

Final Order No. BPR-2005-02778 Date: **5-26-05**  
FILED

Department of Business and Professional Regulation  
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By: Sarah Wachman

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2005011408

The Lakes of Oakland Forest Condominium, Inc. /

**DS 2005-005**

**DECLARATORY STATEMENT**

The Lakes of Oakland Forest Condominium, Inc. (Lakes of Oakland), through its attorney, Bianca L. Brito, filed a Petition for Declaratory Statement requesting an opinion as to whether the association's declaration, which authorizes the acceleration of assessments in the event of default for a specific number of months irrespective of the budget year in which the claim of lien was filed, complies with section 718.112(2)(g), Florida Statutes.

STATEMENT OF FACTS

The following facts are based on information submitted by Lakes of Oakland. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this declaratory statement. A hearing was not requested or held.

1. Lakes of Oakland filed its original petition with the Division on February 21, 2005. The Division received its amended petition on April 13, 2005. Notice of the petition was published in Florida Administrative Weekly on April 29, 2005.

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2. Lakes of Oakland is an "association," as that term is defined by section 718.103(2), Florida Statutes.

3. Lakes of Oakland's declaration, which was recorded in 1984, contains the following provision:

13.3 Acceleration of ASSESSMENTS. If any member or any UNIT OWNER is in default in the payment of any ASSESSMENT for more than thirty (30) days after written demand by the ASSOCIATION, the ASSOCIATION upon written notice to the defaulting member or UNIT OWNER shall have the right to accelerate and require such defaulting UNIT OWNER or member to pay the ASSOCIATION ASSESSMENTS for COMMON EXPENSES for the next twelve (12) month period, based upon the then existing amount and frequency of ASSESSMENTS for COMMON EXPENSES. In the event of such acceleration, the defaulting UNIT OWNER or member shall continue to be liable for any increases in the regular ASSESSMENTS for COMMON EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or for all other ASSESSMENTS payable to the ASSOCIATION.

4. Lakes of Oakland asks whether this twelve month acceleration provision is consistent with section 718.112(2)(g), Florida Statutes (2004), which provides with emphasis added:

*Assessments.* The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

#### CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order in accordance with sections 120.565 and 719.501, Florida Statutes.

2. Lakes of Oakland has standing to seek this declaratory statement.



3. The Condominium Act governs every condominium created and existing in the State of Florida. The law governing a particular condominium is the law in existence on the date of recording the declaration of condominium. Sans Souci v. Dep't of Bus. Reg., 421 So. 2d 623 (Fla. 1st DCA 1982); Suntide Condo. Ass'n v. Dep't of Bus. Reg., 463 So. 2d 314, 317 (Fla. 1st DCA 1984). Generally, a statute is not to be given retroactive effect unless the statute expressly states that it is to be applied retroactively. Century Vill., Inc. v. Wellington Condo. Ass'n, 361 So. 2d 128 (Fla. 1978).

4. Notwithstanding the above, future legislative acts may be incorporated as amendments to the original declaration if the declaration contains express language referring to the Condominium Act as the same may be amended from time to time. See Kaufman v. Shere, 347 So. 2d 626 (Fla. 3d DCA 1977). Declarations which contain these automatic amendment clauses subject the condominium to the application of all subsequent amendments to the Condominium Act, thus avoiding the general rule against retroactive application of statutes.

5. Even in the absence of automatic amendment clauses, certain other changes to the Condominium Act are exceptions to the general rule as well. Provisions that are remedial or procedural and that do not create new rights or take away existing rights, but only operate in furtherance of the remedy or confirmation of already existing rights, do not come within the legal concept of a retrospective law or the general rule against retrospective operation of a statute. City of Lakeland v. Catinella, 129 So. 2d 133, 136 (Fla. 1961); City of Orlando v. Desjardins, 493 So. 2d 1027 (Fla. 1986).

6. Neither exception to the general rule regarding the retroactive application of the Condominium Act is present in this case. Lakes of Oakland's declaration does not contain

an automatic amendment clause. Instead, Lakes of Oakland's declaration provides that "the CONDOMINIUM ACT as same exists as of the execution of this DECLARATION, shall govern this CONDOMINIUM and the rights, duties and responsibilities of UNIT OWNERS therein." Additionally, the statutory language in question is not procedural in nature. The statutory language might alter the substantive right of Lakes of Oakland to accelerate assessments as provided in its declaration.

7. Therefore, Lakes of Oakland's question should be examined in terms of whether its declaration provision regarding the acceleration of assessments complies with the Condominium Act effective in 1984, the year in which its declaration was recorded.

Section 718.112(2)(g), Florida Statutes (1984) , provides:

*Assessments.* The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

Unlike the current section 718.112(2)(g), Florida Statutes (2004), the above 1984 provision is silent on the acceleration of assessments.

8. In 1986, the Legislature amended section 718.112(2)(g), Florida Statutes to explicitly recognize the existing right of an association to accelerate assessments upon default. Ch. 86-175, Laws of Fla. The amendment appears to be in the nature of a clarifying amendment given the language used (e.g., "Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in the payment of common expenses."). In 1988, the Legislature further amended the statute to provide that the right to accelerate assessments is limited to those amounts due for the remainder of the budget year in which the claim of lien was filed. Ch. 88-148, Laws of



Fla. This limitation is not applied retroactively to declarations that were recorded prior to 1988 and do not include the automatic amendment language.

9. Because section 718.112(2)(g), Florida Statutes (1984), is silent on the matter and because the association's declaration was recorded in 1984 without automatic amendment language, the Lakes of Oakland declaration is not inconsistent with the provision of the Condominium Act that applies in this particular situation.

ORDER

Based upon the findings of fact and conclusions of law, it is declared the association's declaration, which authorizes the acceleration of assessments in the event of default for a specific number of months irrespective of the budget year in which the claim of lien was filed, complies with the section 718.112(2)(g), Florida Statutes (1984), which applies to this particular situation.

DONE and ORDERED this 20<sup>th</sup> day of May, 2005.



  
MICHAEL T. COCHRAN, 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 Bianca L. Brito, Esq., Katzman & Korr, 1501 Northwest 49<sup>th</sup> Street, Suite 202, Fort Lauderdale, Florida 33309 on this 31<sup>st</sup> day of May, 2005.

Robin McDaniel  
Robin McDaniel, Division Clerk

Copy furnished to:  
Janis Sue Richardson,  
Chief Assistant General Counsel