

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
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File #	2011-03482

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2010050399

EMERALD LAKE, SPE, LLC, Park Owner,
EMERALD LAKE MOBILE HOME COMMUNITY

DS 2010-079

DECLARATORY STATEMENT

The Division of Florida Condominiums, Timeshares, and Mobile Homes in the Department of Business and Professional Regulation enters this Declaratory Statement under section 120.565, Florida Statutes (2010).

PRELIMINARY STATEMENT

On October 6, 2010, the Department received a Petition for Declaratory Statement from Emerald Lake SPE, LLC requesting an opinion as to: (1) "Whether the Petitioner, the Owner of Emerald Lake manufactured home community, can require the purchaser of an existing home in the community to enter into a new rental agreement with the Owner under the P3 prospectus, with the rental agreement to take effect upon the expiration of the remainder of the term of the existing home seller's rental agreement under the P1, PA or P2 prospectus, consistent with section 723.059(3), Florida Statutes"; and (2) "Whether the language required by the Division to be included in the lifetime rental agreement amended into the P1, PA and P2 prospectus, and the language required to be included in the P3 prospectus, as set forth in paragraphs 12 and 13 of this Petition, are invalid and unenforceable consistent with section 723.059(3), Florida Statutes." The answer is "no" to both questions

On November 15, 2010, Emerald Lake of Punta Gorda, HOA, Inc. filed a motion for additional time to answer and intervene, which was granted. The HOA filed a counter-petition, which was denied, and a response to the petition on December 6, 2010.

On November 22, 2010, the Federation of Manufactured Home Owners of Florida, Inc. [FMO], an association representing mobile home owners across the state, some of whom own homes in Emerald Lake, filed a motion to intervene, which was granted. FMO filed its response to the petition on December 16, 2010, and a post-hearing memorandum of law on February 25,

2011

A hearing was held before General Counsel Reginald Dixon, Secretary Charlie Liem, and Director Michael Cochran on February 10, 2011.

FINDINGS OF FACT

The material facts are set out in the petition and the exhibits. The Department takes no position as to the accuracy of the facts with one exception. Emerald Lake asserts the Division's plain reading of section 723.059(3), Florida Statutes, is a "policy" and the Division's long-standing application of the law is an incorrect interpretation of a homeowner seller's and purchaser's rights. To the extent, Emerald Lake is arguing that the Division's plain reading is an unpromulgated rule, the Division finds this assertion to be without merit.

FMO did not dispute any of the material facts but provided legal argument supporting the Division's plain reading of the act. The HOA denied many of the facts because it had not received copies of the prospectuses after it intervened in the proceeding. The HOA did not request copies when it filed its motion for more time to intervene or before it filed its response. The HOA did not otherwise dispute the material facts asserted by Emerald Lake but did contest the legal conclusions to be drawn from the facts alleged. Because the Division relies upon the language in the four prospectuses, which are part of the record and make up most of the material facts, the Division finds that the facts alleged in the prospectuses are supported by competent substantial evidence. Otherwise, the Division relies upon the material undisputed facts in the petition

1. Petitioner, Emerald Lake SPE, LLC, owns Emerald Lake Mobile Home Community, a mobile home park in Punta Gorda, Florida.

2. The park has 201 mobile home lots leased from the park owner by mobile homeowners who have placed their mobile homes on the lots.¹ The park operates as housing for older persons over 55 years of age.² The park is built out; there are no vacant lots being offered by the park owner for new tenants.

3. The park owner has filed and received Division approval for four prospectuses that have been approved for the park owner's delivery to mobile homeowners in the park.³ The P1 prospectus was approved on March 13, 1986 and is the initial prospectus delivered to

¹ Pet Decl Stmt at 2

² Emerald Lake Guidelines for Community Living (Rules and Regulations), ¶ 1(B), at 1. The HOA denied the facts related to the prospectuses because it had not received copies. Response to Pet'r's Pet for Decl Stmt (Dec 6, 2010)

³ Id. at 3

homeowners. The PA prospectus was approved on December 3, 1987. The PA prospectus amended the P1 prospectus to incorporate the legislative amendments to the Florida Mobile Home Act in 1986. The Division approved the P2 prospectus on May 9, 1988. The Division approved the P3 prospectus on May 22, 2007.

