

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

IN RE: PETITION FOR DECLARATORY STATEMENT

**DS 2011-003**

SEA OATS OF JUNO BEACH CONDOMINIUM TWO ASSOCIATION, INC.

Docket No. 2011001013

**DECLARATORY STATEMENT**

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

**PRELIMINARY STATEMENT**

On January 6, 2011, the division received a Petition for Declaratory Statement from Mark Faris, Secretary of Sea Oats of Juno Beach Condominium Two Association, Inc. (Sea Oats II), seeking an opinion on whether a unit's unpaid assessments extinguished by foreclosure are collectible from all units in the multicondominium or the condominium in which the unit is located under section 718.115(1)(g), Florida Statutes. Sea Oats II did not request a hearing.

The division acknowledged receipt of the petition on January 10, 2011. Mr Faris is a director and secretary of the association. He is a qualified representative of the association in this proceeding. The division informed Mr. Faris that it would need a complete current set of the governing documents and budgets for Sea Oats II and for Sea Oats of Juno Beach Property Owners Association, Inc., before the petition can be reviewed, and that a copy of the

petition would be served on the property owners association so that it may intervene and file a response.

Notice of receipt of the petition was submitted for publication in Florida Administrative Weekly on January 21, 2011.

### FINDINGS OF FACT

The following findings of fact are based on information submitted by Sea Oats II. 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 Oats of Juno Beach is a condominium community developed in two phases between 1986 and 1989.<sup>1</sup>

2. The first phase consists of six buildings with 72 units organized as a single condominium managed by Sea Oats of Juno Beach Condominium Association, Inc. (Sea Oats I), with a single budget for common expenses attributable to the operation of that condominium.<sup>2</sup>

3. The second phase of the community consists of 26 condominiums with 142 units organized as a multicondominium administered by a multicondominium association, Sea Oats II.<sup>3</sup> Each building in the multicondominium has a separate budget for common expenses attributable to the operation of that condominium.<sup>4</sup> Sea Oats II multicondominium association does not have a separate budget for common expenses.<sup>5</sup>

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<sup>1</sup> Pet for Decl Stmt at 1 (January 6, 2011)

<sup>2</sup> Id.

<sup>3</sup> Id. at 2

<sup>4</sup> Id.

<sup>5</sup> Id., Multi-condominium associations must have a budget for only association expenses that is separate from the underlying condominium budgets § 718.111(12)(a)(11), Fla Stat (2010)

4. The Sea Oats of Juno Beach Property Owners Association, Inc. (POA) was created to administer all specific common expenses of the community unrelated to the expenses of each individual condominium.<sup>6</sup> The POA has a separate budget funded by all unit owners in Sea Oats I and Sea Oats II.<sup>7</sup>

5. Sea Oats I and Sea Oats II each collect condominium assessments specific to each condominium and POA assessments for the common areas of the community from the unit owners.<sup>8</sup>

6. The POA has assessment and lien authority to be assessed in equal shares among all unit owners.<sup>9</sup>

7. The budget for each condominium in Sea Oats II contains a line item for POA assessments.<sup>10</sup> The financial statement for Sea Oats II also contains a line item for the POA assessments.<sup>11</sup>

8. Condominium 702, which consists of three units, is located within the multicondominium and is administered by Sea Oats II.<sup>12</sup> Unit 702-D3 is located in condominium 702.<sup>13</sup>

9. Unit 702-D3 was conveyed to the bank following foreclosure proceedings and the lien of Sea Oats II, which left unpaid more than three years of common expenses owed Sea Oats II.<sup>14</sup>

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<sup>6</sup> Id

<sup>7</sup> Id

<sup>8</sup> Id

<sup>9</sup> Art IX, VI, Declaration of Covenants and Restrictions for Sea Oats of Juno Beach

<sup>10</sup> Id

<sup>11</sup> Sea Oats of Juno Beach Condominium II Association, Inc., Statement of Revenues, Expenses and Changes in Fund Balance For the Year Ended December 31, 2008

<sup>12</sup> Pet for Decl Stmt at 2

<sup>13</sup> Id

<sup>14</sup> Id

10. Sea Oats II has proposed a special assessment against the three unit owners in condominium 702 (including the new owner of unit 702-D3) for the unpaid common expenses of building 702 and their share of the common expenses of the POA.<sup>15</sup>

11. Section 718.115(1)(g), Florida Statutes (2010), states that “[i]f any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.”<sup>16</sup>

12. The statutory provision, however, makes no distinction between common expenses attributable to the operation of that specific condominium and common expenses assessed by the POA for common area expenses.<sup>17</sup>

13. Sea Oats II is uncertain as to whether the three unit owners in condominium 702 are solely liable for all bad debt resulting from the unpaid assessments of unit 702-D3 or whether the 139 unit owners in the other condominiums of Sea Oats II and the 72 unit owners in Sea Oats I may be responsible for any part of the unpaid assessments.<sup>18</sup>

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<sup>15</sup> Id

<sup>16</sup> § 718 115(1)(g), Fla Stat (2010)

<sup>17</sup> Pet for Decl Stmt at 3.

