

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	9/14/2015
File #	2015-07662

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2015027097

JOHN NICHOLAS DATESH, JR., UNIT OWNER
BOTANICAL PLACE CONDOMINIUM ASSOCIATION, INC.

DS 2015-074

AMENDED DECLARATORY STATEMENT

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

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement (hereinafter the "Petition") on June 15, 2015, from Mr. Datesh (hereinafter the "Petitioner"), a unit owner and a member of Botanical Place Condominium Association, Inc. (hereinafter the "Association"). The Division counsel responded on July 08, 2015, to inform the Petitioner that the Petition failed to state with particularity the set of circumstances upon which the Petitioner was seeking a declaratory statement. On July 13, 2015, The Petitioner filed an Amended Petition for Declaratory Statement (hereinafter the "Amended Petition"), seeking a declaratory statement on the following questions:

1. Whether the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen pursuant to section 718.111(12)(b) and (c), Florida Statutes?
2. Whether the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen, pursuant to section 718.111(12)(c), Florida Statutes?
3. Whether the Association may impose a charge on a copy of an official record that exceeds the actual cost to the Association for that copy pursuant to section 718.111(12)(b), Florida Statutes?

The Division counsel responded on July 16, 2015, confirming receipt of the Amended Petition and notifying the Petitioner that it would serve a copy of the Amended Petition on the Association, as required by section 718.501(1)(g), Florida Statutes.

Notice of receipt of the Amended Petition was published in the July 17, 2015, issue of the Florida Administrative Register.

The Association intervened on August 3, 2015.

Neither the Petitioner nor the Association requested a hearing.

FINDINGS OF FACT

The following findings of fact are based on information submitted by the Petitioner and the Association. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the Petitioner and the Association for the purposes of issuing this Order.

1. Petitioner is the owner of record of unit 4530-106 and a member of the Association.
2. The Association is the entity responsible for the operation of the Botanical Place Condominium (hereinafter the "Condominium").
3. The Declaration of Condominium (hereinafter the "Declaration") was recorded on November 21, 2005 in the Official Records of Collier County, Book 3933, Page 2592.
4. The Petitioner frequently exercises his unit owner rights to request access to Association official records for the purpose of inspecting and copying such records and intends to continue to exercise such rights in the future.
5. On May 4, 2015, the Association adopted a rule limiting the inspection and copying of Association records. The rule provides in pertinent part:

B) Inspection and Copying.

(2) Upon receipt of a written request to inspect the Official Records, the Association may comply with said request by making the Official Records available as follows, in its sole discretion:

* * * * *

(c) providing access to a computer screen supervised by an agent of the Association if it is determined that most or all of the requested documents are stored in electronic format. In the event an owner requests any document be printed in accordance with F.S. 718.111(12)(b), a request for a printed copy shall be deemed a request for a written copy in accordance with Section (7) below of this Resolution and the Unit Owner shall pay a per page fee for printed copies. In the event documents are made available in this format, the Unit Owner or authorized representative shall be permitted to take a digital image of any document made available as provided for in F.S. 718.111(12)(c)...

* * * * *

(7) A Unit Owner or a Unit Owner's authorized representative shall pay the reasonable expense of copying. In the event the copies are made by the Association, the cost shall not exceed twenty-five cents (\$0.25) per page. If copies are made by outside vendors, actual costs shall be charged to the owner... The cost of printing records normally maintained on the computer shall be twenty-five cents (\$0.25) per page. The cost of converting any records to written forms shall be in addition to the cost of copying or printing such records, and the Unit Owner or the Unit Owner's authorized representative shall pay the reasonable expense of converting such records to written form, which expense shall be the actual cost of making the copy...

6. According to the Petitioner, the Association's position is that the printing of an electronic record upon request of a unit owner constitutes a copy, even if the owner only wants to scan the print-out and does not intend to keep it.
7. In the recent past, the Association has made many records available only by viewing of a laptop screen.
8. The Petitioner plans to request select screen-viewed records be printed out for the sole purpose of scanning the print-out. The Petitioner does not intend to keep the print-out and will return it to the Association upon completion of scanning.
9. The Association's current contract with its management company, Cambridge Management, sets the charge by Cambridge to the Association for black and white, letter-sized copies at \$0.15 per page.