4. Each of the prospectuses incorporates a Division approved lot rental agreement, which must be signed by both the mobile homeowner tenant and the park owner landlord before or at the time the homeowner occupies the lot. The P1 and PA lot rental agreements provide leases that: (1) are a term of one year based on a calendar year; (2) are automatically renewable each year; (3) include an annual rent increase that “shall be cumulative and shall be based upon the percentage change in the Consumer Price Index, . . . But, in no event, shall any rental increase exceed ten (10%) percent in any one year.”⁴

5. In addition to the rent, the P1 and PA mobile homeowners must also incur added costs of moving a home into the park, setting it up, installing concrete, brick steps and skirting it.⁵ The park only accepts double-wide mobile homes.⁶ The homeowner must install at his or her own expense a concrete driveway and carport floor, a screened porch or Florida room, an aluminum roof over the carport, and sod.⁷ The homeowner also pays for utilities, which includes water, sewer, cable TV, garbage, electricity, and telephone.⁸

6. The P1 and PA prospectuses and lot rent agreements expressly incorporate section 723.059, Florida Statutes. The lot rent agreements provide that the mobile homeowner may sell the home to a purchaser, who must be approved by the park owner and who “may assume the remainder of the then current term of these Rental Agreements and shall be entitled to rely upon the terms and conditions of the Prospectus or Offering Circular as delivered to the initial recipient”⁹

7. The P2 lot rental agreement provides for: (1) an annual term based on the calendar year, (2) automatic renewal for the next annual term, and (3) a lot rent increase “(but not decrease) in the Net United States Department of Labor Consumer Price Index. . . ” as the basis for the increase.¹⁰

⁴ Pet for Decl Stmt at 4, P1 and PA Rental Agreements

⁵ Emerald Lake Guidelines for Community Living (Rules and Regulations), ¶ 14, at 10-11

⁶ P1 Prospectus, ¶ 6, at 5

⁷ Id.

⁸ Id., ¶ 7, at 5

⁹ P1, Rental Agreement, ¶ 5.5, at 3, P1 Prospectus at 7

¹⁰ P2 Prospectus, Ex. A. Rental Agreement, ¶ 3, at 1-3

8. In addition to the rent, mobile homeowners under the P2 prospectus also pay special use fees for storage areas, for the park owner having to trim shrubbery around the lot, late fees, security card replacement, and returned check charges.¹¹ Mobile homeowners also pay to set up the home on the lot and add mandatory improvements, including skirting, tie downs, a screened porch or patio or Florida room, sod, landscaping, and a carport with concrete drive and utility storage room.¹²

9 The P2 prospectus provides that a purchaser of a home in the park must be approved by the park owner before occupancy of the home, must agree to pay rent at current market rate at the end of the term, December 31st, of the lot rent agreement, and must execute a lot rent agreement, which will include the same terms and conditions as the lot rent agreements offered to other tenants in the park.¹³

10 The P1, PA, and P2 prospectuses, approved between 1986 and 1988, provide the manner in which the park owner will determine an annual rent increase to be passed onto the homeowners

11 The P3 prospectus was approved in 2007 for adoption by any homeowner under the P1, PA, or P2 prospectus or by any buyer of a home under the P1, PA, or P2 prospectus. The park owner amended the P1, PA and P2 prospectus to include the P3 lot rent agreement as an option to the lot rent agreement that corresponds to each of these 1986-1988 prospectuses. The amendment included in the earlier prospectuses provides this consumer disclosure:

THIS PROSPECTUS CONTAINS TWO RENTAL AGREEMENTS. THE SECOND FORM OF RENTAL AGREEMENT, WAS DETERMINED ADEQUATE BY THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES ON [DATE], ONLY FOR THOSE HOMEOWNERS WHO CONSENT TO THE CHANGES. THE SECOND FORM OF RENTAL AGREEMENT CONTAINS PROVISIONS WHICH ARE DIFFERENT FROM THE DISCLOSURE IN THIS PROSPECTUS.

