

By:

Brandon 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

DS 2003-010

Regis S. Streitman, Unit Owner,
The Shores Club Condominium Association, Inc.,

BPR No. 2003056407
Docket No. DS2003-010

Petitioner.

DECLARATORY STATEMENT

The Division of Florida Land Sales, Condominiums, and Mobile Homes in the Department of Business and Professional Regulation (Division) issues this Declaratory Statement in response to a petition filed by Regis S. Streitman (Streitman), Petitioner, concerning The Shores Club Condominium Management Corporation (Shores Club). Streitman seeks an interpretation as to whether the association's use of a limited proxy, designating a vote for full funding of reserves with maintenance fees at a stated dollar amount, less than full funding of reserves with maintenance fees at a stated dollar amount, or waiver of reserves with maintenance fees at a stated dollar amount, satisfies the requirements of section 718.112(2)(b)2 and 718.112(2)(f)2, Florida Statutes, and rule 61B-22.005(8), Florida Administrative Code (2002).

STATEMENT OF FACTS

The following facts are based on information submitted by the 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. The Division received a petition for declaratory statement from Streitman on April 21, 2003.
2. On May 9, 2003, the Division published notice of its receipt in volume 29, number 19 of the Florida Administrative Weekly.
3. On April 28, 2003, the Division sent notice of the petition to Shores Club, the management company for Shores Club, A Condominium.
4. On November 9, 2002, the board of directors passed a proposed budget for 2003 with a monthly maintenance assessment of \$331.53 per unit, which included full funding of reserves. Attached to his Petition, Streitman provided the minutes of the Budget and Special Assessments Annual Meeting held on November 9, 2002, the minutes of the Shores Club Management Association Annual Meeting held on January 18, 2003, and a copy of the limited proxy.
5. On January 18, 2003, the annual meeting of the members was held. The board of directors presented the proposed annual budget to the membership for vote. A limited proxy was prepared for the meeting for the vote on the budget. The limited proxy stated the reserve vote as follows:

VOTE: YES OR NO TO FULLY FUNDING THE RESERVES.

1. I vote to fully fund reserves, maintenance fee will be \$331.00.

YES _____ NO _____

IF YOU VOTE NO TO FULL FUNDING OF RESERVES, PLEASE VOTE FOR ONE OF THE FOLLOWING (Note: If you checked "yes" above, do not mark below)

2. I vote to partially fund reserves, maintenance fee will be \$277.00 _____

3. I vote to waive all funding of reserves, maintenance fee will be \$266.00 _____

6. The board minutes reported the vote on the reserves as ten for full funding, forty-nine for partial funding, and four for waiver, resulting in a \$54.53 difference in the maintenance fee. The minutes also report that Streitman "stated that he believes that several violations have been committed by the Board and a general discussion was held to make sure that future elections and budget meetings be operated within state guidelines and policies for condominium." [sic]

7. In a response by Thomas Goslin, Registered Agent for Shores Club, Shores Club agrees that the Board prepared a proposed budget of \$331.53 per unit owner per month, which included full funding of reserves. Shores Club also agrees with the fact that the owners voted only to partially fund the reserve account during the January 2003 meeting. The association states that the unit owners approved the partial funding of the reserve fees because the balance of the reserve account was \$46,367 at the end of 2002, and several major projects had just been completed with funds raised from a special assessment.

8. In its response, Shores Club agrees that the maintenance fee for 2004 should be resolved in December of 2003 to avoid any confusion about the amount to be paid in January 2004.

9. Information concerning the budget of the Association was requested from Streitman by the Division. On August 6, 2003, the Division received this requested information, including the minutes from the November 9, 2002, Board Meeting, the Shores Club Management Association 2003 Proposed Operating Budget, the Shores Club Management Association 2003 Proposed Reserves, the January 2003 Annual Membership Meeting Limited Proxy, and the Minutes from the Shores Club Management Association Annual Meeting on January 18, 2003. This documentation failed to indicate which specific reserve funds would be partially reduced and by how much the association would be funding each reserve item.

10. Streitman did not request a hearing.

CONCLUSIONS OF LAW

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

12. Streitman, as a Shores Club unit owner, is substantially affected by whether Shores Club improperly used a limited proxy in order to reduce the funding of reserves.

13. Streitman argues that the limited proxy was improper because it should not have stated the dollar amount of the maintenance fees, which dollar amount should have been determined by later board action. Streitman "contend[s] that a limited proxy should have been provided for a vote to give the board permission to waive or reduce funding."

14. Under the Condominium Act, associations are required to budget for reserve expenditures every year. Unit owners may vote to waive or reduce the amount of reserves in the budget proposed by the board. Section 718.112(2)(f), Florida Statutes, provides:

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. **This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.** . . . If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. . . .

