

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES
MOBILE HOME

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk
By: Brandon M. Nichols

IN RE PETITION FOR DECLARATORY STATEMENT

Docket No. 2003093490

BURTON STOBISKY, unit owner.

DS 2003-040

DECLARATORY STATEMENT

Burton Stobsky (Stobsky), Petitioner, unit owner member of Palm-Aire Country Club Condominium Association, No. 2, Inc., filed a Petition for Declaratory Statement requesting an opinion as to whether the audio tape of a board meeting must be retained and available at a subsequent board meeting that seeks to approve the minutes based on the tape and that only after approval of the minutes, the tape may be discarded under rule 61B-23.002(5)(b)3, Florida Administrative Code.

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. Stobsky filed his petition with the Division on November 26, 2003. Notice of the petition was published in Florida Administrative Weekly on December 26, 2003.
2. Stobsky is a unit owner member of Palm-Aire Country Club Condominium Association, No. 2, Inc. (Palm-Aire), an "association" as that term is defined by section 718.103(2), Florida Statutes (2003).

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3. The board meetings of Palm-Aire are recorded by audio tape. The tape is used in transcribing the typed minutes of the board meetings. The tape is then brought to and used to record the next board meeting. Thus, the tape of the previous meeting is recorded over during the next board meeting, thereby erasing the tape of the previous meeting.

4. According to the petition, at the November 6, 2003, board meeting of Palm-Aire, the President read the typed minutes of the October 16, 2003, board meeting. Stobsky questioned two of the statements read and requested that the board play the tape made of the October 16, 2003, meeting. Stobsky's request to play the tape was denied as the tape was being used at that time to record the meeting in progress. After Stobsky's request was denied, the board voted to accept the minutes of the October 16, 2003, meeting as read.

CONCLUSIONS OF LAW

5. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 718.501, Florida Statutes.

6. Stobsky, as a condominium unit owner, is substantially affected by the rules of the Division relating to the official records of condominium associations.

7. Rule 61B-23.002(5)(b)3, Florida Administrative Code, provides that the official records of a condominium association include:

Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said

minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which are recorded are approved. This accommodates associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.


(emphasis added)

8. Reading the plain language of the rule, Palm-Aire is not required to record audio tapes of its board meetings. However, if the board of Palm-Aire chooses to record such audio tapes, those tapes must be maintained by the board until the minutes contained on the tape are actually approved. Therefore, in order to comply with this rule, Palm-Aire may not record over the tape of the previous meeting until the written minutes of the previous meeting are actually approved at the next board meeting.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that Palm-Aire must maintain any audio recordings of its board meetings until such time that the written minutes of the meeting are actually approved in accordance with rule 61B-23.002(5)(b)3, Florida Administrative Code.

DONE and ORDERED this 24th day of March, 2004.


MICHAEL T. COCHRAN,
Acting Director
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominiums, and Mobile Homes
1940 North 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 has been furnished by U.S. mail to Burton Stobsky, 2661 S. Course Drive, Pompano Beach, Florida 33069, on this 30th day of March, 2004.

Robin McDaniel
Robin McDaniel, Docket Clerk

Copies furnished to:

Janis Sue Richardson,
Chief Assistant General Counsel