

Final Order No. BPR-2000-03815 Date: 9-29-00

FILED

Department of Business and Professional Regulation

AGENCY CLERK

Sarah Wachman, Agency Clerk

By:

Brandon M. Nichols

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

**DS 2000-016**

IN RE: PETITION FOR DECLARATORY STATEMENT  
CRANE CREST APARTMENTS, INC.,

Petitioner,

and

Case Number: CD 2000-128

CHUCK AND ARLENE ROSEN, UNIT OWNERS,

Intervenors.

---

**DECLARATORY STATEMENT**

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division), enters this declaratory statement pursuant to sections 718.501, and 120.565, Florida Statutes:

**PRELIMINARY STATEMENT**

On June 26, 2000, the Division received a Petition for Declaratory Statement from Crane Crest Apartments, Inc., by and through counsel. Notice of the petition was duly published in Florida Administrative Weekly, Volume 26, Number 28, July 14, 2000. No hearing was requested or held.

## 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 final order.

1. Crane Crest Apartments, Inc., is a Florida not-for profit corporation and cooperative association as that term is defined by section 719.103(2), Florida Statutes. The association operates the Crane Crest Cooperative.

3. Chuck and Arlene Rosen are the owners of units 404 and 504 in the cooperative.

4. The Rosens entered into a purchase agreement for a second unit which purchase was conditioned upon the approval by the board of the placement of a connecting staircase requiring an opening in the concrete floor slab between the units.

5. The board of directors gave written approval to the Rosens and the second unit was purchased.

6. Subsequently, a new board of directors was elected and determined that the approval given had to be ratified by the new board due to the fact that the issue had not been discussed at any board meeting.

7. Thereafter, the new board ratified the approval and entered a resolution as follows:

Resolved that the Association approves the renovations in concept, subject to final review of plans and specifications, including responses to concerns of the board and subject to the owner's agreement to the terms and conditions as set forth on Schedule One attached to and incorporated in this Resolution and, if deemed necessary by the Association, review on behalf of the association by an independent engineer at the costs of the owner.

8. The board then submitted the matter to the unit owners for a vote. Of the 103 voting interests in the association, 93 votes were cast, of which 78 were against approval of the change.

9. The board believes it is without authority to approve the change in light of the requirements of section 719.1055(3)(b), Florida Statutes.

10. The Rosens assert that the addition of the staircase and removal of a portion of the concrete slab between the two units is not a change in the configuration of the units, as the units will still be taxed as individual units; they will be assessed as individual units; the exterior hallway will remain the same with an exterior door to each unit; and the addresses will remain separate. The Rosens further assert that the staircase would only be placed between the units in order to create access, just as a doorway could be placed between units to connect one to another.

11. Finally, the Rosens assert that the statute referenced in the petition for declaratory Statement, section 719.1055(3)(b), Florida Statutes, deals with the *Association's* change of the configuration or size of a unit. According to Intervenors, " it does not deal with individual unit owners connecting two units in that this connection is not a change of the configuration or size of either unit, and is to be done by a unit owner."

12. In its Response to the Intervenor's Request to Intervene, the Association asserts that the declaratory statement proceeding is limited to a determination as to whether section 719.1055(3)(b), Florida Statutes, has any application where the Association acts indirectly, through its approval rights under the governing documents, rather than directly to reconfigure a unit.

13. Petitioner further stated that for purposes of the declaratory statement proceeding, the reconfiguration of the unit should be assumed. The Association alleges that should the

Rosens choose to dispute that the removal of the structural cement floor/ceiling of the units and installation of a connecting staircase so that the two units may be used as a single unit together with other substantial renovations to accomplish this purpose is not a reconfiguration, this is not the proper forum for resolution of that factual issue.

14. The board is in doubt and requests a declaratory statement as to whether, pursuant to section 719.1055(3), Florida Statutes, it is authorized to approve the change in units 404 and 504 unless it obtains the consent of two-thirds of the members of the association.

### CONCLUSIONS OF LAW

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

2. Petitioner has standing to seek a declaratory statement.

3. The Rosens' Request to Intervene is granted.

4. The purposes and use of declaratory statements are set out 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.

**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. [Emphasis supplied].*

5. Section 719.1055, Florida Statutes, provides, in relevant part:

(1) Unless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Cooperative documents in cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental entity.

