

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

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| FILED | |
| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 12/17/2012 |
| File # | 2012-07943 |

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2012043666

LA BRISA ASSOCIATION, INC.

DS 2012-083

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.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement October 17, 2012 from La Brisa Association, Inc. seeking a clarification of section 718.112(2)(f)(3)-(4), Florida Statutes, and rules 61B-22.002 and 61B-22.005(7), Florida Administrative Code. Specifically, La Brisa requests a Division statement on whether the association must obtain the vote of all of the members of the multicondominium to utilize interest income from the reserves of individual condominiums within the multicondominium toward a debt incurred for maintenance for a component outside the condominiums on association property, and whether a vote is required of each condominium whose reserve fund interest will be used.

The Division responded October 26, 2012 to acknowledge receipt of the petition. Notice of the Petition was published October 26, 2012 in the *Florida Administrative Register*. A hearing was not requested.

FINDINGS OF FACT

These findings of fact are based on information set forth in the petition and accepted by the Division as submitted for the purposes of this order. The Division takes no position as to their accuracy.

1. La Brisa Association, Inc. is a unit-owner controlled multicondominium association responsible for operating four condominiums in Monroe County, Florida: La Brisa East, La Brisa North, La Brisa South, and La Brisa West.¹

2. La Brisa East, La Brisa North, and La Brisa South each have thirty-two condominium units; La Brisa West has forty units. The association also operates real property outside the condominiums for the use and benefit of the members of all four condominiums.²

3. The association collects reserve funds for each of the individual condominiums for capital expenses and deferred maintenance within those condominiums. The bylaws provide for commingling of funds in a single bank account with a detailed accounting done through an individual chart of accounts showing income and expenses.³

4. Section 1.4 of the bylaws provides for “[m]atters relating to the Association as a whole, or which affect the rights and interests of all the unit owners in the community shall be voted upon by the membership at large.”⁴ If the matter only concerns an individual condominium, then only the unit owners in that condominium

¹ Pet Decl Stmt , at 1

² *Id.* at 2

³ *Id.* at 2-3

⁴ Sec 1 4, Bylaws of La Brisa Ass'n, Inc

vote.⁵ If there is a question as to who must vote, the board's decision on who votes is "presumed correct."⁶

5. The bylaws also provide for specific votes on budget matters. "Reserve funds and any interest accruing thereon shall remain in the reserve accounts for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interest present at a duly called meeting of the Association."⁷

6. The association wishes to use reserve funds or interest accumulated from such reserve funds of the individual condominiums to pay down a debt incurred by the association for a paving project on association property outside the separate condominium property but for the use and benefit of the unit owners of each condominium.⁸ The association understands that the use of reserves for purposes other than those intended requires unit-owner approval, but is uncertain whether such approval is required by votes of individual condominiums, the association, or both.

CONCLUSIONS OF LAW

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

9. 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.

⁵ *Id*

⁶ *Id*

⁷ *Id* sec 7 2(a)

⁸ *Id* at 3

(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.

10. Rule 28-105.001, Florida Administrative Code, 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.

11. Section 718.115(1)(b), Florida Statutes, provides:

The common expenses of a condominium within a multicondominium are the common expenses directly attributable to the operation of that condominium. The common expenses of a multicondominium association do not include the common expenses directly attributable to the operation of any specific condominium or condominiums within the multicondominium.

12. Under section 718.112(2)(f)(3), Florida Statutes, reserve funds and interest from those reserves may only be used for "authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote." The use for other purposes is restricted to the capital expenditures and deferred maintenance of the individual condominium for which the funds are authorized. Furthermore, the voting interests of the units subject to assessment for the reserves in question are the "only voting interests which are eligible to vote on questions that involve . . . using existing reserve funds for purposes other than purposes for which the reserves were intended."⁹

⁹ § 718.112(2)(f)(4), Fla Stat

Under these provisions, the condominium owners may vote for the use of the reserves for other expenses of that condominium.

13. The Division's rules more specifically speak to multicondominium associations: "In a multicondominium association, no vote to allow an association to use reserve funds for purposes other than that for which the funds were originally reserved shall be effective as to a particular condominium unless conducted at a meeting at which the same percentage of voting interests in that condominium that would otherwise be required for a quorum of the association is present in person or by proxy, and a majority of those present in person or by limited proxy, vote to use reserve funds for another purpose."¹⁰

14. Funding of reserves for La Brisa East, for example, is not accomplished by assessments against unit owners of La Brisa North, La Brisa South, or La Brisa West. So, using La Brisa East reserves for another expense of La Brisa East only requires the owners of La Brisa East to vote. La Brisa East may vote to pay its assessed share of the association loan expense but not to pay for the association's expense or any of the other La Brisa condominiums' expenses.

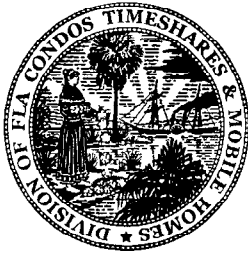
15. Budgeting for association reserves is separate from each of the four condominium reserve funds and a vote to waive or reduce or use the association reserves for another association expense requires an association vote.

¹⁰ Fla Admin Code R 61B-22 005(7)

For the reasons stated above it is hereby:

ORDERED that the use of interest income from the reserves of a particular condominium whose owners are members of La Brisa Association, a multicondominium, may not be utilized for an operating expense related to the multicondominium association's property outside that particular condominium unless the owners of that condominium vote to use their reserves to pay their assessed share of the multicondominium association expense.

DONE and **ORDERED** this 11th day of December 2012, 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 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to David Rogel, Esq., Becker & Poliakoff, 121 Alhambra Plaza, 10th Floor, Coral Gables, FL 33134, on this 17th day of December 2012.


for: Agency Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney