

Final Order No. BPR-96-06196 Date 10-31-96

**FILED**

Dept. of Business and Professional Regulation  
**AGENCY CLERK**

Sarah Wachman, Agency Clerk

By: Brad Simon

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE: PETITION FOR DECLARATORY STATEMENT

PINE ISLAND RIDGE  
CONDOMINIUM "F" ASSOCIATION, INC.,

DOCKET NO. DS95200

Petitioner.

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**DECLARATORY STATEMENT**

The undersigned director of Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) enters this declaratory statement based on information submitted by the Petitioner as follows:

**FACTS**

1. On or around May 12, 1995, the Division received a Petition for Declaratory Statement from Pine Island Condominium "F" Association, Inc. (Petitioner). Petitioner indicated that it had received a letter from a unit owner challenging the association's practice of providing compensation to the Treasurer of the association for duties performed as a bookkeeper. The unit owner's letter indicated that the unit owner believed that the Treasurer of the association could not perform the duties that she is currently performing without benefit of a community association manager's license as required by Chapter 468, Part VIII, Florida Statutes.

2. The Petitioner provides compensation to its Treasurer for duties she performs as bookkeeper for the association. She receives \$75.00 per week for performing the following duties:

- a. preparation of checks to pay various bills, after the President has approved payment of same. The Board, or the President determines which bills will be paid each week;
- b. preparation of the Association's quarterly payroll tax returns;
- c. collection of the monthly maintenance checks, depositing them into the Association's bank account, tracking unit delinquencies, and forwarding delinquent accounts to the Association's attorney for collection;
- d. writing the payroll checks for the employees for signature by two board members;
- e. monthly bank reconciliations, submitting spread sheets to the Association's accountant, and providing any other documentation needed for the annual audit by the accountant.

3. Pursuant to Section 5.5 of the association's Bylaws, the Treasurer's duties are as follows:

The Treasurer shall have custody of all of the property of the association, including funds, securities and evidence of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all of the duties incident to the office of Treasurer. The Assistant Treasurer if any shall assist the Treasurer.

4. The Petitioner indicated that the Treasurer, in her capacity as bookkeeper:

- a. does not prepare the association budget nor have the power to determine how or when it is prepared as the entire board works with the association's CPA to prepare the budget;
- b. does not assist in noticing or conducting meetings;

c. does not coordinate overall maintenance (the President does this as part of his duties);

5. Petitioner seeks a declaratory statement as to whether the director who is paid to provide bookkeeping services to the board must be licensed as a community association manager.

6. Notice of receipt of the petition for declaratory statement was duly published in the Florida Administrative Weekly.

#### CONCLUSIONS OF LAW

The Division has jurisdiction over the Petition for Declaratory Statement and it is authorized to issue this declaratory statement pursuant to Section 120.565, Florida Statutes.

The Petition for Declaratory Statement substantially complies with the requirements of Section 120.565, Florida Statutes. Though the petition is filed by an association, it is sufficiently and narrowly drawn such that this declaratory statement will apply to this association and its particular set of circumstances only.

Rule 61B-55.002(1)(a)-(d), Florida Administrative Code, lists the activities included in community association management:

- a. controlling or disbursing association funds when a person has the authority to judge or determine when or how to control or disburse funds.
- b. judging or determining how or when to prepare budgets or other financial documents for an association.
- c. determining when or how to provide notice of meetings, or to conduct association meetings; and
- d. coordination of the overall operation of the association.

Rule 61B-55.002(4), Florida Administrative Code, states:

- (4) any persons who, for compensation, assist the board

in performing the activities listed as in (1)a - d above where no member of the board is licensed under these rules, must be licensed.

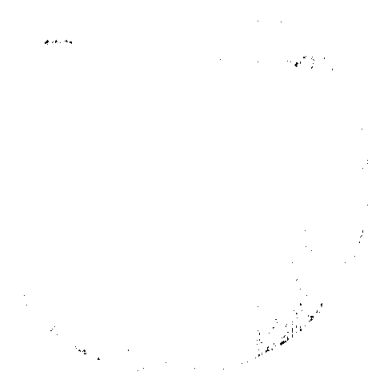
The bookkeeper, in performing her duties as Treasurer and as a board member, assists the other board members and the board's accountant in preparing the association budget. Moreover, the bookkeeper is paid to collect and deposit the monthly maintenance checks, reconcile the association's bank accounts with the monthly statements, determine unit owner delinquencies in payment of assessments, write payroll checks for employees, and prepare quarterly payroll tax returns. Even if these duties are carried out with the full assistance of the board, the bookkeeper would need to be licensed as she is assisting the board in determining how or when to prepare budgets or other financial documents and assisting in coordinating the overall operation of the association, for compensation.

The above should not be construed as prohibiting any other board member from being compensated as a bookkeeper. On these facts, the duties of the board member as Treasurer coupled with her compensated duties as bookkeeper allows her some measure of control over association funds and allows her to assist the board in the coordination of the overall operation of the association. This situation comes within the parameters of Rule 61B-55.002(4), Florida Administrative Code.

WHEREFORE, THE DIVISION DECLARES that the duties performed by the Treasurer of the Pine Ridge Condominium "F" Association, Inc., constitute assisting the board in preparing budgets and other

financial documents and coordinating the overall operation of the association for compensation, within the meaning of Rule 61B-55.002(4), Florida Administrative Code. Accordingly, the Treasurer/Bookkeeper needs to obtain a community association manager's license, and immediately cease all compensated activities until the license is obtained.

Done this 28<sup>th</sup> day of October, 1996.



*Robert H. Ellzey, Jr.*  
Robert H. Ellzey, Jr. Director  
Department of Business and  
Professional Regulation  
Division of Florida Land Sales,  
Condominiums, and Mobile Homes  
Northwood Centre  
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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 HOWARD, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES,

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 sent by U.S. Mail to Cheryl J. Levin, Esquire, Courtyard Business Center, 10226 NW 47th Street, Sunrise, Florida 33351, Counsel for Petitioner, this \_\_\_\_ day of \_\_\_\_\_, 1996.

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JASON PENLEY, Docket Clerk

Copies Furnished to:

Faye Mayberry, Bureau Chief  
Bureau of Condominiums

Kathryn E. Price  
Senior Attorney

pincisla.dst