

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	4/5/2013
File #	2013-01811

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2013001883

TURNBERRY VILLAGE MASTER ASSOCIATION, INC.

DS 2013-002

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 (2012).

PRELIMINARY STATEMENT

The Division received a petition for Declaratory Statement January 15, 2013, from Turnberry Village Master Association, Inc., seeking an opinion on whether the association is a condominium association as defined in section 718.103(2), Florida Statutes, and if so, the manner of members electing directors to the master association under the governing documents.

The Division sent the association a letter January 24, 2013, informing it that a declaratory statement is a limited administrative proceeding and that the Division's authority under chapter 720, Florida Statutes, is strictly limited to arbitration of certain types of disputes. The letter also noted that the Division may not interpret the governing documents in the election dispute at issue.

The Division notified the member associations that they may intervene or otherwise respond to the petition, if so desired. Turnberry Village North Tower

Condominium responded February 18, 2013. Turnberry Village South Tower Condominium did not respond.

Notice of receipt of the petition was published in the January 24, 2013 issue of the *Florida Administrative Register*.

A hearing was not requested.

FINDINGS OF FACT

The following findings of fact are based on information submitted by the master association and Turnberry Village North Tower Condominium Association, Inc. The Division takes no position as to the accuracy of the facts, and merely accepts them as submitted for purposes of this final order.

1. The master association is a Florida not-for-profit corporation organized under chapters 617 and 718, Florida Statutes, for the purpose of operating real property listed in the Declaration of Covenants, Restrictions and Easements for Turnberry Village and the supplement thereto (Master Declaration).¹

2. The real property subject to the declaration, filed in Miami-Dade County, Florida, consists exclusively of two condominiums, Turnberry Village North Tower Condominium and Turnberry Village South Tower Condominium, and other structures and improvements reserved for the use and enjoyment of the residents of those condominiums.² There is no future development property³ and no other real property is subject to the Declaration.⁴

¹ Pet Decl Stmt. at 1.

² *Id* at 1-2 The common areas include "roads, waterways, a surface water management system, landscaping, recreational areas, the Master Life Safety Systems, and structural components serving more than one lot in the project " Art 1.1(h), Master Declaration

³ Email from Roberto Blanch, Esq to William Smith, Investigator DBPR, Case No. 2012010211 (Mar 22, 2012)

⁴ Pet Decl Stmt at 2.

3. Turnberry Village North and Turnberry Village South are separate subassociations operating under Turnberry Village Master Association.⁵

4. The Turnberry condominiums subject to the association's Declaration are located in Aventura, Florida.⁶

5. All lot owners, which are condominium unit owners in Turnberry Village North and Turnberry Village South condominiums,⁷ are obligated to be members of the master association,⁸ which has the power to assess all unit owners in equal shares for the operation and maintenance of the common areas.⁹ The common areas of the master association do not include the common elements within the two condominiums.¹⁰

6. The master association has a lien on the condominium units for assessment payments.¹¹ Turnberry Village North and Turnberry Village South cannot place a lien on a unit for failure to pay an assessment to the master association unless expressly delegated by the master association to do so.¹²

7. The two condominium subassociations do however collect the assessments of the master association, which are expressly not a common expense of Turnberry Village North or Turnberry Village South.¹³

8. Turnberry Village South contains 219 residential units, and Turnberry Village North contains 191 residential units.¹⁴

⁵ *Id.* at 2-3

⁶ Art. 1.1(g), Master Declaration.

⁷ Pet Decl Stmt at 3. Owners are considered members of the master association *Id.* (citing art. 1.1(t), Master Declaration) An owner is defined as the record owner of the fee simple title to any lot under the Declaration *Id.* (citing art. 1.1(w), Master Declaration) An owner of a condominium in Turnberry Village North or Turnberry Village South is considered to own a "lot". *Id.* at 4 (citing art. 3.2, Master Declaration)

⁸ Pet Decl Stmt at 2

⁹ *Id.* at 3, art. 7, Master Declaration.

¹⁰ Art. 4, Master Declaration; art. 5, Art. of Incorp Turnberry Vill Master Ass'n, Inc (Master Articles)

¹¹ Art. 7.8, Master Declaration.

¹² Art. 9.4, Master Declaration

¹³ *Id.* at 2.

