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Dept. of Business and Professional Regulation
AGENCY CLERK

By: Sarah Wachman, Agency Clerk

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

IN RE: DS 98-027

PETITION FOR DECLARATORY STATEMENT

**STRATFORD ARMS CONDOMINIUM
ASSOCIATION, INC.,**

Docket No. DS98122

Petitioner.

_____ /

DECLARATORY STATEMENT

The State of Florida Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to sections 718.501 and 120.565, Florida Statutes (1998).

FINDINGS OF FACT

1. On August 4, 1998, the Division received a Petition for Declaratory Statement from the Stratford Arms Condominium Association, Inc., (Petitioner), concerning the Stratford Arms Condominium, through Harold J. Schatz, President.
2. Petitioner is the condominium association that operates Stratford Arms, a

120-unit condominium located in Boca Raton, Florida.

3. Petitioner requests a declaratory statement as to:

Whether pursuant to sections 718.103(3), (8), and (19) and section 718.108(1)(a), Florida Statutes, and the condominium documents, the Stratford Arms Condominium Association may authorize a unit owner to partially enclose a balcony without a vote by the other unit owners in the condominium.

4. Petitioner is considering a request by a unit owner to alter his unit at his own cost by extending a portion of his east facing glass wall to the easternmost edge of his terrace which runs parallel to the wall to be removed. This will expand the width of the unit's dining room while diminishing the open balcony length by approximately half. The enlarged, enclosed space will become an integral part of the unit. Petitioner is amenable to permit such a change without the consent of the other unit owners in the condominium.

5. One unit owner has objected stating that the Declaration of Condominium does not grant to the board of directors of the condominium association, (Petitioner), the power to authorize the alteration. The unit owner further asserts that the unanimous consent of all the unit owners is required to make such an alteration because the alteration enlarges the condominium unit and diminishes the common elements.

6. The Declaration of Condominium, Article 2.6, defines "common elements" as "the portion of the condominium property not included in the apartments." Article 2.7 of the Declaration defines "limited common elements" as "the portion of the common elements which are reserved for use of a certain Apartment or Apartments to the exclusion of all other Apartments." Under these definitions, the balconies could be considered limited common elements.

7. However, Article 3.6 of the Declaration defines the unit boundaries as follows:

Each apartment shall include that part of the building containing the unit that lies within the boundaries of the unit:

...(b) Perimetrical boundaries. The perimetrical boundaries of the unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls. The intersecting vertical planes adjacent to and which include the exterior of the outside of the walls of the apartment building bounding a unit and fixtures thereon; and **where there is attached to the building, a balcony, or other portion of the building serving only the unit being bounded, such boundaries shall be the intersecting vertical planes adjacent to and which include all of such structure and fixtures thereon.** Emphasis added.

Thus, it would appear, from this description that the balconies may be considered part of the unit.

8. The issue of alterations to the balconies is clearly addressed in the documents. Article 3.4 of the Declaration appears to consider the balconies part of the units but, nonetheless, prohibits changes to the balconies, to wit:

(a) Alteration of unit plans. The interior plan of a unit may be changed by its owner, and the boundaries between units may be changed by the owners of the units affected. No apartment may be subdivided. **No change shall be made of balconies.** No change in the boundaries of units shall encroach upon the boundaries of the common elements.

9. Article 5.1 of the Declaration concerns maintenance, alterations and improvements. The responsibility for the maintenance of the condominium property and restrictions upon its alteration and its improvement is set forth, in part, as follows:

5.1 Apartments.

a. By the Association. The Association shall maintain, repair and replace at the Association's expense:

* * * * *

(2) Balconies.

c. Alteration and improvement. Neither an apartment owner nor the Association shall make any alterations in the portion of an apartment that are to be maintained by the Association, or remove any portion of such, or make any additions to them... without first obtaining approval in writing of the owners of all apartments in which such work is to be done and the approval of the Board of Directors of the Association.

10. On August 21, 1998, the Division published Notice of Receipt of the Petition in the Florida Administrative Weekly. A copy of the Petition was sent to the Joint Administrative Procedures Committee on September 4, 1998. To date, the Division has received no response to the Petition.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes (1998).

2. Petitioner, the association that operates the condominium, is a substantially affected person within the meaning and intent of section 120.565, Florida Statutes, and has standing to seek this declaratory statement.

3. Section 718.103(3), Florida Statutes, states:

(3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

There is no indication in the Petition that shows that the balconies are "Association property."