THE TERMS OF THE SECOND FORM OF RENTAL AGREEMENT APPLY ONLY TO THOSE HOME OWNERS WHOSE TENANCY IS GOVERNED BY THAT AGREEMENT.¹⁴

12. The P3 adds definitions of terms, e.g. fire safety code requirements, reserves certain rights to the park owner, and expands descriptions of the terms and conditions of leasing a lot in the park. The P3 prospectus provides for the method of determining an annual rent increase by an increase in the Consumer Price Index or a minimum of 3% or based upon market rent, which is the "highest rent currently charged to a resident in the Community for a lot

¹¹ *Id.* ¶ 4, at 3-4

¹² *Id.* ¶ 7, at 5

¹³ P2, Ex. A, ¶ 12, at 9

¹⁴ PA at 5, P1 at 5, P2 at 6

in the same rent category as the lot rented by Homeowner, or that rent determined based on a comparison to those base rents and other charges imposed in comparable communities” with a cap of 2% over any increase in the Consumer Price Index.¹⁵ Special use fees may increase based upon: increased costs; similar increases in comparable parks; costs of maintenance, repair and renovation of the park; governmental compliance costs; legal costs; advertising and promotion costs; fire district assessments; training personnel, cost of improvements; and other itemized operational and administrative costs.¹⁶ In addition, the park owner passes on or through to the homeowners utility charges and other governmental charges.¹⁷ The P3 adds a substantial number of new fees and charges that mobile homeowners must pay the park owner.¹⁸

13 The P3 lot rental agreement states its purpose “is to describe the unique relationship that exists between two property owners: the Community Owner, the entity which owns the real estate and common area improvements at Emerald Lake and the Homeowner, who owns a home located in the Community.”¹⁹ The P3 prospectus does not provide a one year term, but provides that each lease “shall be for the lifetime of the Homeowner(s), commencing on the closing date for the purchase of Homeowner’s home at Emerald Lake, and shall remain in effect until: (1) the death of a surviving Homeowner, or where the lease was executed by only one of the Residents of a manufactured home, until the death of the surviving spouse; (2) the sale of the Resident’s home at Emerald Lake; or (3) the transfer of title of the Resident’s home to a third party other than a spouse.”²⁰

14. The P3 lot rent agreement provides that the lifetime lease is not assumable for a homeowner’s transfer of the home to anyone other than a spouse.²¹ On sale of the home, “the buyer will be offered a new agreement at the rates and on the terms then established for new residents ”²² The buyer’s occupancy does not begin until the park owner has given the buyer a lot rental agreement, a prospectus, the current rules, and any notices of change in the rules.²³

15. The P3 prospectus and lot rent agreement are materially different from the P1, PA, and P2 prospectuses in three relevant respects: (1) the P3 makes it clear

¹⁵ P3 at 21-22, see also Ex B Lot Rental Agreement at 38-39.

¹⁶ Id. at 22-24

¹⁷ Id. at 24

¹⁸ Id. at 17-20

¹⁹ P3, Ex B, at 1

²⁰ Id.

²¹ P3, Ex. B, ¶ M, at 43

²² Id.

²³ Id.

that the “lifetime” lease agreement is *not* assumable by third party buyers and is only transferable to the spouse on the co-owner’s death; (2) the P3 allows rent increases based on either increases in the Consumer Price Index *or* market rent (2% above any increase in the CPI); and (3) the P3 adds a number of new special use charges and fees.