9. Only Voting Members may vote on master association matters.¹⁵

10. Each subassociation, through its unit owners, elects one Voting Member to vote on master association issues.¹⁶ The two subassociations are the two Voting Members for the master association.

11. Section 6.3 of the bylaws provides in relevant part:

Voting. The Association shall have (2) classes of voting membership:

Class A Members shall be all those owners, as defined in Section 6.1, with the exception of the "Declarant" (as long as the Class B Membership shall exist, and thereafter, the Declarant shall be a Class A Member to the extent it would otherwise qualify) and shall be entitled to cast the number of votes (including fractional votes) equal to the percentage obligation attributable to the Lots owned by such Owner for expenses of the Master Association. Notwithstanding the foregoing, Class A Members who are also members of a Neighborhood Association shall only vote through a Voting Member and said Class A Members shall be entitled to elect from among themselves, respectively, one Voting Member for each such respective Neighborhood Association, each such Voting Member to have and cast the number of votes equal to the aggregate of the votes entitled to be cast by the Owners represented by the Neighborhood Association. The first election of such Voting Member for a particular Neighborhood Association shall be conducted at or immediately following the meeting at which control of such Neighborhood Association is turned over to its members other than the developer/declarant (i.e., at which the non-developer/declarant members elect a majority of the board of directors) and prior to such time, the Voting Member for the members within the Neighborhood Association shall be the developer of the community governed by the Neighborhood Association. At such time, and at all other times thereafter,

¹⁴ Pet Decl Stmt at 2

¹⁵ *Id.* at 5 (citing art 6 3, Master Articles ("Class A Members who are also members of a Neighborhood Association shall only vote through a Voting Member and said Class A Members shall be entitled to elect from among themselves, respectively, one Voting Member for each respective Neighborhood Association"))).

¹⁶ *Id.* Each unit owner is considered a Class A Member, with the ability to cast one vote per unit for a master association Voting Member Art. 6 3, Master Articles The Developer is considered a Class B member and may continue to elect one member of the board so long as it holds 5% of the lots, or units, for sale Art 6, Master Articles

the Neighborhood Association shall elect its Voting Member in the same manner as it elects its board of directors, subject to the same rules as those applicable to its directors as to the term of office, removal, replacement and other matters. In the event that the members of a Neighborhood Association do not elect a Voting Member, the President of such Association shall perform the duties of the Voting Member.¹⁷

12. If a sub-association fails to elect a Voting Member, the president of that association “shall perform the duties of the Voting Member.”¹⁸

13. Directors are elected according to section 4.1 of the bylaws which states:

The Directors of the Association shall be elected at the annual meeting of the Members except as otherwise specified in the Articles of Incorporation. The election shall be decided by majority vote of all Voting Members present in person or who cast ballots at the annual meeting. Proxies shall not be used for voting for Directors.¹⁹

14. The master asserts that since Turnberry Village South’s Voting Member represents 219 owners (or 53.41% of the master), while Turnberry Village North’s Voting Member represents 191 owners (or 46.59% of the master), and since the master association’s board of directors must be elected by a majority vote of all Voting Members, Turnberry Village North is effectively foreclosed from unilaterally electing board members to the master association.²⁰

15. Turnberry Village North interprets Turnberry Village Master Association’s articles and bylaws to mean that the unit owner members vote through their Voting

¹⁷ Art 6.3, Master Articles

¹⁸ *Id* ; Pet Decl Stmt at 5

¹⁹ Pet Decl Stmt at 6 (citing sec. 4.1, By-laws of Turnberry Vill Master Ass’n, Inc.)

²⁰ *Id.* at 11-12.

Member, making this position adverse to Turnberry Village Master Association's interpretation that under the current bylaws, the Voting Members use a block vote.²¹

16. Further, the Master Declaration in section 18.9 provides a limitation clause stating:

Anything in this Declaration to the contrary notwithstanding, the existence or exercise of any easement, right, power, authority, privilege or duty of the Master Association as same pertains to any condominium located within The Properties which would cause the Master Association to be subject to Chapter 718, Florida Statutes, or any related administrative rules or regulations, shall be null, void and of no effect to the extent, but only to the extent, that such existence or exercise is finally determined by a court or administrative hearing officer of competent jurisdiction (after all appellate rights have been exercised or waived) to subject the Master Association to said Chapter 718. It is the intent of this provision that the Master Association not be deemed to be a condominium association, nor the Common Areas be deemed to be common elements of any such condominium.