§ 718.112(2)(f), Fla. Stat. (2002) (emphasis added).

15. Section 718.112(2)(b)2, Florida Statutes (2002), provides that “[l]imited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.”

16. The Division’s rule requires reserves to be fully funded unless properly waived or reduced. Fla. Admin. Code R. 61B-22.005(6). The Division’s rule restricts a vote to waive or reduce reserves to each annual budget. Fla.

Admin. Code R. 61B-22.005(8) (2002) ("Any vote to waive or reduce reserves for capital expenditures and deferred maintenance required by Section 718.112(2)(f)2., Florida Statutes, shall be effective for only one annual budget."). Further restrictions in the rule apply to multicondominium associations. Because Shores Club is not a multicondominium association, the remainder of the rule does not apply to Streitman's question.

17. The statute and rule require condominium associations to put the question of whether to fund reserves in full, to fund reserves at a reduced amount, or to waive funding of reserves to a vote of the members. The use of a limited proxy is permitted for this purpose. When unit owners vote to fully fund reserves, partially fund reserves, or waive funding of reserves, the vote must clearly indicate to the board which reserve funds will be fully funded, partially funded, or altogether waived. When the vote is to fully fund or waive the reserves, then the proposed budget is clear as to the total amount of reserves being funded or waived. When the vote is to reduce the amount of reserves being funded, then the proposed budget must show which reserve funds are being partially reduced and by how much the association will be funding each reserve item, or the association needs to specify the amount of the partial waiver for each account in the voting materials. For example, unit owners might be given a choice of partially funding the painting reserve for the buildings that have a remaining useful life of 10 years but fully funding the paving reserve for a parking lot that has a remaining useful life of one year. However, the board failed to properly disclose the amount of each reserve being funded by the vote to

partially fund the reserves. The limited proxy only informed the unit owners how much the maintenance fee would be if the reserves were fully funded, partially funded, or funding was waived. Neither the limited proxy nor any other documentation received from Streitman or Shores Club disclosed which reserve funds would be partially reduced and by how much the association would be funding each reserve item. "It is the board's responsibility to establish reserves on the budget and to fully fund those reserves that are not waived or reduced by a vote of the unit owners." Dep't of Bus. & Prof'l Reg., Div. of Land Sales, Condominiums, & Mobile Homes, Budgets & Reserve Schedules: A Self-Study Training Manual for Beginners p. 31 (reprinted July 2003). The board cannot carry out this responsibility if the vote does not clearly indicate which reserves the unit owners intended to be partially funded.

18. The association should clarify for unit owners how it has implemented the vote taken for the 2003 budget. In future, the association should provide unit owners with specific information as to which reserve funds are being reduced and in what amounts. The board may indicate an across-the-board reduction of a stated dollar amount or percentage. The board may provide one reserve schedule for the vote to fully fund or waive and a second reserve schedule for the vote to reduce funding of reserves to show which of the reserve amounts are being reduced and in what amount. The board may use other methods that would also satisfy the statute and rule. The limited proxy used by the board would satisfy the requirements of the statute and rule if the supporting voting materials made it clear to unit owners which reserves would be reduced


and in what amounts. Because the limited proxy did not provide the required disclosures and none of the documents filed with the petition provided these disclosures, the proxy is insufficient.

ORDER

WHEREFORE, based upon the findings of fact and conclusions of law, it is declared that the association's use of a limited proxy, designating a vote for full funding of reserves with maintenance fees at a stated dollar amount, less than full funding of reserves with maintenance fees at a stated dollar amount, or waiver of reserves with maintenance fees at a stated dollar amount, does not satisfy the requirements of section 718.112(2)(b)2 and 718.112(2)(f)2, Florida Statutes, and rule 61B-22.005(8), Florida Administrative Code (2002), because the amount of the partial funding for each reserve fund was not disclosed in the proposed budget presented to the members along with the limited proxy.

DONE and ORDERED this 29th day of August, 2003.




ROSS FLEETWOOD, DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
1940 N. Monroe Street
Tallahassee, Florida 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 declaratory statement has been sent by U.S. Mail to Regis S. Streitman, 221 Meridian Road, Butler, PA 16001, and to the Board of Directors, Shores Club Condominium Management Association, Inc., 3815 S. Atlantic Ave., Daytona Beach Shores, FL 32019-5735, on this 3rd day of September, 2003.


ROBIN BRADWELL, DOCKET CLERK

Copies furnished to :

Ross Fleetwood
Director

Janis Sue Richardson
Chief Assistant General Counsel