

Final Order No. BPR-2008-08158

Date: **9-25-08**

FILED

Department of Business and Professional Regulation

AGENCY CLERK

Sarah Wachman, Agency Clerk

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. 2008046156

DE LA BAHIA CONDOMINIUM ASSOCIATION, INC.

DS 2008-061

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 August 19, 2008 the Division received a Petition for Declaratory Statement from de la Bahia Condominium Association, Inc. requesting an opinion as to whether it must conduct a vote to readopt or reaffirm its present bylaw staggering the terms of directors every two years under the amendment to section 718.112(2)(d)1, Florida Statutes, adopted by chapter 2008-28, s. 7, Laws of Florida.

Notice of receipt of the petition was published in Florida Administrative Weekly on August 29, 2008. No hearing was requested.

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FINDINGS OF FACT

The following findings of fact are based on information submitted by de la Bahia Condominium Association, Inc. 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. Petitioner, de la Bahia Condominium Association, is a not-for-profit Florida corporation organized to administer the operation and management of de la Bahia Condominium in Martin County, Florida.

2. De la Bahia Condominium Association, Inc. requested an opinion as to whether it must conduct a vote to readopt or reaffirm its present bylaw staggering the terms of directors every two years under the amendment to section 718.112(2)(d)1, Florida Statutes, adopted by chapter 2008-28, s. 7, Laws of Florida.

3. De la Bahia's bylaws provide:

IV. BOARD OF DIRECTORS AND OFFICERS

A. Each director elected at each annual members' meeting shall serve for the term of two years or until his successor is duly elected. The seven (7) directors shall be divided into two classes; one class consisting of three (3) directors and the other consisting of four (4) directors. The class of three (3) directors shall be voted upon for election during odd numbered years. The class consisting of four (4) directors shall be voted upon for election during even numbered years. Directors may be removed with or without cause by an affirmative vote of the members owning not less than 50% of the units.

Art. IV, Amended and Restated Bylaws of de la Bahia Condo. Ass'n, Inc. (June 23, 1999).

4. The declaration provides: "[a]ll provisions of Florida Statutes 718, Condominium Law, of the Florida Administrative Code as such may be amended from time to time, are hereby incorporated by reference into this Amended Declaration." Art.

I, sec. B, Proposed Amended and Restated Declarations of Condo. Establishing de la Bahia (June 29, 2007) (approved date). In case of conflict, the Condominium Act prevails. Id.

CONCLUSIONS OF LAW

1. 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.

2. 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.

3. Section 718.112(2)(d)1, Florida Statutes, as amended in 2008 will provide:

(d) *Unit owner meetings.*—

1. There shall be an annual meeting of the unit owners The terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms.

Ch. 2008-28, § 25, Laws of Fla. (2008) (HB 995) (effective Oct. 1, 2008).

4. Beginning October 1, 2008, section 718.112(2)(d)1, Florida Statutes, will provide that if an association's bylaws permit staggered, two-year terms for its directors, a majority of an association's total voting interests' approval is necessary to permit association board members to serve such a term.

5. Laws are prospective in application. Fleeman v. Case, 342 So. 2d 815, 817 (Fla. 1976). Subsection 718.112(2)(d)1, Florida Statutes, as amended by the legislature in the 2008 session is not effective until October 1, 2008, and this subsection will operate prospectively. De la Bahia's declaration adopts all amendments to the Condominium Act once the amendment becomes effective. Therefore, on October 1, 2008, de la Bahia's bylaws will incorporate the amendment. De la Bahia will then need to adopt a set of bylaws that will be in compliance with subsection 718.112(2)(d)1, Florida Statutes, in order to continue the use of staggered, two-year terms for its directors. The subsection requires a majority vote of the total voting interests to adopt staggered terms for the directors.

For the reasons stated above it is hereby:

ORDERED that de la Bahia Condominium Association, Inc. must conduct a vote to readopt or reaffirm its present bylaw staggering the terms of directors every two years under the amendment to section 718.112(2)(d)1, Florida Statutes, adopted by chapter 2008-28, s. 7, Laws of Florida.

DONE and ORDERED this 22nd day of September, 2008,

at Tallahassee, Leon County, Florida.



Division of Florida Condominiums,
Timeshares, and Mobile Homes

A handwritten signature in black ink, appearing to read "M. Cochran".

MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Florida Division of 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 Richard Hoffman, President of de la Bahia Condominium Association, Inc., 2600 South Kanner Highway, Stuart, Florida 34994 on this 30th day of September, 2008.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Assistant General Counsel

Paul Vallier, Registered Agent
2600 South Kanner Highway, S-L
Stuart, Florida 34994