

DATE 9-25-92
DOCKET CLERK Howard

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

IN RE: Petition for Declaratory Statement

Holiday Villas III Condominium
Association, Inc., a Florida
Corporation; John Fleming.

DBR DOCKET NO. DS91226

DECLARATORY STATEMENT

COMES NOW, the Director of the Division of Florida Land Sales, Condominiums and Mobile Homes, and issues this Order pursuant to Section 718.501, Florida Statutes and Section 120.565, Florida Statutes.

FINDINGS OF FACT

1. On or about October 2, 1991, the Division received a Petition for Declaratory Statement submitted by John E. Fleming, a unit owner in the Holiday Villas III Condominium. The Petitioner asserted that the Holiday Villas III Condominium Association offered a rental program until December 31, 1990. According to the Petition, only a portion of the unit owners participated in the rental program. The Petition alleges that the Association used income generated from the rental program to offset ordinary non-rental expenses of the association during the period in question, resulting in a deficit in the rental program. It is alleged that the participants in the rental pool, or some of them, did not

DBRF - '92 - 0128

receive their rental income. The Petitioner asks whether under Sections 718.111 and 718.115, Florida Statutes, the Association may consider deficits in the rental program as common expenses of all unit owners.

2. On or about December 30, 1991, the Division received the Petition for Intervention filed by the Holiday Villas III Condominium Association, Inc., wherein the Association alleged that its substantial interests would be affected by the decision of the Division and requested that it be permitted to intervene. By Order entered January 22, 1992, the Association was permitted to intervene and both parties were permitted to file a legal memorandum on the issues presented. On April 2, 1992, the Division received the written materials from the Petitioner John E. Fleming, and on February 20, 1992, the Division received the memorandum of law filed on behalf of the Association.

3. In its memorandum of law, the Association acknowledged that the previous boards of directors conducted a rental operation which ceased operation early in 1991. The Association acknowledged that the rental income was used for the normal operation of the Association as well as for paying some of the expenses of the rental operation. The Association represents that it is in the process of conducting a financial review and audit of the monies collected both as rental income and assessments and is attempting to determine the expenditure of those funds, what amounts are due to members of the Association in the form of rental income, and related issues. The Association asserts that if it is determined

that an amount is owing to the members of the Association who participated in the rental pool and failed to receive an appropriate amount of rental income, then the Association must assess the amounts owing as a common expense to all the unit owners.

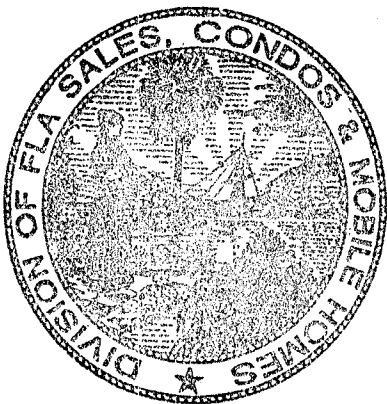
CONCLUSIONS OF LAW


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

2. Obviously, the association may properly conduct a rental program in which some or all of the unit owners participate. See, i.e., Section 718.111(12)(a)13, Florida Statutes (1991). The association appears to stipulate that rental income received by the association in its capacity as rental agent does not constitute funds of the association which would otherwise be available for use to pay association common expenses, and that the income associated with the operation of the rental program should for reporting purposes be segregated from association income generated by assessments. Assessment income can only be utilized for the payment of common expenses. Rule 7D-23.005(3), Florida Administrative Code. The association does not dispute that the expenses of a rental program in this residential condominium in which not all unit owners participate are not common expenses under the declaration or under Section 718.115(1), Florida Statutes. Compare, Section 721.05(1), (5), Florida Statutes.

4. Based on the foregoing, and on the arguments of the parties and applicable statutory and rule provisions, the association should conclude its accounting and determine that amount of rental income utilized by the association for the payment of common expenses which, when adjusted for any appropriate offsets, should be assessed as a common expense to all existing unit owners.

DONE AND ORDERED this 25th day of September, 1992.




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

RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER OR INTERVENOR 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 9.100(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH CAROLYN HOWARD, 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 have been furnished by U.S. Mail to ROBERT L. TANKEL, Esquire, 33 N. Garden Avenue, Clearwater, Florida 34617 and JOHN E. FLEMING, 18610 Gulf Boulevard, Unit 308, Indian Shores, Florida 34635, this 25th day of September, 1992.

Candyn D Howard
DOCKET CLERK

HOLIDAY