

Final Order No. BPR-2000-00033 Date: 1-7-2000

FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By:

Branda M. Nichols

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Division Docket
Number CD1999157

OCEANS CLOVERLEAF
CONDOMINIUM ASSOCIATION, INC.,
Petitioner, and DEBORAH CONVERSE, Unit owner,
Intervenor.

DS 99-022

DECLARATORY STATEMENT

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

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. On October 1, 1999, the Division received a Petition for Declaratory Statement filed on behalf of the Oceans Cloverleaf Condominium Association, Inc. (Petitioner or Association), by and through counsel.

2. Notice of receipt of the petition was duly published in Volume 25, Number 42, (October 22, 1999) Florida Administrative Weekly.

3. On December 15, 1999, the Division received a Stipulation to Intervene, filed by the Association and Deborah Converse, the owner of unit 1A4, the subject of the petition for declaratory statement.

4. Petitioner is the entity responsible for the operation of the Oceans Cloverleaf Condominium, a residential condominium consisting of 181 units located in Daytona Beach Shores, Volusia County, Florida.

5. The condominium consists of a central building of seven stories that houses a parking garage and four attached seven or eight-story buildings or wings, labeled A, B, C and D. Phase 1 consists of Buildings A and B and the garage. Phase 2 consists of Buildings C and D. The condominium units are of various sizes, with two, three, and four-bedroom units. The units are further classified as end, townhouse, central townhouse, split, and penthouse.

6. Unit 1A4 is the designated unit number for unit 04 on the first floor of Wing A.

7. The "as built" plans for Phase 1 of the condominium reflect that Unit 1A4 was constructed as a two-bedroom, two-bath apartment. A typical apartment in a location similar to unit 1A4 would have been constructed as a three-bedroom, three-bath unit. According to the plans, the area where the typical third bedroom and bath would be located is part of the common elements, specifically, bicycle storage.

8. Section 4.3A of the declaration and Section 3 of the Phase 2 Amendment allocate as an appurtenance to Unit 1A4 an undivided share in the common elements equal to that of a three-bedroom end apartment.

9. Ownership shares in the common elements were determined by calculating the average square footage contained in the two bedroom apartments and the average square footage contained in each class of three and four-bedroom apartments, which were then divided by the total square footage contained in all apartments.

9. Unit 1A4 was ascribed a proportionate share of the common expenses equal to the unit's undivided share in the common elements appurtenant thereto.

10. Unit 1A4 was not designated as owning the same share of the common elements or bearing the same percentage share of the common expenses as other two-bedroom, two-bath units in the condominium.

11. Petitioners wish to utilize the procedures set forth in section 718.110(5), Florida Statutes, to file an amendment to the declaration to correct this error. Petitioner is uncertain as to whether the provisions of section 718.110(5), Florida Statutes, extend to the facts of the petition.

CONCLUSIONS OF LAW

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

2. The parties' Stipulation to Intervene is accepted. Deborah Converse, owner of unit 1A4, is substantially affected by this declaratory statement, as is the Association. The parties have standing to seek a declaratory statement.

3. 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.

4. Section 718.110(5), Florida Statutes, provides:

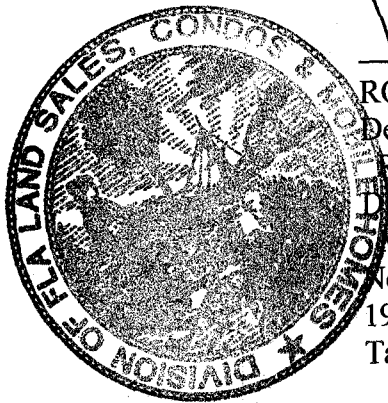
If it appears that through a scrivener's error a unit has not been designated as owning an appropriate undivided share of the common elements or does not bear an appropriate share of the common expenses or that all the common expenses or interest in the common surplus or all of the common elements in the condominium have not been distributed in the declaration, so that the sum total of the shares of common elements which have been distributed or the sum total of the shares of common expenses or ownership of common surplus fails to equal 100 percent, or if it appears that more than 100 percent of common elements or common expenses or ownership of the common surplus have been distributed, the error may be corrected by filing an amendment to the declaration approved by the board of administration or a majority of the unit owners.

The above provision is not intended as a cure-all amendatory procedure to correct material errors in declarations of condominium. Indeed, the provision applies only to situations where a scrivener's error resulted in a unit not being assigned a percentage of the common elements and common expenses or surplus, or where all of the common expenses or interest in common surplus or all of the common elements have not been distributed, or the sum total of the shares does not equal 100 percent, or equals more than 100 percent. On these facts, there was not a mathematical error in the statement of the percentages assigned to unit 1A4, but rather, a mistake in the allocation of the percentages, such that a two-bedroom unit was assigned a percentage

ownership of the common elements normally assigned to a three-bedroom unit. The result of that mistake cannot be corrected pursuant to section 718.110(5), Florida Statutes. Subsection (5) of section 718.110, Florida Statutes, only applies to situations where, due to a scrivener's error the sum total of the percentage shares of ownership assigned to the units in the declaration fails to equal 100 percent. *Providence Square Association, Inc., v. Biancardi*, 507 So. 2d 1366 (Fla. 1987). Since the declaration in the instant case mistakenly designated the percentage ownership normally ascribed to a three-bedroom unit to Unit 1A4, there was no scrivener's error and subsection (5) does not find application.

WHEREFORE, the Division declares that section 718.110(5), Florida Statutes, may not be utilized by the association in this case to correct the provision in the declaration wherein Unit 1A4, a two-bedroom, two-bath unit, was ascribed the percentage ownership of the common elements normally attributed to a three-bedroom, three bath unit.

DONE AND ORDERED this 29 day of December, 1999.



Robin L. Suarez

ROBIN L. SUAREZ, ACTING DIRECTOR
Department of Business and Professional
Regulation
Division of Florida Land Sales Condominiums, and
Mobile Homes
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Copies furnished to:

Kristie Harris
Docket Clerk

U.S. mail to Robert L. Taylor, Esquire, Taylor and Carls, PA., 1900 Summit Towers Boulevard,
Suite 820, Orlando, Florida, 32810, this _____ day of _____,
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

CERTIFICATE OF SERVICE

THE RENDITION OF THIS DECLARATORY STATEMENT,
NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217, WITHIN 30 DAYS OF
FILING FEES, AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET,
APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE
9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE
FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE
STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY
MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA
THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND

RIGHT TO APPEAL