

Final Order No. BPR-2008-06144 Date: **7-21-08**
FILED

Department of Business and Professional Regulation
AGENCY CLERK

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By: Brenda M. Nichols

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2008032450

SHELDEN D. KANGAS and ANNA T. KANGAS, Unit Owners, in
HATCHETT CREEK MOBILE HOME PARK CONDOMINIUM ASSOCIATION, INC.

DECLARATORY STATEMENT **DS 2008-037**

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to section 120.565, Florida Statutes (2007).

PRELIMINARY STATEMENT

On May 13, 2008, the Division received a Petition for Declaratory Statement from Sheldon D. Kangas and Anna T. Kangas requesting an opinion as to whether Hatchett Creek Mobil Home Park Condominium Association, Inc. (Hatchett Creek) may propose a completely amended and restated declaration of condominium and bylaws by stating on the facing page: "substantial rewording, see current text" under sections 718.110(1)(b) and 718.112(2)(h)2, Florida Statutes.

Notice of receipt of the petition was published in Florida Administrative Weekly on June 20, 2008. No hearing was requested.

Hatchett Creek filed a response on June 23, 2008

In re Petition for Declaratory Statement
Shelden D. and Anna T. Kangas, Unit Owners, in
Hatchett Creek Mobile Home Park Condominium Association, Inc.
Docket No. 2008032450

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FINDINGS OF FACT

The following findings of fact are based on information submitted by Sheldon D. Kangas and Anna T. Kangas. 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. Petitioners, Sheldon D. and Anna T. Kangas, are unit owners in Hatchett Creek Mobile Home Park Condominium in Venice, Florida.

2. Hatchett Creek is a condominium "association" as that term is defined in 718.103(2), Florida Statutes.

3. Mr. and Mrs. Kangas filed a request for declaratory statement as to whether Hatchett Creek may propose a completely amended and restated declaration of condominium and bylaws by stating on the facing page: "substantial rewording, see current text" under sections 718.110(1)(b) and 718.112(2)(h)2, Florida Statutes.

4. On February 15, 2008, the Kangases received proposed revised drafts of the association's declaration of condominium, articles of incorporation, and bylaws, which had been revised and reviewed by the association's attorney.

5. The association recorded its revised declaration of condominium, articles of incorporation, and bylaws in the county records on May 31, 2008.

6. Hatchett Creek responded to the petition. Hatchett Creek argues that a substantial rewording and restatement involves significant changes and is presented to the owners as a brand new document that they may take and compare to the existing document. If an association is required in such a case to also provide a full set of underlined and hyphenated-through text, the result would be cumbersome and confusing and would substantially increase the mailing, copying and recording costs. Letter from

Kevin L. Edwards (Response) (June 23, 2008).

7. Mr. Kangas sent a letter to the Division in response to the letter he received from the council for Hatchett Creek Mobile Home Park Condominium Association, Inc. In this letter, which the Division received on July 2, 2008, Mr. Kangas reiterated his position that it was the intent of the legislature in the Condominium Act to protect condominium owner property rights, and that a rewrite of the condominium's governing documents with only "substantial rewording, see current text" fails to effectuate the legislature's intent to protect unit owner property rights, particularly in situations where the association gives only short notice to unit owners before a vote at an association's annual meeting. Letter from Shelden D. Kangas (July 2, 2008).

CONCLUSIONS OF LAW

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

9. The Kangases have standing to seek this declaratory statement. §§ 120.565, 718.103(28), Fla. Stat.

10. Hatchett Creek has standing to intervene in this proceeding as its substantial interests may be affected by a decision. §§ 120.565, 718.103(2), Fla. Stat.

11. 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.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set or circumstances.

12. Rule 28-105.001, Florida Administrative Code (2007), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

13. Section 718.110(1)(b), Florida Statutes, states:

No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision _____ for present text."

14. Section 718.112(2)(h)2, Florida Statutes, states:

No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw _____ for present text."

15. The legislature provided a procedure for revisions of the declaration and bylaws in order to assure notice to condominium owners of changes affecting title to their property. It is the division's belief that the association's notice of revision on the facing page of the amended and restated declaration of condominium and bylaws, "substantial rewording, see current text," complies with the requirements in that the wording is substantially similar to the language quoted in both statutes and the notion of citing to each specific revised provision, in any of the documents, would be a hindrance with much or all of the current text stricken through. When the owners are on notice of a substantial overhaul to the governing documents, the simple notice of "substantial rewording, see current text" is sufficient notice to owners to review the proposed documents completely for changes being made throughout.

16. So, based on the facts presented, the amendment complies with sections 718.110(1)(b) and 718.112(2)(h)2, Florida Statutes.

For the reasons stated above it is hereby:

ORDERED that Hatchett Creek Mobil Home Park Condominium Association, Inc. may propose a completely amended and restated declaration of condominium and bylaws by stating on the facing page: "substantial rewording, see current text" under sections 718.110(1)(b) and 718.112(2)(h)2, Florida Statutes.

DONE and ORDERED this 11th day of July, 2008,
at Tallahassee, Leon County, Florida.



**Division of Florida Land Sales,
Condominiums & Mobile Homes**

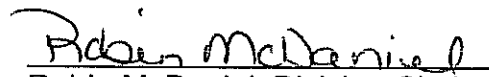
for Kevin L. Stanfield
MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums, Timeshares
and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

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 Sheldon D. and Anna T. Kangas, 4578 Country Manor Drive, Sarasota, FL 34233, and Kevin L. Edwards, Esq., Becker-Poliakoff, P.A., 630 South Orange Ave., Third Floor, Sarasota, FL 34236, on this 24th day of July, 2008.


Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney