

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

By: Brandon M. Nichols

IN RE PETITION FOR DECLARATORY STATEMENT

Docket No. CD2000-176

PARLIAMENT TOWERS CONDOMINIUM, INC.

DS 2000-024

DECLARATORY STATEMENT

Parliament Towers Condominium, Inc., Petitioner, filed a petition for declaratory statement requesting an opinion of the effect on its election of officers, some of whom may be re-elected, of a recall petition being served on the board shortly before or after its annual election and what action the board must take under 718.112(2)(j), Florida Statutes, if the recall petition is actually served.

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.

1. The association filed its petition with the Division on October 27, 2000. Notice of the Petition was published in the Florida Administrative Weekly on November 9, 2000.
2. Parliament Towers Condominium is a "condominium" as that term is defined by section 718.103(10), Florida Statutes (2000).
3. Parliament Towers Condominium, Inc. is a condominium "association" as that term is defined by section 718.103(2), Florida Statutes (2000).
4. The annual election for the members of the board of directors is held in January of each year.

5. The present board was notified that a recall agreement is being circulated among the members of the association. The recall agreement is purportedly to recall all present members of the board. The recall agreement has not been served on the board.

6. The present board posits the following hypothetical situations should the recall agreement be served on the board:

(a) Will the recall agreement be valid if it is signed before the election but not served until after the election?

(b) What effect will an arbitration order have on the recall agreement if it is executed and served on the board before the election and sent to arbitration as not certified by the board?

7. The board believes that any arbitration order entered after the election would be moot, even as to those recalled members who were re-elected. The board also views the re-elected member as a new member who would not be subject to the recall under the member's old term. Essentially, should a recall of members under a present board be used to overturn the vote and re-election of that member?

CONCLUSIONS OF LAW

8. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 718.501, Florida Statutes (2000).

9. The board must comply with section 718.112(2)(j), Florida Statutes (2000) and Florida Administrative Code Rule 61B-23.0028. The board must call a meeting within five business days of service of the written recall agreement. *See* 718.112(2)(j)2, Fla. Stat. At the meeting, the board must either certify or not certify the written recall agreement. *See* § 718.112(2)(j)2-5, Fla. Stat. The decision to certify or to not certify a recall is based in part on the

recalling owners' compliance with the service and form requirements. *See* 718.112(2)(j), Fla. Stat.; r. 61B-28.0027(1)-(2), Fla. Admin. Code.

10. If the board certifies the recall, then the board members elected by the recall take office upon adjournment of the board meeting certifying the recall. *See* 718.112(2)(j)2, Fla. Stat.; r. 61B-23.0028(3)(a)3, (5)(c).

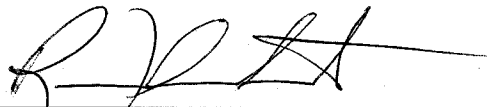
11. If the board does not certify the recall agreement, then it must refer the matter to arbitration in accordance with section 718.112(2)(j)3, Florida Statutes. The arbitrator will then address the legal consequences of the recall on the specific facts as to the timing of service on the board, the timing of the board's referral to arbitration, the issue of mootness of the recall in face of the annual election, and what effect an arbitration decision upholding the recall would have on any re-elected members.

ORDER

Based upon the findings of fact and conclusions of law, it is ORDERED that Petitioner must comply with section 718.112(2)(j), Florida Statutes, and rule 61B-23.0028, Florida Administrative Code if a written recall agreement is served.

DONE and ORDERED this 27th day of November, 2000.




ROSS FLEETWOOD, Director
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, FL 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RLE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), 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 THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Randall K. Roger, Kaye & Roger, P.A., 6261 Northwest 6th Way, Ft. Lauderdale, Florida 33309 on this _____ day of _____, 2000.

Kristie Harris, Docket Clerk

Copies furnished to:
Jim Mullins, Acting Chief
Bureau of Condominiums

Martha F. Barrera, Chief Attorney
Office of General Counsel