16. The Division approved the P3 for use with prospective homeowners and existing homeowners who accept it at their option.²⁴ The Division’s approval advised:

The park owner is obligated by law to furnish a copy of an approved prospectus and all exhibits to each **prospective** home owner. An approved prospectus must also be delivered by the park owner to each home owner who is renewing a rental agreement or prior to increasing the lot rental amount if no prospectus has previously been given. This prospectus may be delivered only to a home owner who is not assuming an existing rental agreement or to a home owner who has not previously received a prospectus.²⁵

17. Emerald Lake SPE intends to use the P3 prospectus and lifetime lot rental agreement with buyers of existing homes. Emerald Lake SPE “intends to enter into lifetime tenancies with all home owners ” It asserts that existing homeowners may “elect to enter into a new lifetime rental agreement.”²⁶

18. The P1, PA, P2, and P3 prospectuses provide for the park owner to unilaterally amend the terms to “conform with changes in relevant statutory provisions or changes in relevant rules of the Department of Business and Professional Regulation, or any other agency having jurisdiction over the operation of this manufactured home Community.”²⁷

CONCLUSIONS OF LAW

19 The Department has authority to issue a declaratory statement regarding the Florida Mobile Home Act under sections 723.006 and 120.565, Florida Statutes.

20 Emerald Lake SPE, LLC has standing to petition for a declaratory statement under sections 723.002, 723.003(7), and 120.565, Florida Statutes.

21 Emerald Lake of Punta Gorda HOA, Inc has standing to intervene. The HOA is the mobile homeowners’ association representing the homeowners in the park under section 723 075, Florida Statutes. It has authority to represent homeowners in

²⁴ Pet for Decl Stmt , Ex B Letter from Philip Twelves, DBPR, to Richard P. Lee, Esq (May 22, 2007)

²⁵ Id. (emphasis in original)

²⁶ Id. at 7

²⁷ P3 at 27

matters relating to the park and the Florida Mobile Home Act.²⁸ The homeowners assert that they leased their lots in the park based upon the park owner's representations made in the prospectus they received with their lot rent agreements. The homeowners wanted the lot increase provision in the prospectus they received, the Consumer Price Index increase only, "as an incentive to future purchasers of their homes, making this house more desirable than their neighbors whose rent could be raised for almost any reason."²⁹

22 The Federation of Manufactured Home Owners of Florida, Inc. [FMO] has standing to intervene.³⁰ FMO argues that: (1) the homeowner, not Emerald Lake, is adversely affected by requiring a buyer to accept the P3 prospectus and lot rent agreement; (2) section 723.059(3) clearly makes it the buyer's choice to accept a P3 or the seller's prospectus not the park owner's choice to impose it; (3) the act does not require homeowners to enter into new rental agreements every year at the expiration of the lot rent term, which is a conclusion reached by following Emerald Lake's contract theory; (4) the terms of the prospectus control the rental agreement; (5) the initial recipient is the home owner who receives a prospectus from the park owner; (6) the prospectus creates certainty for the homeowners and buyers as to the bundle of rights being purchased; and (7) the legislature has not seen a need to define tenancy, so the agency may not do so.

23. 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

24. Rule 28-105.001, Florida Administrative Code (2010), 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.

²⁸ § 723.075(1), Fla Stat (2010)

²⁹ [HOA] Response to Pet's Pet for Decl Stmt at 4

³⁰ See Order Granting Intervention for FMO (Dec 2, 2010)

25. Section 723.059, Florida Statutes, provides the rights of purchasers:

(1) The purchaser of a mobile home within a mobile home park may become a tenant of the park if such purchaser would otherwise qualify with the requirements of entry into the park under the park rules and regulations, subject to the approval of the park owner, but such approval may not be unreasonably withheld.

(2) Properly promulgated rules may provide for the screening of any prospective purchaser to determine whether or not such purchaser is qualified to become a tenant of the park.

(3) The purchaser of a mobile home who becomes a resident of the mobile home park in accordance with this section has the right to assume the remainder of the term of any rental agreement then in effect between the mobile home park owner and the seller and shall be entitled to rely on the terms and conditions of the prospectus or offering circular as delivered to the initial recipient.

(4) However, nothing herein shall be construed to prohibit a mobile home park owner from increasing the rental amount to be paid by the purchaser upon the expiration of the assumed rental agreement in an amount deemed appropriate by the mobile home park owner, so long as such increase is disclosed to the purchaser prior to his or her occupancy and is imposed in a manner consistent with the initial offering circular or prospectus and this act.