10. As of May 4, 2015, the Association, via Cambridge CAM Heather Keel's email to the Petitioner dated May 7, 2015, has established the fee for copies and print-outs at \$0.18 per page.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
2. Section 120.565, Florida Statutes, provides in pertinent 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 of circumstances.
3. 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.
4. The Petitioner has standing to petition for a declaratory statement as a unit owner. §§ 718.103(28); 120.565, Fla. Stat. (2014).
5. The Petitioner's first question, whether the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen pursuant to section 718.111(12)(b) and (c), Florida Statutes, is answered in the affirmative. Section 718.111(12), Florida Statutes, provides in pertinent part:

(12) OFFICIAL RECORDS.—

(b) The official records of the association must be maintained within the state for at least 7 years...This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or *the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request...*

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, *at the reasonable expense, if any, of the member...* The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet... and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and *may charge its actual costs for preparing and furnishing these documents to those requesting the documents.* (Emphasis added).

6. Section 718.111(12)(b), Florida Statutes, allows condominium associations to offer access to official records electronically. Section 718.111(12)(c), Florida Statutes, gives unit owners the right to make or obtain copies at the reasonable expense and, depending on which records are being requested, obtain copies for the actual costs in preparing and furnishing the records. Therefore, the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen, pursuant to section 718.111(12)(b) and (c), Florida Statutes.
7. The Petitioner's second question, whether the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen pursuant to section 718.111(12)(c), Florida Statutes, is answered in the affirmative. Section 718.111(12)(c), Florida Statutes, provides in pertinent part:

An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative *for the use of a portable device*. (Emphasis added).

According to the statute, a unit owner may use a portable scanner to make electronic copies of records immediately available for scanning, and a condominium association may not impose a fee for the use of such devices. Before a unit owner can scan records accessible only on a computer screen, a hard copy of the electronic record has to be made. Section 718.111(12)(c) states that unit owners have the right to inspect records, and this right "includes the right to make and obtain copies, at the reasonable expense, if any, of the member." Even if a unit owner does not intend to "obtain" copies and wants to return them back, such copies are nevertheless "made" within the meaning of the statute. Therefore, the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen, pursuant to section 718.111(12)(c), Florida Statutes.

8. The Petitioner's third question, whether the Association may impose a charge on a copy of an official record that exceeds the actual cost to the Association for that copy pursuant to section 718.111(12)(b), Florida Statutes, is denied. Section 718.111(12)(b), Florida Statutes, sets the requirements of keeping and maintaining official records by a condominium association:

(12) OFFICIAL RECORDS.—

- (b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association

governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

This subsection is silent on the question of costs and fees a condominium association may charge for making copies of official records. Therefore, section 718.111(12)(b), Florida Statutes, is inapplicable.

9. To the extent the Petitioner is asking whether the Association may impose a charge on a copy of an official record that exceeds the actual cost to the Association for that copy pursuant to section 718.111(12)(c), Florida Statutes, the question is also denied. Section 718.111(12)(c), Florida Statutes, provides in part as follows:

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, *at the reasonable expense, if any, of the member...* The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and *may charge its actual costs for preparing and furnishing these documents to those requesting the documents.* (Emphasis added).

10. Section 718.111(12)(c) generally provides that an association may charge a reasonable expense to a member for making copies of official records, however, with respect to certain official records, the association may charge its actual costs for preparing and furnishing the official records. The Petitioner does not indicate whether his question applies to official records for which the association may charge its actual costs or whether it applies to official records for which the association may charge a reasonable expense.
11. The Amended Petition does not provide sufficient facts to support a declaration as to the Petitioner's third question. When the Division is called upon to issue a declaratory statement that is not supported by specific facts, the Division may decline to issue the statement. Sun Coast Home Care v. Dep't of Ins., 710 So. 2d 120 (Fla. 2d DCA 1998). The Division does not have authority to issue a declaratory statement "when the record contains no competent, substantial evidence to support the declaration." Id. Because the Petition does not provide sufficient facts, the Petitioner's third question is properly denied.

For the reasons stated above it is hereby:

ORDERED that 1) the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen pursuant to section 718.111(12)(b) and (c), Florida Statutes; and 2) the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen pursuant to section 718.111(12)(c), Florida Statutes.

DONE and ORDERED this 9th day of September 2015, at Tallahassee, Leon County, Florida.



Kevin Stanfield

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; 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 John Nicholas Datesh, Jr., 4530 Botanical Place Circle, Unit 106, Naples, FL 34112, and to Botanical Place Condominium Association, c/o Goede & Adamczyk, PLLC, Registered Agent, 8950 Fontana Del Sol Way, Suite 100, Naples, FL 34109, on this 14th day of September 2015.

A handwritten signature in black ink that reads "Brandon M. Nichols". The signature is written in a cursive style and is positioned above a horizontal line.

