

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

LAND SALES, CONDOMINIUMS  
AND MOBILE HOMES  
DATE 7/18/91  
DOCKET CLERK C. C. WRIGHT

In re: Petition for Declaratory Statement

Eden Point South Condominium  
Association, Inc.,

DOCKET NO. DS90221

Petitioner.

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FINAL DECLARATORY STATEMENT

COMES NOW, the undersigned as Director of the Division of Florida Land Sales, Condominiums and Mobile Homes, and pursuant to sections 718.501 and 120.565, Florida Statutes, issues this Final Declaratory Statement as follows.

FINDINGS OF FACT

1. On or about July 24, 1990, the Division received the petition for declaratory statement of Eden Point South Condominium Association, Inc., the condominium association responsible for the operation of the Eden Point South Condominium.

2. The declaration of condominium of the Eden Point South Condominium was recorded in the public records on November 5, 1973.

3. The petitioner association seeks a declaratory statement on the issue of whether under Sections 718.111(8),

718.103(26) and 718.104(4)(i), Florida Statutes, a vote of the unit owners, in addition to the affirmative vote of the board of administration, is required for the association to purchase a recreation facilities lease from the landlord. By letter dated November 9, 1990, an ad hoc committee of unit owners within the condominium, represented by counsel, made an appearance in this proceeding and filed certain documents in support of their position that a unit owner vote was required for the purchase.

4. Under section 11 of the articles of incorporation, the association has the power:

c. To acquire and enter into agreements whereby it acquires land, leaseholds, memberships or other possessory or use interests in lands or facilities including but not limited to country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the enjoyment, recreation or other use or benefit of the unit owners. [Emphasis added].

There is no similar provision in the declaration of condominium; however, the articles of incorporation are generally incorporated into the declaration and made an exhibit thereto. There is a similar but not identical<sup>1</sup> provision in Section 5(i) of the bylaws:

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<sup>1</sup> While the articles provide that the association may acquire land, leaseholds, and memberships, the bylaws merely provide that the board may acquire leaseholds and memberships.

5. POWERS AND DUTIES OF BOARD OF DIRECTORS.

...The powers and duties of the directors shall include but shall not be limited to the following, subject, however, to the provisions of the Declaration and these By-Laws: . . .

\* \* \*

i. Acquire Interests. To acquire and enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interests in lands or facilities whether or not contiguous to the lands of the condominium intended to provide for the enjoyment, recreation or other use and benefit of the apartment owners and to declare expenses in connection therewith to be common expenses.  
[Emphasis added].

The bylaws are also incorporated into the declaration of condominium.

5. The declaration itself does not provide a method for the purchase of a recreation lease or for the acquisition of leaseholds, memberships, or other possessory or use interests.

CONCLUSIONS OF LAW

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

2. Section 718.111(8), Florida Statutes (1989) provides as follows:

(8) Purchase of Leases. - The association has the power to purchase any land or recreation lease upon the

approval of such voting interest as is required by the declaration. If the declaration makes no provision for acquisition of the land or recreation lease, the vote required shall be that required to amend the declaration to permit that acquisition.

Petitioner argues that pursuant to the section set forth above, since the articles of incorporation and bylaws, as incorporated into the declaration, permit the board to acquire and enter into agreements whereby it acquires lands and leaseholds, Section 718.111(8), Florida Statutes is complied with because the declaration and other condominium documents do not require a unit owner vote. In other words, the association argues that only if the declaration makes no provision for the acquisition of a land or recreational leases does Section 718.111(8), Florida Statutes require that unit owner vote required to amend the declaration to permit the acquisition. The intervening unit owners, on the other hand, contend that Section 718.111(8), Florida Statutes, in permitting the association to purchase any recreation lease upon the approval of such "voting interest" as is required by the declaration, should be interpreted to require a vote of the unit owners to purchase the lease. Due to the particular disposition of the petition for declaratory statement, it is unnecessary to decide whether Section 718.111(8), Florida Statutes, which requires the declaration to specify a method of purchasing a lease, is satisfied where the bylaws, incorporated into the declaration, specify a method but the declaration is silent on the issue.

3. Section 718.111(8), Florida Statutes, in authorizing the purchase of a lease upon the approval of such voting interest as may be required by the declaration, plainly contemplates a unit owner vote. Section 718.103(26), Florida Statutes, defines "voting interests" to mean the voting rights distributed to the association members pursuant to Section 718.104(4)(i), Florida Statutes. Accordingly, the statute does not contemplate the purchase of a recreation lease merely upon the approval of the board of administration. Since in this case the declaration does not provide or specify what voting interest is required, the vote required shall be that required to amend the declaration to permit the acquisition.

4. The case of Waterford Point Condominium Apartments, Inc. v. Fass, 402 So.2d 1327 (Fla. 4th DCA 1981), pet. for rev. den. (Fla. 1982) is distinguishable. In Fass, supra, a unit owner claimed that the association had no power to purchase a recreational lease and to assess her for her proportionate share of the purchase price. In that case, 78% of the unit owners had approved the buyout of the long-term lease. The court ruled that under Section 718.114, Florida Statutes, the association had the authority to purchase the lease by following the procedure set forth in Section 718.401(6)(c), Florida Statutes. The court viewed that section as requiring the approval of 66.67% of the unit owners, and concluded that since 78% of the unit owners had approved the purchase, the statute was satisfied. The court under no

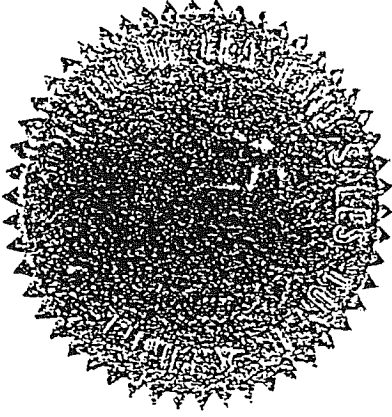
interpretation of its opinion construed the Condominium Act to allow the purchase of a recreation lease upon a vote of the board of administration.<sup>2</sup>

5. Accordingly, the subject lease may only be purchased, consistent with Section 718.111(8), Florida Statutes, by the approval of that voting interest required to amend the declaration to permit the acquisition.

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<sup>2</sup> In any event, there is apparent inconsistency between Fass, supra, in which Section 718.114, Florida Statutes was construed, and the opinion of the Florida Supreme Court in Towerhouse Condominium, Inc v. Mulman, 475 So.2d 674, 676 ftnt. 5, construing the current Section 718.111(8), Florida Statutes as extending an association's power to purchase real property to include recreation leases.

DONE AND ORDERED this 13<sup>th</sup> day of July, 1991.



Henry M. Solares  
HENRY M. SOLARES, DIRECTOR  
Division of Florida Land Sales,  
Condominiums and Mobile Homes  
Department of Business Regulation  
State of Florida

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT 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 CAROLYN CANNON, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, WITHIN 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. Certified Mail to REBECCA S. WOHL, Bedzow, Korn, Kan & Glaser, P.A., 11077 Biscayne Boulevard, Penthouse Suite, Miami, Florida 33161, and Mitchell K Karpf, Esquire, Young, Stern & Tannenbaum, P.A., 17071 West Dixie Highway, P.O. Box 600 550, North Miami Beach, Florida 33160, this 18<sup>th</sup> day of July, 1991.

Carolyn Cannon  
CAROLYN CANNON, DOCKET CLERK

Copies furnished to:

Karl M. Scheuerman, Esquire  
Deputy General Counsel

Dean Woodson, R.E.D.S.

Sharon Malloy, Assistant Chief  
Bureau of Condominiums

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