

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

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>3/3/2015</b>
File #	<b>2015-01935</b>

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2014047649

THE FOUNTAINS VACATION CLUB, LLC, Petitioner.

**DS 2014-146**

**DECLARATORY STATEMENT**

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

**PRELIMINARY STATEMENT**

The Division received a Petition for Declaratory Statement November 12, 2014, from The Fountains Vacation Club, LLC (hereinafter "Petitioner"), seeking a declaratory statement as to whether The Fountains Vacation Club (hereinafter "Vacation Club"), as proposed, is a "timeshare plan" or "multisite timeshare plan" within the meaning of sections 721.05(39) and 721.52(4), Florida Statutes.

Division counsel responded November 24, 2014, to confirm receipt of the Association's petition for a declaratory statement and requested a complete set of the governing documents of the Vacation Club's proposed plan.

Notice of receipt of the petition was published in the November 25, 2014, issue of the Florida Administrative Register.

Petitioner did not request a hearing.

**FINDINGS OF FACT**

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

1. Petitioner intends to develop a proposed multiple location use product called Fountains Vacation Club to be located in recreational vehicle resorts.
2. The proposed club will be a membership plan established in accordance with the Fountains Vacation Club Trust Agreement.
3. Petitioner will transfer a lease or title to certain condominium units or other real property interests that are subject to exclusive ownership or use by one or more persons to an independent Trustee. The Trustee will hold legal and equitable title to the property for the use and benefit of the members of the Vacation Club. This property is referred to as "Potential Trust Property."<sup>1</sup>
4. In order to become a member of the club, a person must enter into an agreement through which a member obtains membership status with Petitioner or have been assigned the rights as a member under the Membership Agreement.<sup>2</sup>
5. "Fountainshare Points" are a symbolic unit of use comparison initially assigned to members which signify the members' use rights in the Trust Property.<sup>3</sup>
6. No members shall have any right, title, or interest in or to any portion of the legal equitable title to the Trust Property.<sup>4</sup>
7. The initial term of each membership is 35 months and commences on the first day of each month immediately following the date on a member's Membership Certificate.<sup>5</sup>
8. Members will receive a Renewal Notice no less than 30 days and no more than 60 days prior to the date of renewal, informing the member of his right to terminate at any time prior to the date of automatic renewal.<sup>6</sup>
9. In order to terminate membership, a member must send Petitioner written notice of termination prior to the automatic renewal date. Alternatively, a member will be deemed to have elected to terminate his membership if he fails to timely pay the agreement renewal fees.<sup>7</sup>

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<sup>1</sup> Fountains Vacation Club Trust Agreement, § 2.34.

<sup>2</sup> *Id.* at § 2.29.

<sup>3</sup> *Id.* at § 2.22.

<sup>4</sup> *Id.* at § 6.1(c).

<sup>5</sup> Membership Agreement Fountains Vacation Club, § 8.3(a).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at § 8.3(b).

10. Unless a member terminates his membership to the Vacation Club prior to the expiration of the initial term or any renewal term, each of which constitute an automatic renewal date, the member's membership will renew on the automatic renewal date for an additional 35 months.<sup>8</sup>
11. After submitting payment in full of the Purchase Price, members shall pay the Vacation Club one hundred dollars (\$100.00) in consideration for renewing their memberships, unless otherwise terminated.<sup>9</sup>
12. Petitioner asks whether the Vacation Club, as proposed, is a "timeshare plan" or "multisite timeshare plan" within the meaning of sections 721.05(39) and 721.52(4), Florida Statutes, respectively.

#### CONCLUSIONS OF LAW

13. The Division has jurisdiction to enter this order pursuant to sections 721.26 and 120.565, Florida Statutes.
14. Section 120.565, Florida Statutes, provides, in part:
  - (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.
15. 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.

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<sup>8</sup> *Id.* at § 8.3(a).

<sup>9</sup> *Id.*

16. Petitioner has standing to petition for a declaratory statement as the developer of a multiple location vacation club product.<sup>10</sup>

17. Section 721.03(1), Florida Statutes, provides, in part:

“This chapter applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations and facilities, if any, are located within this state or offered within this state”

18. As outlined above, in order to fall within the Division’s jurisdiction, the program must offer more than seven timeshare periods over a period of at least three years.<sup>11</sup> Chapter 721, Florida Statutes, does not apply to an operation unless each of these elements is present.<sup>12</sup>

19. The Division previously did not assert jurisdiction over a club with a membership period lasting 35 months.<sup>13</sup> Membership to the Vacation Club lasts 35 months, and thus does not fall within the three year requirement of section 721.03, Florida Statutes. As such, the Vacation Club is not subject to the Division’s jurisdiction as a “timeshare plan” within the meaning of section 721.05(39), Florida Statutes.

20. Section 721.52(4), Florida Statutes, provides, in part:

“Multisite timeshare plan” means any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term “multisite timeshare plan” shall not include any method, arrangement, or procedure wherein:

(a) The contractually specified maximum total financial obligation on the purchaser’s part is \$3,000 or less, during the entire term of the plan; or

(b) The term is for a period of 3 years or less, regardless of the purchaser’s contractually specified maximum total financial obligation... For purposes of determining the term of

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<sup>10</sup> § 120.565, Fla. Stat.

<sup>11</sup> § 721.03(1), Fla. Stat.

<sup>12</sup> *All Seasons Resorts, Inc. v. Dep’t of Bus. Reg., Div. of Land Sales, Condos. and Mobile Homes*, 455 So.2d 544 (Fla. 1st DCA 1984).

<sup>13</sup> *In Re: Pet. for Dec. Stmt. Lifestyle Dev. Co., L.P.*, DBPR-07-8627 (Apr. 12, 2007).

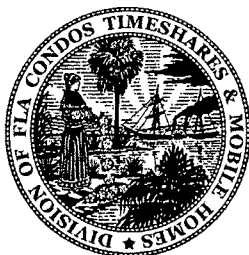
such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

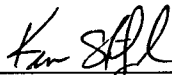
21. The Vacation Club's membership agreement provides that the initial term of membership is 35 months. The membership agreement affords members the right to terminate their membership at any time. The Vacation Club will provide members with a notice, no less than 30 days and no more than 60 days prior to the date of automatic renewal, informing the members of their right to terminate their membership at any time prior to the date of the automatic renewal. Therefore, the Vacation Club falls under the exception in section 721.52(4)(b), Florida Statutes, and is not considered a "multisite timeshare plan" within the meaning of section 721.52(4), Florida Statutes.

For the reasons above it is hereby:

**ORDERED** that The Fountains Vacation Club is neither a "timeshare plan" nor a "multisite timeshare plan" within the meanings of sections 721.05(39) and 721.52(4), Florida Statutes, and therefore is not subject to the Division's jurisdiction.

**DONE** and **ORDERED** this 24<sup>th</sup> day of February 2015, at Tallahassee, Leon County, Florida.



  
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KEVIN STANFIELD, 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; [AGC.FILING@MYFLORIDALICENSE.COM](mailto:AGC.FILING@MYFLORIDALICENSE.COM); FAX (850) 488-5761, 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 William C. Guthrie, Esq., Foley & Lardner, LLP, 111 N. Orange Ave. Suite 1800, Orlando, FL 32801-2386 on this 3<sup>rd</sup> day of March 2015.

A handwritten signature in black ink that reads "Brandon M. Nichols". The signature is written in a cursive style with a horizontal line underneath the name.

Agency Clerk's Office

Copies furnished to:

Thomas Morton  
Chief Attorney