17. Turnberry Village raises three issues: 1) whether Turnberry Village Master Association is an association as defined in section 718.103(2), Florida Statutes; 2) if it is an association as defined in section 718.103(2), Florida Statutes, whether the directors of the association are to be elected by the individual unit owner members of the association or whether such directors are to be elected by the Voting Members, pursuant to the election procedures outlined in the articles of incorporation; 3) in the event the association is not an association as defined in section 718.103(2), Florida Statutes, whether the directors of the association are to be elected by the individual unit

²¹ Resp to Pet Decl Stmt , Turnberry Vill N Tower Condo (Feb 18, 2013)

owner members of the association or whether such directors are to be elected by the Voting Members, pursuant to the election procedures outlined in the articles.²²

CONCLUSIONS OF LAW

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

19. Turnberry Village has standing to petition for a declaratory statement.²³

20. The subassociations have standing to intervene and respond as the petition affects their substantial interests as members of Turnberry Village.²⁴

21. 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.

22. 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.

Turnberry Village is an association under chapter 718, Florida Statutes

²² Pet Decl Stmt at 8-9

²³ §§ 718 103(2), 120 565, Fla. Stat. (2012).

²⁴ § 718 103(2), Fla Stat (2012)

23. Turnberry Village Master Association is a condominium association as that term is defined in section 718.103(2), Florida Statutes.

24. Section 718.103(3), Florida Statutes (2012), provides:

“Association” means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or *maintains other real property* in which unit owners have use rights, where *membership in the entity is composed exclusively of unit owners or their elected or appointed representatives* and *is a required condition of unit ownership*. (Emphasis added).

25. In 1991, the legislature amended this provision to substantially similar form of that listed above.²⁵ Prior to this change, section 718.103(2), Florida Statutes, more narrowly defined association as “an entity which is responsible for the operation of a condominium.” According to a Senate Staff Analysis dated April 10, 1991, the legislature changed this provision in order to codify the judicial decision of *Downey v. Jungle Den Villas Recreational Association*,²⁶ and the Department of Business Regulation rule promulgated in response to *Downey*.²⁷ Therefore, to be subject to regulation under the Condominium Act, an association must:

(1) function like a condominium association in that it must operate real property in which condominium owners have use rights, and

(2) have a membership constituency that is

(a) exclusively composed of unit owners or their representatives, and

(b) mandatory as a condition of condominium ownership.

(1) Function

²⁵ See Ch 91-103, Laws of Fla (1991)

²⁶ 525 So 2d 438 (Fla 5th DCA 1988).

²⁷ See *Downey*, 525 So. 2d at 440-41 (applying both the “constituency” and “function” tests to define a master association as a condominium association under the jurisdiction of chapter 718, Florida Statutes)

26. Turnberry Village Master Association functions like a condominium association in that it owns, operates, and maintains the real property in which two underlying condominiums and their respective unit-owner members enjoy use rights. The association is tasked with operating and maintaining the shared common areas of its subassociations and the recreation area owned by the master association for the benefit of the unit owners.

(2) Constituency

27. The constituency test consists of two parts: (i) whether only condominium parcel owners or their representatives can be members, and (ii) whether membership is mandatory.

(i) Whether membership is limited to condominium parcel owners or their representatives

28. Membership is limited to lot owners, which are now all condominium unit owners since the property was built out with only condominiums.²⁸ The developer is a member until the developer is no longer offering 5% or more of its units for sale. The constituency test is satisfied.

(ii) Whether membership is mandatory

29. Membership in the association is mandatory under the Master Articles and the Master Declaration. The membership test is satisfied.

30. The Master Declaration's limitation on being declared to be a condominium master association without a court or administrative hearing is not a limitation on the

²⁸ Since the property has been built out, any rights of the developer to develop non-condominium property within the project has expired. Thus, this case is distinguishable from *Dep't of Bus. Reg v Siegel*, 479 So 2d 112 (Fla 1985) (finding that master association with operation over un-built real property was not a condominium association)

Division's jurisdiction, which is set by law. Rather, it reserves the right of the master association to contest the Division's assertion of jurisdiction in a judicial or administrative proceeding.