(5) Lifetime leases, both those existing and those entered into after July 1, 1986, shall be nonassumable unless otherwise provided in the lot rental agreement or unless the transferee is the home owner's spouse. The renewal provisions in automatically renewable leases, both those existing and those entered into after July 1, 1986, are not assumable unless otherwise provided in the lease agreement.

History.--s. 1, ch. 84-80; s. 10, ch 86-162; s. 924, ch 97-102 ³¹

26. Under section 723 059, Florida Statutes, a buyer may assume the remaining time on the seller's lot rent agreement at the rent being paid by the seller under that agreement, but must enter into a new lot rent agreement and accept the increased rent rate at the end of the term if the park owner imposes the increase in a manner set out in the prospectus ³²

³¹ § 723.059, Fla Stat. (2010) (emphasis added)

³² § 723.059(3), (4), Fla Stat (2010); see Magnolia Vill Homeowners Ass'n v Magnolia Vill, Inc., 758 So 2d 1201 (Fla 5th DCA 2000) (clarifying decision by finding that the purchasers of mobile homes assumed the seller's rights under the lease under § 723 059(3), Fla Stat and were not assignees under the lease, so that previous owners were not members of the class action); see also Hobe Assoc v Dep't of Bus Reg., 504 So 2d 1301, 1305 (Fla 1st DCA 1987) (agreeing with the division that a mobile home

27. By way of example, under the P1, PA and P2 prospectuses for Emerald Lake, a buyer of a home in September 2009 would assume the seller's P1, PA or P2 lot rent agreement and pay the lot rent set for 2009 but would then enter into a new P1, PA or P2 lot rent agreement at the rate set by the park owner for January 1, 2010. The buyer also has the option of accepting the seller's P1, PA or P2 prospectus, but may opt to accept the P3 prospectus with the lifetime lot rent agreement. The Division reads the plain language of section 723.059(3) as making it the buyer's option, not the park owner's prerogative.

28 Emerald Lake SPE argues that the duration of the tenancy is set by the lot rental agreement, which it argues is the superior document to the prospectus because the prospectus is incorporated into the rental agreement under section 723.031(10), Florida Statutes. FMO argues that this means the terms of the prospectus are incorporated into the lot rent agreement. It also ignores the statutory order of including the lot rent agreement as an exhibit to the prospectus under section 723.012(14)(d), Florida Statutes. Under section 723.011(2), the park owner must deliver a copy of the prospectus with all exhibits, which includes the lot rent agreement, to each prospective lessee. FMO argues that under Emerald Lake SPE's interpretation, the P1, PA and P2 tenancies are one year in duration and it may on January 1st each year require homeowners to accept the lifetime lot rental agreement with the P3 prospectus or any new lot rental agreement and prospectus currently being offered. Emerald Lake SPE stated at hearing that it would not amend a current owner's prospectus to change the term but was entitled to change the prospectus of the buyer once the annual term of the lot rental agreement assumed by the buyer was concluded. Emerald Lake SPE argues that the Division's mandatory disclosure and interpretation of section 723.059, Florida Statutes, creates a covenant running with the land contrary to its rights under the Florida Mobile Home Act.

29 If Emerald Lake's interpretation of this section is correct, then the P1, PA and P2 prospectuses end on December 31st every year because the term of the lot rent agreement is one year. If this is the case, then section 723.059(3), Florida Statutes, as interpreted by Emerald Lake and park owners for decades, sets the duration of the prospectus at 1 year.³³ This has not been the understanding of homeowners, the division, legislators or the courts. The First District Court of Appeal could not determine the duration of the prospectus or the tenancy of mobile homeowners but said it is more than the one year lot rent agreement and that it is up to the

buyer has a right to assume the remainder of the agreement under § 723.059(3), Fla. Stat. and that the park owner may not unilaterally alter the prospectus without the homeowner's consent)

³³ If the prospectus is controlled by the lot rent agreement, then the prospectus will be tied to the term of the lot rent agreement, which is no less than 1 year with the great majority being a one year term. § 723.031(4), Fla. Stat.

