

FILED

Department of Business and Professional Regulation

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By: Sarah Wachman

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

IN RE: PETITION FOR DECLARATORY STATEMENT

**DS 99-007**

HOWARD CHANDLER, SECRETARY  
FLORIDIAN MOBILE HOME PARK  
HOMEOWNERS ASSOCIATION, INC.

DOCKET NO. DS99070

Petitioner.

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to sections 723.006 and 120.565, Florida Statutes.

FINDINGS OF FACT

1. On March 9, 1999, the Division received a petition for declaratory statement from Petitioner. Notice of receipt of the Petition was published in the Florida Administrative Weekly, Volume 25, Number 13, at page 1381, on April 2, 1999.
2. Petitioner is a mobile home park association as that term is defined in section 723.075, Florida Statutes.
3. On March 29, 1999, the park owner, Anthony Piccolo, intervened in the proceeding. The materials provided by the

Intervenor have been reviewed and are a part of the official docket file of this Declaratory Statement.

4. Petitioner requests a declaratory statement as to whether the Division has prosecutorial jurisdiction over certain actions of the park owner. The specific actions were:

a. that the park owner sold a mobile home to someone under 55 years old;

b. that the park owner rented two mobile homes to people under 55 years of age;

c. that the park owner placed rental advertisements in a newspaper, and the advertisement failed to contain verbiage that the park is a "55 or older" park;

d. that two large mobile homes owned by the park owner sit on ten foot high concrete block pillars and are not skirted, and do not have concrete steps;

e. that the park owner has not maintained the park, and the disrepair includes large potholes in the street, and, that a Dumpster is surrounded by a rotten fence and no gate.

5. Attached to the petition were copies of several letters that had been exchanged between the Petitioner and the Bureau of Mobile Homes' Tampa office. Based on this correspondence, the conclusion of the Bureau was that they did not have jurisdiction to prosecute these particular actions of the park owner.

## CONCLUSIONS OF LAW

### I. Jurisdiction to Issue Declaratory Statement

The Division has jurisdiction to enter this Order pursuant to section 120.565, Florida Statutes. The Petitioner has set forth certain facts which are specific enough to enable this agency to make a response of a specific nature limited to the Petitioner's set of circumstances only, rather than a response of such a general and consistent nature as to meet the requirements of rulemaking. Florida Optometric Association v. Department of Professional Regulation Board of Opticianry, 567 So.2d 928 (Fla. 1st DCA 1990).

### II. Jurisdiction over Actions of the Park Owner

Section 723.005, Florida Statutes, states

The division has the power and duty to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant thereto relating to the rental, development, and sales of mobile home parks. However, the division does not have the power or duty to enforce mobile home park rules and regulations or to enforce the provisions of ss. 723.022, 723.023, and 723.033. [Emphasis added]

Section 723.022, Florida Statutes, is a list of the mobile home park owner's general obligations. Section 723.023, Florida Statutes, is a list of the mobile home owner's general obligations. Section 723.033, Florida Statutes, lists the court's jurisdiction in regard to lot rental amount, rent

increases or changes, or any unreasonable provisions of a rental agreement.

The Petitioner contends that section 723.006, Florida Statutes, the general powers and duties given to the Division by the legislature, should supercede the specific provisions of section 723.005, Florida Statutes. In particular, the Petitioner refers to section 723.006(5)(d), Florida Statutes, which states:

The division may bring an action in circuit court on behalf of a class of mobile home owners, mobile home park owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

A maxim of statutory interpretation is that a statute covering a particular subject is controlling over a general statutory provision covering the same and other subjects in general terms. Adams v. Culver 111 So.2d 665 (Fla. 1959). Therefore, in this case, the broad general powers given to the Bureau in section 723.006 are limited by the specific restrictions in section 723.005. To paraphrase the Petition, section 723.005 supercedes section 723.006, and not vice versa, as the Petitioner contends.

#### STATEMENT

In accordance with the foregoing discussion, the Division declares that none of the alleged actions of the park owner are within the jurisdiction of the Division.

DONE this 2 day of <sup>June</sup> ~~May~~, 1999.



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

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 APPROPRIATE FILING FEES AND WITH THE DOCKET CLERK  
FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE  
HOMES, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY  
STATEMENT.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was provided by certified mail to Howard Chandler, Floridian Mobile Home Park Homeowners Association, Inc., 5105 Sleighbell Lane, New Port Richey, Florida 34652, and Anthony J. Piccolo, park owner, 5046 Sleighbell Lane, New Port Richey, Florida 34652, this \_\_\_\_\_ day of May, 1999.

\_\_\_\_\_  
KRISTIE HARRIS, DOCKET CLERK

Copies furnished to:

Robin Suarez,  
Acting Division Director

Jim Norred, Chief  
Bureau of Mobile Homes

Mayre Lutha Tillman, Supervisor  
Bureau of Mobile Homes

Mary Denise O'Brien,  
Assistant General Counsel