31. In September 2011, a Division arbitrator dismissed a petition filed by three Turnberry unit owners for lack of jurisdiction. After reviewing the petition and citing to article 18.9 of the Master Declaration, the arbitrator concluded that this article "appears to create a homeowners association."²⁹ There was no further analysis set out in the final order of dismissal and no hearing was conducted. However, saying you are a homeowners association for purposes of filing a petition for arbitration doesn't override conflicting positions in condominium documents or the law.³⁰

The Division may not issue a statement on proper election procedure in this case.

32. The Division may not interpret an association's ambiguous governing documents.³¹ With regards to statutory requirements for a master association's election procedures, "more questions are raised than answers are available."³² Section 718.112(2)(d), Florida Statutes, does not give much insight on the master association election process, therefore procedurally, elections must be conducted according to the association's by-laws.³³ To be sure, the Division has held that not only does the

²⁹ *Rothenberg, et al v Turnberry Vill. Master Ass'n, Inc.*, Arb. Case No 2011-04-3939 (Final Order of Dismissal for Lack of Jurisdiction) (Sept. 13, 2011)

³⁰ See § 718.103(2), Fla Stat , *Downey*, 525 So 2d at 440-41.

³¹ § 120 565, Fla. Stat , *Peck Plaza Condo. v. Div. Fla. Land Sales, Condos, and Mobile Homes, Dep't of Bus. Reg.*, 371 So 2d 152 (Fla. 1st DCA 1979).

³² *Charles v. Wynmoor Community Council, Inc.*, Arb. Case No 94-0258, at 9 (Summary Final Order) (Scheuerman) (Nov 8, 1994)

³³ See *In re Pet. for Decl. Stmt. Wynmoor Community Council, Inc* , BPR-2002-03029, Docket No CD2002-041, Agency Clerk DS 2002-012 at 6 (Aug 20, 2002) ("A condominium association derives its powers from the Condominium Act and the governing declaration, bylaws and articles to the extent these are not inconsistent with the Condominium Act or corporation laws ")

Condominium Act not provide for or prohibit representative voting regarding master associations,³⁴ but also that chapter 718, Florida Statutes, “does not contain enough standards and guidelines to support the inference that in all instances, unit owners who are non-voting members in master associations are entitled to a direct election of council representatives, with the election to be held at the master association level.”³⁵ Absent a conflict with the Condominium Act, issuing a statement on this matter would force the Division to make a decision based solely on the association’s governing documents, which is outside the scope of this proceeding.³⁶

33. The ambiguity in this case stems from article 6.3 of the Master Articles and whether the Voting Member must cast the aggregate amount of votes from his or her respective subassociation in a block vote, or whether the vote may be fractional. For instance, if there were four people running for positions on the Master Association board, A, B, C, and D, and unit owners in Turnberry Village South supported each 40%, 30%, 20%, and 10% respectively, is the Voting Member required to vote the aggregate of total votes in a block vote, in other words 219 votes for candidate A, or may the Voting Member vote the aggregate number of votes in on a fractional basis, 87 votes for A, 66 votes for B, 44 votes for C, and 22 votes for D?³⁷ The Division does not find an answer in the Condominium Act.

34. Turnberry Village North submits that voting rights are appurtenant to the units and each unit owner has the right to vote in the election of the directors of the master

³⁴ See *id.* at 12-13

³⁵ *Charles v. Wynmoor Community Council, Inc.*, Arb Case No 94-0258, at 8.

³⁶ *Peck Plaza*, 371 So 2d at 153-54 (“We find no provision in the condominium law that would grant to the respondent Division the authority to interpret and then to enforce its interpretation of the provisions of a condominium contract that is admittedly ambiguous. Jurisdiction to interpret such contracts is, under our system, vested solely in the judiciary.”)

