

**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	
CLERK	Brandon Nichols
Date	5/31/2013
File #	2013-03081

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2013017030

Donald A. Carter, Unit Owner,
The Marina at the Bluffs Condominium Association, Inc.

DS 2013-030

DECLARATORY STATEMENT

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

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement April 17, 2013 from Donald A. Carter, petitioner, a unit owner in the condominium and a member of The Marina at the Bluffs Condominium Association, Inc. (hereinafter "the association"), seeking an opinion whether the association may propose extensive amendments to the declaration and bylaws without strike through and underlining but by notation at the beginning of the proposed changes that changes are a "substantial rewording of the declaration or bylaw" under sections 718.110(1)(b) and 718.112(2)(h), Florida Statutes.

Division counsel responded April 19, 2013 to inform Mr. Carter that a declaratory statement is a limited administrative proceeding, and that the Division would serve a copy of the petition on the association, as required by section 718.501(1)(g), Florida Statutes, so that the association could intervene and file a response if it chose to do so.

On April 23, 2013, the Division received a reply from Mr. Carter. On April 30, 2013, the Division received a response from the association.

Notice of receipt of the petition was published in the April 22, 2013 edition of the Florida Administrative Register. A hearing was not requested.

FINDINGS OF FACT

The material facts are set out in the petition and the association response. The Division takes no position as to the accuracy of the facts and accepts them as submitted by Mr. Carter and the association for the purposes of issuing this declaratory statement.

1. In March, 2013, a notice was posted informing unit owners of proposed changes to the declaration of condominium, by-laws, and articles of incorporation.¹
2. A meeting was held April 8, 2013, at which the attorney for the association explained that underlined and struck-through copies of the proposed changes would not be provided.²
3. Rather than provide underlined and struck-through copies, the association provided copies of the proposed amendments, with the following language at the top of the first page of each document:

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
CONDOMINIUM _____ OF THE MARINA AT THE
BLUFFS, A CONDOMINIUM**

NOTE: This document is a substantial rewording of the Declaration of Condominium executed by Developer on _____, recorded on _____, at Official Records Book _____, Page _____, of the Public Records of Palm Beach County, as amended to this date (hereinafter the "Original Declaration"), except that all Exhibits to the

¹ Pet Decl Stmt 1

² *Id.* at 2

Original Declaration which are not otherwise referenced herein or attached hereto remain unchanged and are hereby incorporated by reference herein as if attached hereto and made a part hereof.³

4. Mr. Carter submitted a Petition for Declaratory Statement to the Division for the purpose of determining whether the association may propose extensive changes to the governing documents by the method explained in paragraph 3, above, under sections 718.110(1)(b) and 718.112(2)(h), Florida Statutes.

CONCLUSIONS OF LAW

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

6. 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.

7. 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 Resp't[is] Resp Pet Decl Stmt

8. Mr. Carter has standing to petition for a declaratory statement as a unit owner.⁴
9. The association has standing to intervene.⁵
10. Section 718.110(1)(b), Florida Statutes, provides:

No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision for present text."⁶

11. Section 718.112(2)(h)(2) provides:

No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw. See bylaw for present text."⁷

⁴ §§ 718 103(28), 120 565, Fla Stat. (2012).

⁵ *Id.* § 718 103(2); Fla Admin Code r 28-105 0027.

⁶ § 718 110(1)(b), Fla Stat. (2012).

⁷ § 718 112(2)(h)(2), Fla. Stat (2012)

12. It is clear from sections 718.110(1)(b) and 718.112(2)(h)(2), Florida Statutes that where a substantial rewording of the governing documents is proposed, it is not necessary to provide a struck-through and underlined copy of the proposed changes.⁸

13. Where a substantial rewording of the entire document is proposed, sections 718.110(1)(b) and 718.112(2)(h)(2), Florida Statutes, do not require notation indicating that the language is a substantial rewording to be placed at the beginning of every paragraph, subparagraph, and section.⁹ Such a reading of the statute would be impractical, and would hinder, rather than assist unit owners' understanding of the proposed changes.

The method employed by the association, namely, placing a notation in boldface text at the beginning of each document indicating that the document is a substantial rewording of the governing documents, is permissible under sections 718.110(1)(b) and 718.112(2)(h)(2), Florida Statutes.

For the reasons stated above it is hereby:

ORDERED that the method of notation of proposed changes employed by the association is permissible under sections 718.110(1)(b) and 718.112(2)(h)(2), Florida Statutes.

⁸ §§ 718.110(1)(b), 718.112(2)(h)(2), Fla Stat (2012)

⁹ See *In re: Pet for Decl. Stmt. Kangas, Hatchett Creek Mobile Home Park Condo. Ass'n, Inc.* Final Order No DPR-2008-06144, Docket No. 2008032450, Division Clerk DS 2008-037, at 5 (July 21, 2008) ("When the owners are on notice of a substantial overhaul to the governing documents, the simple notice of 'substantial rewording, see current text' is sufficient notice to owners to review the proposed documents completely for changes being made throughout")

DONE and ORDERED this 28th day of May 2013, 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 Donald A. Carter, 2501 Marina Isle Way, #506, Jupiter, Florida, 33477, and to Mark D. Friedman, Becker & Poliakoff, P.A., 625 North Flagler Drive 7th, West Palm Beach, FL 33401, Registered Agent, The Marina at the Bluffs Condominium Association, Inc, on this 31st day of may 2013.



Agency Clerk's Office

Copies furnished to:

Janis Sue Richardson
Chief Attorney

The Marina at the Bluffs Condominium Association, Inc.
2328 S Congress Ave., STE 2A
West Palm Beach, FL 33406