<sup>18</sup> Id

## CONCLUSIONS OF LAW

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

15. 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.

16. 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.

17. As a condominium association, Sea Oats II has standing to petition for a declaratory statement.<sup>19</sup>

18. Section 718.115(1)(g), Florida Statutes, provides:

If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.

19. Section 718.115(1)(g), Florida Statutes, makes clear that any unpaid share of bad debt for the common expenses of condominium 702 is to be shared

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<sup>19</sup> §§ 718 103(2), 120 565, Fla Stat (2010)  
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among the three unit owners in that condominium in equal one-third shares<sup>20</sup>, and is not to be assessed against the other unit owners in the multicondominium. The unpaid bad debt is to be collected only from the unit owners in the condominium in which the foreclosed unit is located. As such, the amount extinguished becomes a common expense of the condominium building where the unit is located. Otherwise, every unit owner in the multicondominium would be paying assessments for a condominium in which they are not owners. Thus, under section 718.115(1)(g), Florida Statutes, the unpaid bad debt of condominium 702 is an expense to those three unit owners only. To collect this bad debt from the unpaid multicondominium expenses, Sea Oats II may specially assess the three unit owners of building 702, in equal one-third assessments.

20. However, the POA has assessment and lien authority against every unit in the multicondominium for the payment of POA expenses.<sup>21</sup> The POA common expenses are assessed in equal shares to all unit owners in the Sea Oats Community.<sup>22</sup> Article VI of the Declaration of Covenants and Restrictions for Sea Oats of Juno Beach (POA) provides that “[t]he cost to the Association of maintaining the common areas shall be assessed equally among the Dwelling Unit Owners.”<sup>23</sup> Any bad debt for the POA assessments is not collectible solely from the individual condominium 702.<sup>24</sup>

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<sup>20</sup> Exhibit A-1, Declaration of Condominium of Sea Oats of Juno Beach Condominium, Building 702

<sup>21</sup> Art IX, Declaration of Covenants and Restrictions for Sea Oats of Juno Beach.

<sup>22</sup> Id. art VI

<sup>23</sup> Id.

<sup>24</sup> The multicondominium budget shows no bad debt for the POA as it prepays this assessment liability Sea Oats II Ass'n Balance Stmt. (Dec. 31, 2010).

21. To carry out the intent of section 718.115(1)(g), Florida Statutes, Sea Oats II may specially assess the three unit owners in condominium 702 for that part of the bad debt resulting from the unpaid assessments of the multicondominium common expenses, but not that part of the bad debt resulting from the unpaid POA assessments. Therefore, under section 718.115(1)(g), Florida Statutes, the three unit owners in condominium 702 are responsible for all the unpaid multicondominium common expenses of that condominium net (less) the POA expenses.

22. Therefore, the three unit owners in condominium 702, where the foreclosed unit is located, are solely responsible for paying any unpaid multicondominium assessments in equal one-third portions under section 718.115(1)(g), Florida Statutes, as this amount is now a common expense of the condominium building where the unit is located. However, the bad debt or extinguished lien expenses arising from POA assessments, if any, is not solely the responsibility of the three unit owners in building 702 because this POA expense is to be assessed equally among all unit owners in the community and is not a common expense solely attributable to the operation of condominium 702.

For the reasons stated above it is hereby:

**ORDERED** that the three unit owners in condominium 702 are liable for all the bad debt for the unpaid assessments net (less) the bad debt for the unpaid POA assessments under section 718.115(1)(g), Florida Statutes.

**DONE** and **ORDERED** this 14<sup>th</sup> day of February 2011, 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, 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 Mark Faris, Secretary, Sea Oats of Juno Beach Condominium Two Association, Inc., 800 Sea Oats Drive, Juno Beach, FL 33408, on this 18<sup>th</sup> day of February 2011.

*for: Brandon M. Nichols*  
Robin McDaniel, Division Clerk

Copies furnished to:  
Janis Sue Richardson  
Chief Attorney

Sea Oats Property Owners Association, Inc.  
c/o Steve Inglis, Registered Agent  
1930 Commerce Lane Suite #1  
Jupiter, FL 33458