

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

DS 99-011

IN RE: PETITION FOR DECLARATORY
STATEMENT, HOWARD GRAVES,
EAGLE POINT HOMEOWNERS INC.,

Division Docket Number: DS99093

Final Order No. BPR-99-04793 Date 8-20-99

FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Branden M. Nichols

DECLARATORY STATEMENT

The State of Florida, Department of Business and Professional Regulation (Department),

Division of Florida Land Sales, Condominiums and Mobile Homes (Division), issues this
declaratory statement pursuant to Sections 723.006 and 120.565, Florida Statutes, based upon the
following:

STATEMENT OF THE ISSUE

Whether pursuant to Section 723.077, Florida Statutes, Eagle Point Homeowners, Inc.
(EPHI) is required to make a conversion to either condominium, cooperative or subdivision form
of ownership.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Petitioner. The
Division takes no position as to the accuracy of the facts, but merely accepts them as submitted
for purposes of this declaratory statement. Petitioner did not request and no hearing was held on
the petition.

1. The Division received a petition for declaratory statement from Howard Graves,
president of Eagle Point Homeowners, Inc. (EPHI). The petition was filed April 19, 1999 with

an Addition to Petition for Declaratory Statement filed May 3, 1999 and Supplement to the Petition filed May 17, 1999. Notice of receipt was published in Volume 25, Number 17 (April 30, 1999), Florida Administrative Weekly.

2. Eagle Point is a 248-lot residential mobile home park, as defined by Section 723.003(6), Florida Statutes.

3. EPHI is a not for profit corporation formed under Chapters 617 and 723, Florida Statutes, for the specific purpose of acquiring, owning and operating a residential mobile home park.

4. Each homeowner in Eagle Point is a shareholder of EPHI, except two homeowners who have been continual residents of the park since before EPHI purchased the park from its prior private owner.

5. Membership and purchase of stock in EPHI is mandatory for each homeowner in Eagle Point, except for the two homeowners discussed above.

6. EPHI purchased Eagle Point from a private owner in 1986 and has been operating the park ever since.

7. Petitioner asks the following questions in the petition:

a. Are we required by Chapter 723 to make the conversion as set forth in Section [723].077 of that Chapter even though our articles of incorporation do not specifically call for that to be done?

b. If the answer to question [a.] is no, what form of ownership are we presently in and under which statute do we operate?

c. If the answer to question [a.] is yes, does the board of directors have to seek approval from the shareholders to make the conversion to a cooperative as our bylaws do not contain the wording set forth in 723.078, (3),(5)?

- d. If the present corporation is converted to a cooperative, does this change in ownership make the purchase of documentary stamps necessary?
- e. As the lots in this park are rented from the corporation on an annual rental agreement by the owner/shareholder of the mobile home thereon and are not held in fee simple title by the homeowner, it appears that we do not meet the requirements of Chapter 617.301(7), (10). Is this correct?
- f. EPHI was incorporated pursuant to Chapter 723.075, therefore, we are not subject to the rules set forth for homeowners associations in Chapter 617.301-617.312. Is this correct?
- g. Must our articles of incorporation be amended to include the complete text of Chapter 723.077 before we can proceed with a conversion to 718 or 719 if we are required to do so?
- h. Our present voting is by shares of stock owned, one vote per share, rather than one vote per lot. Is this legal and if so, by what authority?

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to Sections 723.006 and 120.565, Florida Statutes.
2. The purposes and use of declaratory statements are presented in Chapter 120, Florida Statutes, and Chapter 28-105, Florida Administrative Code:

120.565 Declaratory Statement by agencies. --

(1) Any substantially affected person may seek a declaratory statement regarding the agency's opinion as to the applicability of a statutory provision, or of any rule or order of agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, Florida Administrative Code, provides:

28-105.001 Purpose and Use of Declaratory Statement. A declaratory statement is a means for resolving controversy or answering questions or doubts

concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

3. Petitioner asks the following:

a. Are we required by Chapter 723 to make the conversion as set forth in Section [723].077 of that Chapter even though our articles of incorporation do not specifically call for that to be done?

b. If the answer to question [a.] is no, what form of ownership are we presently in and under which statute do we operate?

c. If the answer to question [a.] is yes, does the board of directors have to seek approval from the shareholders to make the conversion to a cooperative as our bylaws do not contain the wording set forth in 723.078, (3),(5)?

Petitioner cited Section 723.077, Florida Statutes, as the statutory provision upon which it seeks an interpretation.

4. Section 723.077, Florida Statutes provides in relevant part:

Articles of Incorporation. - The articles of incorporation of a homeowners' association shall provide:

(2) For the conversion of the mobile home park once acquired to a condominium, a cooperative, or a subdivision form of ownership, or another type of ownership.