\* \* \*

(3) (a) Unless other procedures are provided in the cooperative documents or such action is expressly prohibited by the Articles of Incorporation or bylaws of the cooperative, the association may materially alter, convert, lease, or modify the common areas of the mobile home cooperative if the action is approved by two-thirds of the total voting interests of the cooperative.

(b) The association may change the configuration or size of a unit only if the action is approved by the affected unit owners and by two-thirds of the total voting interests of the cooperative. [Emphasis supplied].

6. The bylaws of Crane Crest Apartments, Inc., were substantially amended January 26, 1996, to provide, in relevant part:

ARTICLE I

1.1 "Act " or Cooperative Act" as used herein shall mean Chapter 719, Florida Statutes, as the same may be amended from time to time.

ARTICLE XI

11.2.6 No structural changes of any kind shall be made in or to any Unit, patio or balcony or adjoining Common Area walls or balconies without specific approval of the Board of Directors, which approval must be in writing.

7. In a cooperative, the association holds legal title to all of the property comprising the cooperative and the owners of cooperative units have an ownership interest in the cooperative association and a lease or other muniment of title granted by the association as the owner of all

the cooperative property. Thus, even though the unit owners in this case purchased the use of units 404 and 504 and are the ones contemplating the changes to the units and common areas, the association as holder of legal title to the units is the entity that ultimately acts with respect to all of the cooperative property. Accordingly, section 719.1055(3)(b), as applied to these facts, would encompass the types of changes referenced in the petition for declaratory statement, regardless of the fact that it is the unit owners seeking to make the changes.

8. The changes contemplated by the unit owners constitute both a change in the common areas (the concrete slab between the units is part of the common area and will have to be altered to make the change) and a change in the configuration or size of the units (the upper unit will now have a downstairs and the lower unit will now have an upstairs). The configuration of the units will change because the arrangement of the parts comprising both units will be changed.

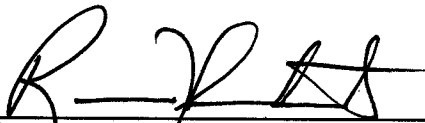
9. The Cooperative Act does not specifically address how a change in the common areas may be effectuated, except when the documents are amended to effectuate the change and except in a mobile home cooperative. See §§719.1055(1) and (3)(a), Fla. Stat. (1999). The cooperative documents specifically address structural changes in a cooperative unit or the adjoining common areas. Therefore, since the documents require the association's approval for structural changes in the units or adjoining common areas, the association was required to approve the structural change by the procedure set out in the documents. However, since the change will also result in a change in the configuration or size of both units, the association must seek the approval of two-thirds of the total voting interests of the cooperative. The foregoing makes sense when viewed in light of the overall import of the Cooperative Act. Specifically, since all cooperative unit owners comprise the association, which owns all of the cooperative

property, it makes sense to obtain a vote of the unit owners to approve changes in the cooperative property, particularly a change that may affect the association's future ability to market units 404 and 504.

Wherefore, the Division declares that section 719.1055, (3)(b), Florida Statutes, applies to the facts herein, such that the association is required to obtain the vote of two-thirds of the total voting interests of the cooperative to approve the change in units 404 and 504 to install a stairway between the units.

DONE AND ORDERED this 29<sup>th</sup> day of September 2000.



  
ROSS FLEETWOOD, DIRECTOR  
Department of Business and Professional Regulation  
Division of Florida Land Sales Condominiums, and Mobile Homes  
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 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 AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217, 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 Louise Tudzarov, Esquire, Law Offices of Louise Tudzarov, 345 West Oakland Park Boulevard, Ft. Lauderdale, Florida, 33311 and Larry E. Shiner, P.A., 750 South Dixie Highway, Boca Raton, Florida 33432, this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Kristie Harris  
Docket Clerk

Copies furnished to:  
Kathryn E. Price  
Assistant General Counsel

Jim Mullins, Acting Chief  
Suzanne Schmidt, R.E.D.S.  
Bureau of Condominiums  
h:\kep23\cranecrestds