

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. 2010017752

FIDDLER'S GREEN CONDOMINIUM
ASSOCIATION II, INC.

DS 2010-029

DECLARATORY STATEMENT

Fiddler's Green Condominium Association II, Inc. (Fiddler's Green) filed a Petition for Declaratory Statement requesting an opinion as to whether Fiddler's Green's bylaws limiting a director to two consecutive terms is consistent with section 718.112(2)(d), Florida Statutes.

PRELIMINARY STATEMENT

On March 26, 2010, the Division received a Petition for Declaratory Statement from Fiddler's Green, seeking an opinion on whether Fiddler's Green's bylaws limiting a director to two consecutive terms is consistent with section 718.112(2)(d), Florida Statutes. On April 7, 2010, the Division sent a letter to Fiddler's Green informing the association that the Division received the petition for declaratory statement and clarified the question presented in the petition. A hearing was not requested or held.

FINDINGS OF FACT

The following findings of fact are based on information submitted by Fiddler's Green. 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. Fiddler's Green is a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.

2. The association is the entity responsible for the management and operation of Fiddler's Green, a Condominium located in Sarasota County, Florida.

3. Fiddler's Green annually holds its election of Directors and is unsure as to the correct and proper application of section 718.112(2)(d), Florida Statutes, with regard to the 2005 amendment to article 3.3 of the bylaws. The Amended and Restated Bylaws for Fiddler's Green Condominium Association II, Inc., provide:

At each annual meeting of members, directors shall be elected to two-year terms to fill the vacancies of those directors whose terms are then expiring. If new director terms are added, the term shall be for two years. All directors shall serve until their respective successors shall have been duly elected and qualified, or until their earlier resignation or removal. Terms on the Board of Directors shall be limited to two consecutive terms or until a qualified replacement is elected or appointed.

4. Fiddler's Green held a membership meeting in which its membership voted in favor of continuing two-year staggered terms as required by section 718.112(2)(d)1, Florida Statutes.

CONCLUSIONS OF LAW

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

2. Fiddler's Green is a condominium association and has standing to petition for a declaratory statement.

3. Section 718.112(2)(d)1, Florida Statutes, provides in part:

Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals or exceeds the number of candidates, no election is required. 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 may serve 2-year staggered terms. If no person is interested in or demonstrates an intention to run for the position of a board member whose term has expired according to the provisions of this subparagraph, such board member whose term has expired shall be automatically reappointed to the board of administration and need not stand for reelection. (emphasis added).

4. The bylaws provide that directors serve two-year staggered terms for a maximum of two consecutive terms totaling four years for directors. Art. 3.3, Amend. Bylaws. At the end of two consecutive two-year terms, a director would not be eligible under the bylaws to run for re-election to the board.

5. In 2007, the Division issued a Declaratory Statement in Re: Petition for Declaratory Statement Gulf and Bay Club Condominium Association, Inc., Docket No. 20070228049 (Gulf and Bay) which presented the question, "whether Gulf and Bay...may adopt a bylaw restricting unit owners from serving on the board for more than two consecutive three year terms under section

718.112(2)(d), Florida Statutes (2005), and Florida Administrative Code Rule 61B-23.0021.” In response, the Division ordered that:

Gulf and Bay may not adopt a proposed amendment to the bylaws limiting a director's right to seek a re-election as such a bylaw would be inconsistent with section 718.112(2)(d)(3), Florida Statutes, which provides that all unit owners, except convicted felons whose right to vote has not been restored, are eligible to run for election to the board.

6. The legislature amended the election requirements in 2008.¹ The amendment provides that length of all director terms expire at the annual meeting. Board members whose terms expire are eligible to run for reelection “unless otherwise permitted by the bylaws.”² The legislature intended that all director terms must expire rather than continue on without an election.³ However, an association that adopts a bylaw allowing directors to serve two-year staggered terms permits directors to serve beyond the annual expiration date set by this amendment. Another exception to the expiration of terms occurs when the board member's term expires and no other candidate intends to run for the seat, then the board member is automatically reappointed without the need for an election.⁴

7. The amendment further changed the law to allow associations to limit the number of consecutive terms a board member may serve, so that a member whose term expires may not run for reelection. The phrase “unless otherwise permitted by the bylaws” qualifies which “board members may stand for

¹ Ch 2008-28, § 7, at 634, Laws of Fla (H.B. 995); see In re Pet. Decl. Stmt, The Decoplage Condo Ass'n, Inc., Docket No 2008050050, DS 2008-065, Final Order No. BPR-2008-10393 (Dec. 4, 2008) (

² Id. (codified at § 718 112(2)(2)(d)(1), Fla. Stat) (emphasis added).

³ Fla H R. Comm Saf. and Sec. Council, CS for HB 995 (2008) Staff Analysis 8, 21 (Apr. 14, 2008) (available at <http://www.flsenate.gov/data/session/2008/House/bills/analysis/pdf/h0995c.SSC.pdf>)

⁴ § 718 112(2)(d)(1), Fla. Stat (2009).

reelection.” The phrase modifies the reelection of a board member whose term has expired and who would be eligible to run for reelection unless the bylaws permit a different result.⁵ A bylaw limiting a board member’s eligibility to run for reelection by limiting the number of consecutive terms of directors is permitted under section 718.112(2)(d)(1), Florida Statutes.

ORDER

Fiddler’s Green Condominium Association II, Inc.’s bylaw limiting a director to two consecutive terms is consistent with section 718.112(2)(d)1, Florida Statutes, which provides that all unit owners, except those explicitly limited by the statute, are eligible to run for election to the board.

DONE and **ORDERED** this 27th day of April, 2010,
at Tallahassee, Leon County, Florida.




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, Florida 32399-1030

⁵ Jacques v Dep’t of Bus. and Prof’l Reg., Div. Pari-Mutuel Wagering, 15 So. 3d 793, 796 (Fla. 1st DCA 2009) (under the doctrine of the last antecedent, qualifying phrases are to be applied to the words or phrase immediately preceding and not others more remote) “Otherwise” means in a different way or to the contrary Webster’s Ninth Collegiate Dict. 835 (1983)

NOTICE OF RIGHT TO APPEAL

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY 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 Jeremy V. Anderson, Esquire, The Law Offices of Lobeck & Hanson, P.A., 2033 Main Street, Suite 403, Sarasota, FL 34237, this 13th day of May, 2010.


for: Brandon M. Nichols
ROBIN MCDANIEL, Division Clerk

Copies furnished to:

Janis Sue Richardson,
Chief Assistant General Counsel