legislature to amend the statute to clarify the duration of a prospectus.³⁴ Even before this decision, the appellate court found this to be a legislative task

We appreciate the difficulty experienced by the Division in its efforts to give effect to legislative intent to protect the unique tenancy of the mobile home owner without the benefit of a statutory definition of “tenancy.” To avoid possible abuse in this area, perhaps the time is ripe for provision of a legislative definition of this unique hybrid tenancy recognized seventeen years ago by the Florida Supreme Court in *Stewart v Green*.³⁵

30 The agency has only that authority granted it by the legislature.³⁶ The Florida Constitution creates three co-equal separate branches of government—the executive, the legislative and the judicial.³⁷ Under the separation of powers doctrine, no branch may delegate its authority to another branch, and the legislature may not delegate its core functions to an executive agency.³⁸ The legislature’s core power and function is to enact the laws.³⁹ “This Court has repeatedly held that, under the doctrine of separation of powers, the legislature may not delegate the power to enact laws or to declare what the law shall be to any other branch.”⁴⁰ Emerald Lake would have the Division insert terms into the law to determine the length of a prospectus. This is beyond its authority. The Division declines to determine the length of a prospectus and the attendant lot rent agreement in this proceeding. This decision is bolstered by the appellate court’s declaring that enacting a statutory definition of tenancy to determine the length of a prospectus with its corresponding lot rent agreement is a job for the legislature.⁴¹

31 However, the Division is authorized to apply a plain reading of the statute to the facts.⁴² Under the rules of statutory construction, a statute is given its plain and ordinary

³⁴ Fed’n Mobile Home Owners of Fla., Inc. [FMO] v. Fla. Manufactured Housing Ass’n, Inc. [FMHA], 683 So. 2d 586, 591-92 (Fla. 1st DCA 1996)

³⁵ See also Herrick v. Fla. Dep’t of Bus. Reg., 595 So. 2d 148, 157 (Fla. 1st DCA 1992) (citing Stewart v. Green, 300 So. 2d 889 (Fla. 1974))

³⁶ Grove Isle, Ltd. v. State, Dep’t of Env’tl Reg., 454 So. 2d 571 (Fla. 1st DCA 1984) (“It is a cornerstone of administrative law that administrative bodies or commissions, unless specifically created in the constitution, are creatures of statute and derive only the power specified therein.”)

³⁷ Art. II, § 3, Fla. Const.

³⁸ Chiles v. Children A, B, C, D, E, and F, 589 So. 2d 260, 264 (Fla. 1991), see also Bush v. Schiavo, 885 So. 2d 321, 332 (Fla. 2004) (holding law allowing the Governor to issue immediate stay of final judgment ordering withdrawal of life support was unconstitutional under the separation of powers doctrine), Askew v. Cross Keys Waterways, 372 So. 2d 913, 918-919 (Fla. 1979) (“When legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law.”).

³⁹ Id.

⁴⁰ Id.

⁴¹ FMO v. FMHA, 683 So. 2d at 592 (“it is inappropriate for us to legislate the meaning of ‘tenancy’” in a rule challenge proceeding), see also Herrick v. Fla. Dep’t of Bus. Reg., 595 So. 2d 148, 157 (Fla. 1st DCA 1992) (“the time is ripe for provision of a legislative definition”).

⁴² § 120.565, Fla. Stat.

meaning if its language is clear and unambiguous⁴³ Subsections are read within the context of the section in order to glean legislative intent.⁴⁴

32. Section 723.059(3), Florida Statutes, is clearly worded to say that a purchaser of an existing home in the park has the right to assume the remainder of the term of the *seller's* rental agreement and is entitled to rely on the prospectus delivered to the *initial recipient*. The provision deals with two parts of a mobile home lease. The first is the lot rent agreement. The rental agreement is specific to each homeowner because it contains the homeowner's name, the beginning and ending dates for the lease term, and the lot rent amount then in effect for the mobile home lot. So, the rental agreement assumed by the buyer is for the same beginning and ending date of the current year of the seller at the seller's lot rent amount for the remainder of the annual term under the P1, PA, and P2. This section would not apply to a P3 agreement, which is expressly not assumable because it is a lifetime lease agreement recognized under subsection 723.059(5), Florida Statutes, as being "nonassumable."