³⁷ Vote numbers calculated as 40% of 219, 30% of 219, 20% of 219, and 10% of 219

association.³⁸ Therefore since block voting would dilute or erode this right, Voting Member's must vote fractionally according to the unit owner's vote.³⁹ This one unit one vote finds support on the subassociation level in the governing documents. The Master Articles state "Class A Member[s] . . . shall be entitled to cast the number of votes . . . equal to the percentage obligation attributable to the Lots owned by such Owner for expenses of the Master Association."⁴⁰ Further, assessments are to be made "against all Lots within the Properties equally,"⁴¹ and the term "Lot" refers to the individual condominium units.⁴² Therefore, since each Lot is assessed equally and each Lot is an individual unit, individual units are assessed equally. Since individual units are assessed equally and since the number of votes a unit owner member may vote is equal to the percentage obligation for master association expenses, each unit owner has an equal vote, hence, one unit one vote. So the argument goes, a block vote by the Voting Member would necessarily deny some unit owners a vote in the elections of the master association board members. While this may be true in some sense and would certainly be problematic on the subassociation level, the Division has taken the position that chapter 718, Florida Statutes, does not foreclose this possibility when electing representative members of the master association board. The Division has specifically held "[s]ection 718.112, Florida Statutes, does not guarantee that each individual unit owner in a master association is entitled to one vote in choosing all board members on

³⁸ Resp. to Pet. Decl. Stmt , Turnberry Village North Tower Condo. (Feb. 18, 2013).

³⁹ *Id*

⁴⁰ Master Articles, 6 3.

⁴¹ Master Declaration 7.2.

⁴² *Id.* at 1 1(r)

the master association.”⁴³ The Division has never held that a unit owner vote through representative Voting Members violates any provision of chapter 718, Florida Statutes.⁴⁴

35. Even though the Master Declaration provides for fractional votes in electing a Voting Member,⁴⁵ because the Voting Members are to be elected by the subassociations in the same way the subassociations elect directors to their board,⁴⁶ and because the subassociations do not provide for fractional votes, there can be no fractional vote in electing Voting Members.⁴⁷ Both Turnberry Village North and Turnberry Village South provide in their declarations, “Each unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.”⁴⁸ Therefore, since neither subassociation allows for fractional voting, no Voting Member may be elected using fractional voting. That does not mean the master association board cannot be elected using fractional voting though since the members are elected by the Voting Members, with no indication the process must mirror the election process in the subassociations. The manner of

⁴³ *Charles v. Wynmoor Community Council, Inc.*, Arb Case No 94-0258, at 8

⁴⁴ Further, both sub-associations are always represented by an elected representative since in the absence of a Voting Member, the president of the sub-association board will serve as the Voting Member Master Articles, sec. 6.3

⁴⁵ Master Articles, sec 6 3 (Class A Members “shall be entitled to cast the number of votes (including fractional votes) . . .”)

⁴⁶ *Id* (“[T]he Neighborhood Association shall elect its Voting Member in the same manner as it elects its board of directors, subject to the same rules as those applicable to its directors as to the term of office, removal, replacement and other matters”).

⁴⁷ Fractional votes in this context seem to mean not that each vote may be divided, but that a sub-association may have units which are only allowed a fractional vote. For example, if there are 100 units, the governing documents may provide that 80 of the units have one vote per unit and the remaining 20 have only half of a vote each. See *Irving v. Sutton Place Condominium Ass’n, Inc*, Arb Case No 01-2783, 6 (Summary Final Order) (Scheuerman) (Aug 7, 2001) (finding cabana units could have been assigned fractional votes instead of the entire vote and that there is nothing in the Condominium Act requiring each unit be assigned one vote or any vote at all). Section 617 0721(1), Florida Statutes, may allow for dividing one’s own vote into fractions if provided for in the bylaws, but this section does not apply to this case since section 617 0721(7), Florida Statutes, states 617 0721(1), Florida Statutes, does not apply to condominiums. Further, neither Turnberry Village North nor Turnberry Village South allow for dividing one’s vote into fractions.

⁴⁸ Declaration of Condominium, Turnberry Village North Tower Condominium Association, Inc , sec 5 2; Declaration of Condominium, Turnberry Village South Tower Condominium Association, Inc , sec 5 2

voting set out for the Voting Members is not mandated by chapter 718, Florida Statutes. Therefore, the Division declines to interpret and apply the master voting provisions to the issue presented.

36. Further, the court in *Heron at Destin West Beach & Bay Resort Condominium Association., Inc. v. Osprey at Destin West Beach and Bay Condo. Association, Inc.* found that weighted voting through an elected representative does not violate any provision in the Condominium Act even with the representative casting the votes as he or she saw fit.⁴⁹ Under this type of voting scheme, if the representative saw fit to block vote, he or she could do so. However, this also stands for the proposition that the representative could split his or her votes. The court also indicated that a simple majority vote of the voting interests would not violate anything from chapter 718, Florida Statutes.⁵⁰ In the absence of specific provisions for master level voting in the Condominium Act, the master documents control the voting process.