4. Section 718.103(8), Florida Statutes, defines "Common elements" as the portions of the condominium property which are not included in the units. The balconies appear to be included in the boundaries of the unit according to Article 3.6(b)(1) of the Declaration.

5. Section 718.103(19), Florida Statutes, defines "Limited common elements" as those common elements which are reserved for the use of a certain condominium unit or units to the exclusion of other units, as specified in the declaration of condominium. This section is not applicable to this case, since the balconies appear to be part of the unit by the terms of the Declaration. Vinik v. Taylor, 270 So.2d 413 (Fla. 4th DCA 1972) (Under declaration of condominium provision establishing unit boundaries, when there was attached to condominium apartment building a balcony or other portion of building serving only unit being bounded, to include all of such structures and fixtures thereon, multiple open balconies were included within the units as opposed to being common elements which constituted all improvement parts not included within the units).

6. Section 718.108(1)(a), Florida Statutes, states that "Common elements" includes within its meaning the condominium property which is not included within the units. This statute is not applicable because the Declaration includes the balconies as part of the units.

7. The Petition seeks a ruling from the Division as to whether the Association can approve the alteration to the balcony area of a unit without a vote of the unit owners who are members of the Association. Petitioner argues that pursuant to Article 3.6(b)(1) of the declaration, the balcony in question is within the boundaries of the unit and the unit owner is free to make the subject alteration without further approval. In the alternative,

Petitioner argues that the balconies are limited common elements maintained by the Association and thus the balcony may be changed in accordance with Article 5 of the Declaration, which authorizes the Board to approve an alteration to an area maintained by the Association if the cost of the alteration is less than \$50,000.

8. These arguments fail because Article 3.4(a) of the Declaration specifically prohibits changes to balconies. A provision in a condominium declaration must be strictly construed. Pepe v. Whispering Sands Condo. Ass'n, Inc., 351 So. 2d 755 (Fla. 2d DCA 1977). In Pepe, the Court stated:

A declaration of a condominium is more than a mere contract spelling out mutual rights and obligations of the parties thereto—it assumes some of the attributes of a covenant running with the land, circumscribing the extent and limits of the enjoyment and use of real property. Stated otherwise, it spells out the true extent of the purchased, and thus granted, use interest therein. Absent consent, or an amendment of the declaration of condominium as may be provided for in such declaration, or as may be provided by statute in the absence of such a provision, the enjoyment and use cannot be impaired or diminished. 351 So 2d at 757, 758.

Any attempt to interpret the terms of a declaration, must first look to the plain language, the unambiguous terms. Lambert v. The Berkely S. Condo. Ass'n, Inc., 680 So. 2d 588 (Fla. 4th DCA 1996) (when a document's language is clear, a court cannot indulge in construction or interpretation of its plain meaning). In this case, the declaration is clear and not ambiguous that no changes can be made to balconies.

It would be error to construe other more general provisions to give the balcony prohibition provision a meaning other than its plain and ordinary meaning. Heck v. Parkview Place Homeowners Ass'n, Inc., 642 So. 2d 1201 (Fla. 4th DCA 1994).

9. In Sterling Village Condo., Inc. v. Breitenbach, 251 So. 2d 685 (Fla. 4th DCA 1971), cert. denied, 254 So. 2d 789 (Fla. 1971), the Court held that the

condominium documents "ought to be construed strictly to assure these investors that what the buyer sees the buyer gets...The individual ought not be permitted to disrupt the integrity of the common scheme through his desire for change, however laudable that change might be." Sterling Village, 251 So. 2d at 688. In this case, the declaration specifically states in a provision concerning alterations to units, that changes to the balconies are prohibited.

Wherefore, the Petitioner may not authorize the proposed alteration to the balcony in question without first amending the Declaration in the manner prescribed by the Condominium Act and the condominium documents.

DONE AND ORDERED this 29th day of October, 1998, at Tallahassee, Leon County, Florida.



Philip Nowicki

PHILIP NOWICKI, P.H.D., DIRECTOR
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business and
Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONERS 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 APPROPRIATE FILING FEES, AND WITH SARAH WACHMAN, AGENCY CLERK FOR THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaratory Statement has been furnished by U.S. Mail to Harold J. Schatz, President, Stratford Arms Condominium Association, Inc., 2600 South Ocean Blvd. Boca Raton, Florida, 33432, on this _____ day of October, 1998.

Kristie L. Harris
Docket Clerk

Copies furnished to:

Martha F. Barrera,
Assistant General Counsel

Leann B. Ramseur, R.E.D.S.
Bureau of Condominiums