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Final Order No. BPR-2007-02989 Date: **4-11-07**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By:

Brandon M. Nichol

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 2007-004

Docket No. 2007008627

LIFESTYLE DEVELOPMENT COMPANY, L.P.

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 February 7, 2007, the Division received a petition for declaratory statement from Lifestyle Development Company, L.P. (Lifestyle) requesting an opinion as to whether The Conservancy and Sporting Society, a vacation club offering equitable memberships limited to a term of thirty-five months is a timeshare plan regulated under chapter 721, Florida Statutes.

Notice of receipt of the petition was published in Florida Administrative Weekly on March 9, 2007.

On October 20, 2006, the Division issued a declaratory statement finding that The Conservancy and Sporting Society as originally planned was a multisite timeshare plan subject to part II, chapter 721, Florida Statutes. In re: Pet. for Dec. Stmt. Lifestyle Dev.

Co., Docket No. 2006046922; Agency Clerk Final Order No. BPR-2006-07785; DS 2006-039 (Oct. 20, 2006).

FINDINGS OF FACT

The following findings of fact are based on information submitted by Lifestyle with its second petition. 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. Lifestyle is a Florida corporation that intends to create and develop The Conservancy and Sporting Society (Club), an "equity club" formed under Cayman Islands law, as a "company limited by guarantee." The Conservancy and Sporting Society Membership Plan Overview at 1.

2. Lifestyle provided a copy of its revised proposed membership plan and disclosure statement. A description of the plan is included in the first declaratory statement. Lifestyle made some changes to the plan. The one significant change is the limit on the term of a membership to thirty-five months. Pet. at 1.

3. The plan now provides:

TERM AND TERMINATION OF MEMBERSHIPS

Each Membership shall have an initial term of thirty-five (35) months from the closing of the purchase of the Membership (the last day of such term shall be referred to herein as the "Initial Expiration Date"). Unless terminated prior to the Initial Expiration Date, each Membership will automatically renew for a subsequent twelve (12) month term and, thereafter, unless a Membership is resold in accordance with the provisions below, at the end of such renewal term, each Membership will continue to automatically renew for additional twelve (12) month renewal terms (since the Member will have received the benefits of the Club for the full thirty-five (35) month term).

The Club shall deliver to each Member no less than thirty (30) days and no more than sixty (60) days prior to the Initial Expiration Date,

a notice that shall provide the Member the right to terminate such Member's Membership. If a Member exercises such termination right, such Member's Membership shall expire and terminate as of the Initial Expiration Date and shall be resigned to the Club. Member shall not be entitled to a refund or any other compensation for terminating and resigning the Membership.

Membership Plan at 8.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 721.26 and 120.565, Florida Statutes.

2. Lifestyle has standing to seek a declaratory statement.

3. 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.

4. The Florida Legislature enacted a comprehensive regulatory scheme, recognizing real property and personal property timeshare plans and establishing procedures for the creation, sale, exchange, promotion, and operation of these plans. § 721.02, Fla. Stat. The purpose was to regulate all timeshare plans located or offered in Florida and ensure that all purchasers received full and fair disclosures about the plan before purchasing an interest in a plan. Id.

5. The legislature also created exceptions to the act. Under part I of the Florida Vacation Plan and Timesharing Act, the act applies to all timeshare plans with "more than seven timeshare periods of at least 3 years" in which the accommodations and facilities are located within Florida or offered in Florida. § 721.03(1), Fla. Stat. (2006). Under part II

of the act, a multisite timeshare plan does not include a plan where the term is "for a period of 3 years or less." § 721.52(4)(b), Fla. Stat. (2006).

6. Section 721.52(4), Florida Statutes, provides that a multisite timeshare plan does not include a plan in which:

(b) The term is for a period of 3 years or less, regardless of the purchaser's contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

§ 721.52(4), Fla. Stat. (2006) (emphasis added).

7. The revised Club plan submitted by Lifestyle tracks the statutory exceptions to the act. The plan is less than three years with automatic renewal periods. The automatic renewal periods are not included in the term of the plan because members have the right to terminate their memberships after receiving the statutory notice.

Based upon the foregoing findings of facts and conclusions of law, it is:

ORDERED that The Conservancy and Sporting Society plan is not subject to regulation as a timeshare plan under the exceptions provided in sections 721.03(1), and 721.52(4), Florida Statutes (2006), because it is less than three years in duration and provides members with a notice of no less than 30 days and no more than 60 days prior to the date of renewal informing the member of the right to terminate at any time prior to the date of automatic renewal.

DONE this 4th day of April, 2007, at Tallahassee, Leon
County, Florida.



Division of Florida Land Sales,
Condominiums & Mobile Homes


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
Tallahassee, Florida 32399-1030

NOTICE OF RIGHT TO APPEAL

THIS ORDER DENYING PETITION FOR DECLARATORY STATEMENT
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 Michael B. Bradford, Paul, Hastings, Janofsky & Walker, L.L.P., 515 South Flower Street, 25th Floor, Los Angeles, CA 90071-2228, this 12th day of April, 2007.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson,
Chief Assistant General Counsel

Rudolph A. Prinz,
Bureau Chief, Standards and Registration