L-1589

DIVISION OF FLORIDA
LAND SALES, CONDOMINIUMS
AND MOBILE HOMES

DATE 9/17/90
DOCKET CLERK C. Cannon

DECLARATORY STATEMENT

Petitioner, Las Casas Owners' Association, Inc., seeks a declaratory statement interpreting certain portions of Chapter 718, the Condominium Act, and administrative rules promulgated thereto. Specifically, Petitioner asks what right, if any, the remainderman of a life estate has to exercise the vote of a condominium unit pursuant to Section 718.106(2), Florida Statutes, and Rule 7D-23.002(4), Florida Administrative Code.

The Division makes the following Findings of Fact based on the information submitted by Petitioner.

FINDINGS OF FACT

1. Las Casas Condominium is a condominium as defined by Chapter 718, Florida Statutes and is located in Venice, Sarasota County, Florida.
2. Petitioner, the condominium association, is that body charged with conducting elections pursuant to Chapter 718 for the operation of the condominium association.
3. Eleanor M. Reberger and Herbert S. Reberger are mother and son who took title as grantees of Unit B-5 in Las Casas Condominiums, Section I by deed in the following manner:

"Eleanor M. Reberger as to a Life Estate and Herbert S. Reberger, as to the Remainder."

4. No voting certificate or other agreement designating who is authorized to exercise the voting rights appurtenant to Unit B-5 have been filed with the condominium association.

5. On June 21, 1989, the association held a special membership meeting. At said meeting the remainderman appeared and alleged that he enjoys a privilege in law to enter upon the life estate to protect his future interest from damage. The remainderman alleges that he should hold the entire vote for Unit B-5.

6. Article VIII of the Las Casas Condominiums declaration provides:

Each of the units shall be entitled to one vote at meetings of the association. In the event of joint ownership of a unit said vote shall be apportioned among the owners or exercised by one of them by agreement with the remainder of said joint owners.

7. Petitioner asks what voting right the remainderman of a life estate has as to a condominium unit pursuant to Section 718.106(2), Florida Statutes and Rule 7D-23.002(4), Florida Administrative Code.

CONCLUSIONS OF LAW

1. The Division of Florida Land Sales, Condominiums and Mobile Homes has jurisdiction herein pursuant to Section 120.565 and Chapter 718, Florida Statutes.

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

3. Section 718.106(2)(d), Florida Statutes, provides:

- (2) There shall pass with the unit, as appurtenances thereto:
- (d) Membership in the association designated in the declaration, with full voting rights appertaining thereto.

Rule 7D-23.002(4), Florida Administrative Code, which was promulgated pursuant to Chapter 718, Florida Statutes, provides:

- (a) No association shall deny or abridge the voting rights appurtenant to a unit. However, the association may place reasonable restrictions on the manner of exercising the right to vote if such restrictions are authorized by the Condominium Act, rules promulgated thereunder, or by other applicable law.

A thing is appurtenant to something else when it is necessarily connected with the use and enjoyment of the latter. Black's Law Dictionary 94 (5th ed. 1979). Thus, the voting rights appurtenant to a condominium unit belong to the association member entitled to the use and enjoyment of the unit.

4. At issue then is whether the voting rights appurtenant to the life estate in Unit B-5 would be abridged if the association allows the remainderman to vote. Pursuant to the above cited statutory and rule provisions, it is contemplated that the condominium association may reasonably restrict the manner in which the voting rights appurtenant to a unit are

exercised. Any restrictions, however, must be authorized by the Condominium Act, rules promulgated thereunder, or by other applicable law. The Condominium Act and the rules promulgated thereunder specifically authorize the use of certain restrictions on the manner in which voting rights are exercised, such as restrictions on the voting certificates and proxies. (See Section 718.112(1)(b)1, Florida Statutes, and Rule 7D-23.002(5), Florida Administrative Code). It is evident that the holder of the life estate in Unit B-5 could authorize another person to exercise her voting rights pursuant to the Condominium Act and the Rules. However, there is no provision in Chapter 718, Florida Statutes, or the rules which explicitly or impliedly authorizes a condominium association to require the holder of the life estate to execute a voting certificate or some other document which reflects the remainderman's future interest. The remainderman's voting rights will not be appurtenant to Unit B-5 until such time that the life estate ends, i.e., the life tenant dies. See generally 22 Fla. Jur. 2d Estates, Powers and Restraints (1980). Thus, any restriction which would require the holder of the life estate to apportion the vote appurtenant to Unit B-5 with the remainderman would be unreasonable, and violative of Rule 7D-23.002(4), Florida Administrative Code.

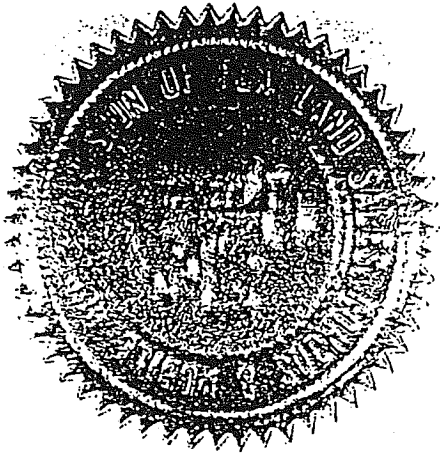
5. Neither is the remainderman authorized to vote pursuant to applicable law. Where property is conveyed by life estate to one individual with a remainder interest in another, the present

interest of the life tenant is paramount to that of the remainderman. Aetna Insurance Co. v. La Gasse, 223 So.2d 727 (Fla. 1969). Further, the life tenant is entitled to the exclusive use and occupancy of the property. Marshall v. Hewitt, 24 So.2d 1, 156 Fla. 645 (Fla. 1945). Thus, the remainderman does not have any voting rights in the condominium unit until the life estate ends.

6. Pursuant to the foregoing discussion, it does not appear that the provision in Article VIII of the Las Casas declaration can be applied to the facts of the petition. The owner of the life estate in Unit B-5 and the owner of the remainder are not joint owners. As stated above, the life estate must end before the remainderman's interest begins. If the Association required an apportionment of the vote appurtenant to Unit B-5 between the life tenant and the remainderman, or an agreement between the two interests pursuant to that provision, it would be an unreasonable restriction on the manner in which the life tenant's voting rights are exercised. The requirement would thus be an abridgment of the life tenant's voting rights in violation of Rule 7D-23.002(4), Florida Administrative Code.

WHEREFORE, the Division declares that absent the express authority of the life tenant, the Las Casas owner's association is not authorized to allow the remainderman to exercise the voting rights appurtenant to unit number B-5.

DONE AND ENTERED this 17th day of September, 1990.



A handwritten signature in black ink, appearing to read "Matthew M. Carter, II".

MATTHEW M. CARTER, II, DIRECTOR
Department of Business Regulation
Division of Florida Land Sales,
Condominiums and Mobile Homes
State of Florida

RIGHT TO APPEAL

THIS 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(d), FLORIDA RULES OF APPELLATE
PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL,
ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH CAROLYN
CANNON, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES,
CONDOMINIUMS AND MOBILE HOMES, WITHIN 30 DAYS OF THE RENDITION
OF THIS ORDER.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been furnished by Certified U.S. Mail to William D. Clark, Secretary/Treasurer of Las Casas Owners' Association, Inc., P.O. Box 473, Venice, Florida 34284-0473, this 17th day of ~~August~~ ^{September}, 1990.



CAROLYN CANNON, Docket Clerk

cc: Alex M. Knight, Chief
Bureau of Condominiums

Kathryn E. Price,
Assistant General Counsel