

Final Order No. BPR-2008-08146 Date: 9-25-08
FILED

Department of Business and Professional Regulation
AGENCY CLERK:
Sarah Wachman, Agency Clerk

By: Brendan M. Hinkel

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

IN RE: PETITION FOR DECLARATORY STATEMENT **DS 2008-029**

SEA FIELDS CLUB, INC.,
A Florida Cooperative Association

Docket No. 2008024082

DECLARATORY STATEMENT

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 (2008).

PRELIMINARY STATEMENT

On April 21, 2008, the Division received a Petition for Declaratory Statement from Sea Fields Club, Inc. (Sea Fields), a Florida residential cooperative, seeking an opinion as to whether the association may insure unit wall and floor coverings, fixtures, and appliances by amending its documents to define the insurance of these items as a common expense under section 718.107(1)(a), Florida Statutes.¹

Like condominiums, cooperatives are regulated by both Florida Law and their governing documents (documents). Cooperative documents are defined at section 719.103(13)(a), Florida Statutes, to include articles of

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¹ Counsel for Sea Fields clarified the question on July 29, 2008.

incorporation, bylaws, and the ground lease or other underlying lease, if any.

The Division requested a current set of documents in order to begin its review. Sea Fields filed the documents on May 16, 2008.

FINDINGS OF FACT

The following findings of fact are based on information submitted by 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. Sea Fields is a residential cooperative association that owns and operates Sea Fields Club cooperative apartments. Arts. I, II, Sea Fields Club, Inc. Art. of Incorporation.

2. Sea Fields is responsible for insuring the building. Art. VIII, sec. 1(a), Bylaws. Sea Fields must budget for operating expenses, including insurance costs, and collect assessments from the owner-shareholders in sufficient amounts to purchase "such insurance as may be authorized." Art. VIII, sec. 6, Amended Bylaws (1991).

3. The documents do not explicitly define "common expenses" or provide a list of the individual items of property and services considered "common expenses" of the association. The documents do not identify the property inside the unit as an insurable common expense of the association.

4. Unit owners lease an apartment from Sea Fields. Sea Fields Club, Inc. Lease. Under the lease, Sea Fields is responsible for repairing partial fire damage to the building. ¶ 6(e), Lease at 4. "In the case of total destruction of said

building by fire or otherwise, this lease shall thereupon terminate, unless the insurers, if any, shall elect to rebuild the building pursuant to the provisions of the policies of insurance, if any, in which event this lease shall continue in force with respect to the corresponding premises in the building so rebuilt." Id.

5. Under the documents, unit owners own and must maintain "all furniture, appliances, carpets, lamps, draperies, and telephones." Art. VIII, sec. 6, Amended Bylaws (1991). Unit owners are responsible for the "appearance, as well as the maintenance and replacement of all furnishings and appliances." ¶ 7(e), Lease.

6. Sea Fields has "just completed a massive reconstruction project due to damage caused by recent hurricanes." Pet. at 1. Sea Fields wants to insure parts of the interior of the apartments owned by the unit owners, such as cabinets, appliances, and the wall, ceiling and floor coverings under the association's policy covering the building.² Id. Sea Fields believes it has a sufficient number of owners to pass an amendment to the bylaws to effect this change. Id. at 3.

7. Under the documents, an amendment to the bylaws automatically amends the unit owner leases. ¶ 3, Lease. The bylaws provide for amendment by a majority of owners. Art. X, Bylaws.

CONCLUSIONS OF LAW

8. The Division has jurisdiction to enter this order pursuant to sections 719.501 and 120.565, Florida Statutes.

² Sea Fields has identified each of these items as included in the "fixtures and improvements" in its petition. The Division does not take a position on whether appliances and other personal property constitute "fixtures and improvements." If any of the items are determined to be

9. Sea Fields has standing to seek this declaratory statement. §§ 120.565, 719.103(2), Fla.Stat.

10. 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.

11. 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. (emphasis added)

12. While many similarities in the law exist between the Condominium Act and the Cooperative Act, the two forms of property ownership are distinct. A cooperative association owns the cooperative property and leases the units to the shareholders of the corporation. Id. §§ 719.103(2) (defining association as the owner of the "record interest in the cooperative property"), (12) (defining cooperative as a form of property ownership "wherein legal title is vested in a

"fixtures" owned by the association, then the item would be "association property," which Sea

corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of the cooperative property”), (26) (defining a unit owner as “the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property”).

13. Under the lease agreement, the shareholders in Sea Fields own the property inside the units that Sea Fields would like to insure as a common expense. Art. VIII, sec. 6, Lease.

14. Cooperative associations must assess owners for the common expense of purchasing insurance. §§ 719.104(3), 719.107(1)(a), Fla. Stat. Common expenses also include the expenses of “operation, maintenance, repair, or replacement of the cooperative property; the association’s operating costs,” and any expense “designated as [a] common expense” by the Cooperative Act or the cooperative documents. § 719.107(1)(a), Fla. Stat.

15. If Sea Fields properly amends its documents to make insuring the unit wall and floor coverings, fixtures, and appliances a common expense, then the insurance will be a common expense under section 718.107(1)(a), Florida Statutes.

For the reasons stated above it is hereby:

ORDERED that if Sea Fields Club, Inc., a Florida cooperative, amends its governing documents to define the cost of insuring the items inside the unit as a

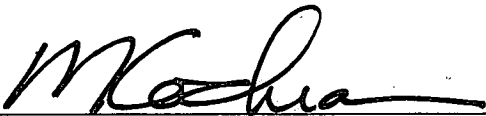
Fields would insure under section 719.104(3), Florida Statutes.

common expense, then the insurance will be a common expense under section 719.107(1)(a), Florida Statutes.³

DONE and **ORDERED** this 19th day of September, 2008,
at Tallahassee, Leon County, Florida.



Division of Florida Condominiums,
Timeshares, and Mobile Homes


MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Northwood Centre
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NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY 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.

³ Whether Sea Fields can obtain insurance for unit owner owned property is beyond the scope of this proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Larry Corman, Esq., Hodgson Russ, LLP, 1801 N. Military Trail, Suite 200, Boca Raton, FL 33431 on this 26th day of September, 2008.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Assistant General Counsel