

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

IN RE PETITION FOR DECLARATORY STATEMENT
HOLIDAY MANOR COOPERATIVE, INC.

Docket No. DS2003070145

DS 2003-020

DECLARATORY STATEMENT

Holiday Manor Cooperative, Inc. (Holiday Manor), Petitioner, filed a petition for declaratory statement requesting an opinion as to whether the monthly financial reports which show the Cooperatives' financing of each individual shareholder's purchase of a unit, is confidential and exempt from disclosure as a cooperative record under section 719.104(2)(c)2, Florida Statutes (2002).

STATEMENT OF FACTS

The following facts 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 a hearing and none was held.

1. Holiday Manor Cooperative, Inc., filed its petition with the Division on July 1, 2003. Notice of the Petition was published in the Florida Administrative Weekly on August 1, 2003.

2. Holiday Manor is an "association" as that term is defined by section 719.103(2), Florida Statutes (2002).

3. Holiday Manor is the association of a mobile home and recreational vehicle park located in Collier County. The park was purchased from the previous owner and the cooperative was created in 1996.

4. Holiday Manor took out a bank loan to finance the purchase of the park. Additionally, Holiday Manor gave the unit owners the right to finance the purchase of their unit with Holiday Manor at eight percent annual interest, amortized over twenty-five years.

5. Holiday Manor maintains records and generates a monthly report regarding the financed units. These records and monthly reports include the name of the individual who has financed the unit, the rate of interest being paid, the monthly payment amount, and the balance owed by each individual.

6. A unit owner requested in writing to view these monthly reports. Holiday Manor has thus far denied inspection of these records by the unit owner because it disputes whether the unit owner has a right to inspect the monthly reports under section 719.104(2)(c), Florida Statutes.

CONCLUSIONS OF LAW

7. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 719.501, Florida Statutes (2002).

8. Holiday Manor, as an association maintaining official records pursuant to section 719.104(2)(c), Florida Statutes, is substantially affected by the laws regulating inspection of association official records provided in chapter 719, Florida Statutes.

9. Section 719.104(2)(c), Florida Statutes, provides: “The official records of the association shall be open to inspection by any association member or the authorized representative of such member at all reasonable times.”

10. Section 719.104(2)(a), Florida Statutes provides:

From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

11. The monthly financial reports of association financed units requested for inspection in this case fall under the section 719.104(2)(a)7, Florida Statutes, definition of association official records and as such must be open to inspection by any association member, or the authorized representative of the association member, pursuant to section 719.104(2)(c), Florida Statutes, unless the monthly reports requested fall within one of the exemptions to section 719.104(2)(c), Florida Statutes.

12. Section 719.104(2)(c), Florida Statutes, contains three exemptions to the association members’ right to inspect the association’s official records. The petitioner questions whether section 719.104(2)(c)2, Florida Statutes, provides an exemption from disclosure if the association records contain “[i]nformation obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.”

13. Section 718.111(12)(c)2, Florida Statutes regulates condominiums. This section is identical to section 719.104(2)(c)2, Florida Statutes. Section 718.111(12)(c)2 is interpreted in the declaratory statement St. Augustine Ocean and Racquet Club Condominium Association, Inc., Docket No. DS98182 (February 1, 1999) (on file with

Agency Clerk, Dep't of Bus. & Prof'l Reg.), affirmed, 753 So. 2d 794 (Fla. 5th DCA 2000), stating:

This exemption is limited to those instances where the condominium association is involved in approving a prospective lessee or purchaser of the units in the condominium. Commonly in those situations, the Association requires personal information of prospective lessors and unit purchasers prior to authorizing the transfer of a particular unit. The information that is sought to be protected is that submitted by the applicants as a result of the approval process.

In St. Augustine Ocean and Racquet Club, the Division issued a declaratory statement stating that the association cannot preclude a unit owner from examining all of an association's rental records, including financial information. On appeal, the Fifth District Court of Appeal upheld the declaratory statement under the state privacy law. The court stated "[i]f a better balance between issues of condominium governance and the privacy concerns of individual condominium owners is to be struck, it is the legislature who must do it." St. Augustine Ocean and Racquet Club Condo. Ass'n, Inc., v. Dep't of Bus. & Prof'l Reg., 753 So. 2d 794, 795 (Fla. 5th DCA 2000).

14. The exemption applies to information obtained in connection with the approval of the lease, sale or transfer of a unit. While the financing of the purchase of a unit is related to the lease, sale or transfer of a unit, the records requested in this particular case do not contain information in connection with the approval of the lease, sale or transfer of a unit. According to the information contained in the Petition, the monthly financial reports at issue in this case contain the name of each unit owner financed, the rate of interest being paid, the monthly payment amount, and the balance owed by each individual to Holiday Manor. Based on these facts, the information contained in the requested financial statements does not fall under the exemption because

the information does not include confidential information obtained in a lease, sale or transfer approval process.

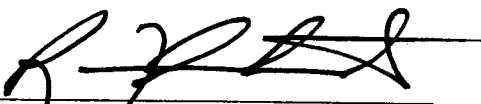
15. Additionally, an association cannot limit the inspection of the official records of an association to a particular purpose. Monte Carlo Towers Association, Inc., Declaratory Statement Docket No. 89L-105 (December 10, 1989) (on file with Agency Clerk, Dep't of Bus. & Prof'l Reg.). Likewise, there is no "good faith" requirement placed on the unit owner requesting inspection of an official record of the association. Commodore Owners' Association, Inc., Declaratory Statement Docket No. 88L-52 (April 18, 1989) (on file with Agency Clerk, Dep't of Bus. & Prof'l Reg.).

ORDER

Based upon the findings of fact and conclusions of law, it is ORDERED that the information contained in the monthly reports for association financed units of Holiday Manor--specifically the name of the unit owner financed by the association in the purchase of a unit, the rate of interest paid to the association, the monthly payment amount, and balance owed by each unit owner financed--does not fall under the exemption in section 719.104(2)(c)2, Florida Statutes, of the requirement that official records of the association shall be open to inspection by any association member, and therefore the unit owner requesting the financial records shall be allowed to inspect the records pursuant to section 719.104(2)(c), Florida Statutes.

DONE and ORDERED this 21st day of August, 2003.





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 RULE 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 Ronald L. Stetler, Garlick, Stetler & Peeples, LLP, 5551 Ridgewood Drive, Suite 101, Naples, Florida 34108-2718, this 3rd day of September, 2003.


Robin Bradwell, Docket Clerk

Copies furnished to:
Ross Fleetwood, Director

Janis Sue Richardson, Senior Attorney
Office of the General Counsel