33. The second part of subsection (3) concerns the prospectus, which discloses the park owner's representations about the operations of the park.⁴⁵ Under section 723.011(2), Florida Statutes, the park owner must deliver a prospectus with all exhibits to each prospective lessee before execution of the lot rent agreement, unless the tenancy is a renewal or the homeowner has previously received it. The park owner "may request that the homeowner sign a *receipt* indicating that the homeowner has received a copy of the prospectus."⁴⁶ Thus, the homeowner is the initial recipient of the prospectus

34. Subsection (3) is clear standing alone or when read in relation to subsection (4). Under subsection 723.059(4), Florida Statutes, the "initial" prospectus governs the manner in which the park owner may increase the buyer's rent once the annual term of the P1, PA, or P2 lot rent agreement ends.⁴⁷ The buyer may rely on the terms and conditions in the prospectus delivered to the initial recipient, or the buyer may accept a new prospectus for the lot. If the buyer accepts a new prospectus, then the park owner has delivered it and the buyer signed a

⁴³ Fla. Dep't of Env'tl. Protection v. Contractpoint Fla. Parks, LLC, 986 So. 2d 1260, 1265 (Fla. 2008)

⁴⁴ *Id.*

⁴⁵ § 723.011(3), Fla. Stat.

⁴⁶ § 723.011(5), Fla. Stat. (emphasis added).

⁴⁷ The park owner's initial prospectus had to contain the same terms as those offered existing tenants when the act went into effect. § 723.011(3), Fla. Stat. This demonstrates an intention to make the prospectus apply to all the lots in the park, not just a few lots. The lot rental agreements would be lot and owner specific because each homeowner must sign, the agreement has differences as to name, lot, and rental amount, which varies based on lot size or location within the park. *Id.* Amendments to the prospectus were limited. Fla. Admin. Code R. 61B-31.001

receipt for it.⁴⁸ The buyer then becomes the "initial recipient" of this replacement prospectus.

35. The automatic renewal provision in (5) is not applicable to (3) assumptions of tenancy. Automatic renewal provisions in lifetime leases are for the lifetime of the mobile home owner and are not assumable because the lease does not extend beyond the owner's lifetime⁴⁹

36. The division's required disclosure is consistent with sections 723.11 and 723.059(3), Florida Statutes.


For the reasons stated above it is:

ORDERED that Emerald Lake SPE may not require the purchaser of an existing home in the community to enter into a new rental agreement with it under the P3 prospectus, under section 723.059(3), Florida Statutes, and must include the disclosure required by the Division to be included in the lifetime rental agreement amended into the P1, PA and P2 prospectus, and the language required to be included in the P3 prospectus, which are consistent with section 723 059(3), Florida Statutes.

DONE and **ORDERED** this 18th day of May, 2011,

at Tallahassee, Leon County, Florida.




MICHAEL T. COCHRAN, Director
Division of Florida Condominiums,
Timeshares, and Mobile Homes
Department of Business and
Professional Regulation
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 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,


⁴⁸ § 723 01, Fla Stat

⁴⁹ See Miren International Lodging Corp v Manley, 982 So. 2d 1203 (Fla. 5th DCA 2008)

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 David Eastman, Esq., Lutz, Bobo, Telfair, Eastman, Gabel & Lee, 2155 Delta Blvd , Suite 210-B, Tallahassee, FL 32303, Robert B. Burandt, Esq. 1714 Cape Coral Parkway East, Cape Coral, FL 33904, and Diana Davis Basta, Esq., Raymond Tamayo, Esq., 36625 U S. 19th North, Palm Harbor, FL 34684, on this 23rd day of May, 2011.


for: Robin McDaniel, Division Clerk

Copies furnished to:

J. Layne Smith
General Counsel

Janis Sue Richardson
Chief Assistant General Counsel