5. Petitioner has stated through materials submitted that EPHI has not made a conversion to either condominium, cooperative or subdivision form of ownership. However, EPHI has already converted to a not for profit corporation pursuant to Chapter 617, Florida Statutes, and is thereby an entity that falls within the fourth category of Section 723.077(2), Florida Statutes: ... "another type of ownership". Therefore, EPHI is not now required to make a

further conversion to condominium, cooperative or subdivision form of ownership, as it is already a not for profit corporation primarily governed by Chapter 617, Florida Statutes. As EPHI is not presently required to make a conversion contemplated in Section 723.077, Florida Statutes, Petitioner's third question is moot.

6. Petitioner next asks the following:

d. If the present corporation is converted to a cooperative, does this change in ownership make the purchase of documentary stamps necessary?

Petitioner did not cite any statutory authority or case law upon which he seeks an interpretation of this question.

7. Chapter 201, Florida Statutes governs excise tax on documents and is administered by the Department of Revenue pursuant to Section 201.11, Florida Statutes. The interpretation Petitioner seeks on this question is beyond the jurisdiction of this Department and therefore cannot be answered in this declaratory statement.

8. Petitioner next asks the following:

e. As the lots in this park are rented from the corporation on an annual rental agreement by the owner/shareholder of the mobile home thereon and are not held in fee simple title by the homeowner, it appears that we do not meet the requirements of Chapter 617.301(7), (10). Is this correct?

f. EPHI was incorporated pursuant to Chapter 723.075, therefore, we are not subject to the rules set forth for homeowners associations in Chapter 617.301-617.312. Is this correct?

9. The answer to both of the preceding questions is "no". Chapter 617, Florida Statutes governs not for profit corporations. According to Petitioner, EPHI is a not for profit corporation formed under Chapters 617 and 723 for the specific purpose of acquiring, owning

and operating a residential mobile home park. Section 617.301(7), Florida Statutes, as amended by the 1999 Florida Legislature, defines a homeowners' association as follows:

"Homeowners association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners association" does not include a community development district or other similar special taxing district created pursuant to statute.

EPHI as a non-profit corporation owns the lots in the park. While a resident of Eagle Point may not own in fee simple the lot on which her mobile home is placed, it is mandatory that the resident purchase stock and be a shareholder of the corporation. As shareholders of the corporation, the park residents have ownership interest in the property upon which their homes reside. As the corporation is made up of its shareholders, each of EPHI's shareholders is a park owner. Because purchase of stock in EPHI is mandatory, the fact that the owner/shareholder rents the lot from the corporation is not the determining factor as to whether EPHI is a homeowners' association. While the shareholders may avail themselves of the benefits of park ownership, they must also carry the burdens of park ownership, and cannot simultaneously qualify for the protections afforded park residents under Chapter 723, Florida Statutes. This tenet overrides the fact that the owner/shareholder rents the lot from the corporation, and determines that EPHI does meet the requirements of a Section 617.301(7), Florida Statutes homeowners' association, and is therefore subject to the accompanying rules and requirements. Of course, if EPHI chose to make the conversion set forth in Section 723.077, Florida Statutes to condominium, cooperative or subdivision, it would then no longer be a Section 617.301(7), Florida Statutes homeowners' association. Further, the two grandfathered non-shareholder

residents are protected by Chapter 723, Florida Statutes as park residents, and could even form their own association if they chose to do so in accordance with Sections 723.078(6) and 723.075, Florida Statutes.

10. Petitioner next asks the following:

g. Must our articles of incorporation be amended to include the complete text of Chapter 723.077 before we can proceed with a conversion to 718 or 719 if we are required to do so?

As there is no requirement for EPHI to convert to either a condominium, cooperative or subdivision as set forth in conclusion of law number 5 above, Petitioner's question is moot.

11. Petitioner's final question is as follows:

h. Our present voting is by shares of stock owned, one vote per share, rather than one vote per lot. Is this legal and if so, by what authority?

The Division is bound by and receives its authority from Chapter 723, Florida Statutes with respect to mobile home parks. There is nothing in Chapter 723, Florida Statutes to prevent association voting by one vote per share of stock owned rather than by one vote per lot. Further interpretation as to this issue outside the confines of Chapter 723, Florida Statutes is beyond the jurisdiction of the Department and therefore cannot be addressed in this declaratory statement.

WHEREFORE, the Division DECLARES that Eagle Point Homeowners Inc. is not currently required to make a conversion to condominium, cooperative or subdivision form of ownership.

DONE and ORDERED this 16 day of ^{August} ~~June~~, 1999.



Robin L. Suarez
ROBIN L. SUAREZ, Acting Director
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominiums and Mobile Homes
1940 North Monroe Street
Tallahassee, Florida 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES A FINAL AGENCY ACTION
AND MAY BE APPEALED BY ANY PARTY SUBSTANTIALLY AFFECTED BY THIS
DECLARATORY STATEMENT 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 THE
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 has been furnished by U.S. mail to Howard C. Graves, President, Eagle Point Homeowners Inc., 10303 Burnt Store Road, Punta Gorda, Florida 33950, this ____ day of _____, 1999.

Kristie Harris
Docket Clerk

Copies furnished to:

Scott K. Edmonds
Assistant General Counsel

Jim Norred, Chief
Bureau of Mobile Homes