

Department of Business and Professional Regulation  
AGENCY CLERK

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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

Docket No. 2007001248

CYNTHIA L. GLEASON, Unit Owner,  
GULF ISLAND BEACH & TENNIS CLUB  
CONDOMINIUM ASSOCIATION I, INC.

**DS 2007-002**

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

On January 4, 2007, Cynthia L. Gleason (Gleason), the owner of a condominium unit in Gulf Island Beach & Tennis Club I, Inc. Condominium, Inc. (Gulf Island) filed a petition for declaratory statement requesting an opinion as to whether the board of directors of Gulf Island is composed of three or five members under section 718.112(2)(a)1, Florida Statutes. Twenty-two other unit owners signed the petition.

Gleason supplemented the petition with a copy of the governing documents bearing the official recording book and page number on January 27, 2007. The time to issue the statement was stayed until the documents were received.

The Division published notice of receipt of the petition in the Florida Administrative Weekly on February 2, 2007.

On January 17, 2007, the Division mailed a notice of the petition to the association's registered agent. The association filed a response to the petition on February 7, 2007. No hearing was requested, and none was held.

#### FINDINGS OF FACT

The following findings of fact are based on information submitted by Gleason and the association. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. Gleason is a "unit owner" as that term is defined in section 718.103(28), Florida Statutes.
2. Gulf Island is a condominium "association," as that term is defined by 718.103(3), Florida Statutes.
3. The Division denied Gleason's petition for declaratory statement, case number 2006025677, because it requested the agency's review of actions already taken and involved circuit court jurisdiction over the validity of documents recorded in the public records. The dispute was which of two sets of documents governed the association.
4. That dispute continues in this petition. Gleason maintained and still maintains that only one set of documents has been recorded in the public records. Gleason provided a set of documents showing the Official Record Book and Page numbers. Gleason asserts that the bylaws of the association are silent, so section 718.112(2)(a)1, Florida Statutes, mandates a five member board.

5. The association provided excerpts from a set of governing documents that do not bear the Official Record Book and Page number, so it cannot be determined if these documents were recorded. However, the association argues that their set of the articles of incorporation establish a board of three directors. Ass'n response, ex. 1, arts. Five and Nine, Art. of Incorp.

6. Gleason disputes the association's documents as "unrecorded and therefore invalid documents." Gleason (Feb. 19, 2007).

7. The recorded declaration of condominium incorporates the articles of incorporation. Art. 8.3, Declaration of Condo. for Gulf Island Beach & Tennis Club I, A Condominium (Declaration) (recorded at OR 1381 PG 0948).

8. Article VIII, section 1, of the Articles of Incorporation for Gulf Island submitted by Gleason provides:

The affairs of the Association shall be managed by a Board consisting of the number of Directors determined by the By-Laws, but not less than three(3) Directors, and in the absence of such determination, shall consist of three (3) Directors.

Art. VIII, Art. of Incorp. (recorded at OR 1381 PG 1012).

9. The bylaws do not specify a number of directors. Declaration, Ex. D, Bylaws (recorded at OR 1381 PG 1018). The association did not contest this assertion or provide a copy of the bylaws showing otherwise. However, article IV of the bylaws provides that the association shall be managed by a board "as set forth in the Articles of Incorporation." Section 4.1, Bylaws (recorded at OR 1381 PG 1024).

### CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501

and 120.565, Florida Statutes.

2. Gleason has standing to seek a declaratory statement.
3. The association has standing to intervene in this petition.
4. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

5. Section 718.112(2)(a)1, Florida Statutes, provides:

The form of administration of the association shall be described indicating the title of the officers and directors and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members. . . .

6. The declaration of a condominium is its "constitution" or the superior document. S & T Anchorage, Inc. v. Lewis, 575 So. 2d 696, 698 (Fla. 3d DCA 1991). The bylaws and articles must be consistent with the declaration. Id. The Gulf Island articles of incorporation and bylaws are incorporated into the declaration. In this case, the articles of incorporation are also incorporated into the bylaws. Art. IV, Bylaws. The articles of incorporation provide for a three member board. Art. VIII, § 1, Art. of Incorp. The bylaws adopt the articles of incorporation, so they are not silent on the question of the number of board members.

7. Because Gulf Island's governing documents specify a three member board of directors, section 718.112(2)(a)1, Florida Statutes, does not change the number of

members of the board as it only operates in the absence of any provision specifying the number of members.

**ORDERED** that section 718.112(2)(a)1, Florida Statutes, does not change the governing documents of Gulf Island Beach & Tennis Club Condominium Association I, Inc., which specify a three member board of directors.

**DONE** this 20<sup>th</sup> day of March, 2007, at Tallahassee, Leon County, Florida.



  
Michael T. Cochran, Director  
Department of Business and  
Professional Regulation,  
Division of Florida Land Sales,  
Condominiums and Mobile Homes.  
Northwood Centre  
1940 North Monroe Street  
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**NOTICE OF RIGHT TO APPEAL**

THIS ORDER DENYING PETITION FOR DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY EITHER PARTY WHO IS ADVERSELY AFFECTED 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 Cynthia Gleason, 3891 The Battery, Duluth, GA 30096 and Eric N. Appleton, Bush/Ross, 220 South Franklin Street, Tampa, FL 33602-5330, this 26<sup>th</sup> day of March, 2007.

Robin McDaniel  
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson,  
Chief Assistant General Counsel