37. As it turns out, Turnberry's governing documents may provide a mechanism for dealing with the type of voting ambiguity in this case. The Master Declaration states that the declaration, articles and by-laws are to be interpreted by the board and that this interpretation will be binding so long as it is rendered in good faith and the board receives a written opinion from legal counsel stating that the interpretation is not unreasonable.⁵¹ However, since this is an ambiguity within the governing documents

⁴⁹ 94 So 3d 623, 629 (Fla 1st DCA 2012) ("The representative then gets one vote per unit to cast as he or she sees fit in any voting process.")

⁵⁰ *Id.* at 630. The issue in *Heron* was whether the election of officers for the master association should be determined by a majority vote of the five master association directors or a weighted vote of the five directors based on the number of units in the directors' subassociations *Id.* at 625. The court found that the vote should be weighted, but only because that was the method prescribed by the governing documents and seemed to indicate that either way of voting would have been acceptable under chapter 718, Florida Statutes *Id.* at 630.

⁵¹ Sec 1.2, Master Declaration

that cannot be resolved by the language of chapter 718, Florida Statutes, the Division may not render an opinion on this issue.

38. Further, the Division may not issue a declaratory statement to determine the rights and duties of third parties.⁵² Turnberry Village North joined this proceeding by filing its Notice of Appearance⁵³ and response to the petition, but Turnberry Village South has not. A Division statement on proper election procedure would necessarily affect all of the unit owner members of Turnberry Village South. Those affected unit owners, either individually or as represented by their Voting Member, are not parties to this proceeding.

39. Finally, the Division may not render an opinion on statutes outside of its jurisdiction.⁵⁴ Turnberry requests a statement on whether or not unit owners must elect the directors of the master association or whether, pursuant to the articles, the Voting Members may elect those same directors, in the event Turnberry was not an association as defined in section 718.103(2), Florida Statutes. Turnberry goes on to cite election statutes from chapter 720, Florida Statutes, under the assumption that if Turnberry is not an association under chapter 718, Florida Statutes, then it is a homeowner's association under chapter 720, Florida Statutes.⁵⁵ First, the Division has already determined that Turnberry is a condominium association as defined in section 718.103(2), Florida Statutes. Second, even if Turnberry was considered a homeowner's association under chapter 720, Florida Statutes, it would be beyond the Division's

⁵² § 120.565, Fla Stat ; Rule 28-105.002, Fla Admin Code ("A declaratory statement is not the appropriate means for determining the conduct of another person "); see *Manasota-88, Inc. v. Gardinier, Inc.*, 481 So 2d 948 (Fla 1st DCA 1986) (petition for statement on applicability of statutory provisions to third parties correctly denied)

⁵³ Filed February 13, 2013

⁵⁴ § 120.565, Fla Stat.

⁵⁵ Pet Decl. Stmt. at 12-13

authority to issue a statement in this case, as its authority is limited to only certain issues in arbitration.⁵⁶

For the reasons stated above it is hereby:

ORDERED that Turnberry Village Master Association is a condominium association as defined in section 718.103(2), Florida Statutes. The Division declines to issue a statement regarding how directors of the master association must be elected under its bylaws, because it is outside the scope of this proceeding.

DONE, and **ORDERED** this 2nd day of April 2013, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "Michael T. Cochran", written over a horizontal line.

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

⁵⁶ § 720 302(2), Fla Stat (2012)

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 Turnberry Village Master Association, c/o Roberto C. Blanch,
Esq., Siegfried, Rivera, Lerner, De La Torre & Sobel, P.A., 201 Alhambra Circle, 11th
Floor, Coral Gables, FL 33134 and Peter M. Dunbar, Esq., P. O. Box 10095,
Tallahassee, FL 32302, on this 5th day of April 2013.


Agency Clerk's Office

Copies furnished to:

Janis Sue Richardson, Chief Attorney

Turnberry Village South Tower Condominium Association, Inc.
c/o Joshua D. Krut, Registered Agent
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.A.
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