Agency Clerk's Office

Copies furnished to:

Robin E. Smith
Senior Attorney

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	8/26/2015
File #	2015-07124

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

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2015027097

JOHN NICHOLAS DATESH, JR., UNIT OWNER
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DS 2015-074

DECLARATORY STATEMENT

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2. The Association is the entity responsible for the operation of the Botanical Place Condominium (hereinafter the "Condominium").
3. The Declaration of Condominium (hereinafter the "Declaration") was recorded on November 21, 2005 in the Official Records of Collier County, Book 3933, Page 2592.
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5. On May 4, 2015, the Association adopted a rule limiting the inspection and copying of Association records. The rule provides in pertinent part:

B) Inspection and Copying.

(2) Upon receipt of a written request to inspect the Official Records, the Association may comply with said request by making the Official Records available as follows, in its sole discretion:

* * * * *

(c) providing access to a computer screen supervised by an agent of the Association if it is determined that most or all of the requested documents are stored in electronic format. In the event an owner requests any document be printed in accordance with F.S. 718.111(12)(b), a request for a printed copy shall be deemed a request for a written copy in accordance with Section (7) below of this Resolution and the Unit Owner shall pay a per page fee for printed copies. In the event documents are made available in this format, the Unit Owner or authorized representative shall be permitted to take a digital image of any document made available as provided for in F.S. 718.111(12)(c)...

* * * * *

(7) A Unit Owner or a Unit Owner's authorized representative shall pay the reasonable expense of copying. In the event the copies are made by the Association, the cost shall not exceed twenty-five cents (\$0.25) per page. If copies are made by outside vendors, actual costs shall be charged to the owner... The cost of printing records normally maintained on the computer shall be twenty-five cents (\$0.25) per page. The cost of converting any records to written forms shall be in addition to the cost of copying or printing such records, and the Unit Owner or the Unit Owner's authorized representative shall pay the reasonable expense of converting such records to written form, which expense shall be the actual cost of making the copy...

6. According to the Petitioner, the Association's printing of an electronic record upon request of a unit owner constitutes a copy, even if the owner only wants to scan the print-out and does not intend to keep it.
7. In the recent past, the Association has made many records available only by viewing of a laptop screen.
8. The Petitioner plans to request select screen-viewed records be printed out for the sole purpose of scanning the print-out. The Petitioner does not intend to keep the print-out and will return it to the Association upon completion of scanning.
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10. As of May 4, 2015, the Association, via Cambridge CAM Heather Keel's email to the Petitioner dated May 7, 2015, has established the fee for copies and print-outs at \$0.18 per page.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.
2. Section 120.565, Florida Statutes, provides in pertinent 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 of circumstances.
3. 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.
4. The Petitioner has standing to petition for a declaratory statement as a unit owner. §§ 718.103(28); 120.565, Fla. Stat. (2014).
5. The Petitioner's first question, whether the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen pursuant to section 718.111(12)(b) and (c), Florida Statutes, is answered in the affirmative. Section 718.111(12), Florida Statutes, provides in pertinent part:

(12) OFFICIAL RECORDS.—

(b) The official records of the association must be maintained within the state for at least 7 years...This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or *the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request...*

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, *at the reasonable expense, if any, of the member...* The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet... and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and *may charge its actual costs for preparing and furnishing these documents to those requesting the documents.* (Emphasis added).

6. Section 718.111(12)(b), Florida Statutes, allows condominium associations to offer access to official records electronically. Section 718.111(12)(c), Florida Statutes, gives unit owners the right to make or obtain copies at the reasonable expense and, depending on which records are being requested, obtain copies for the actual costs in preparing and furnishing the records. Therefore, the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen, pursuant to section 718.111(12)(b) and (c), Florida Statutes.
7. The Petitioner's second question, whether the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen pursuant to section 718.111(12)(c), Florida Statutes, is answered in the affirmative. Section 718.111(12)(c), Florida Statutes, provides in pertinent part:

An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative *for the use of a portable device*. (Emphasis added).

According to the statute, a unit owner may use a portable scanner to make electronic copies of records immediately available for scanning, and a condominium association may not impose a fee for the use of such devices. Before a unit owner can scan records accessible only on a computer screen, a hard copy of the electronic record has to be made. Section 718.111(12)(c) states that unit owners have the right to inspect records, and this right "includes the right to make and obtain copies, at the reasonable expense, if any, of the member." Even if a unit owner does not intend to "obtain" copies and wants to return them back, such copies are nevertheless "made" within the meaning of the statute. Therefore, the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen, pursuant to section 718.111(12)(c), Florida Statutes.

8. The Petitioner's third question, whether the Association may impose a charge on a copy of an official record that exceeds the actual cost to the Association for that copy pursuant to section 718.111(12)(b), Florida Statutes, is denied. Section 718.111(12)(b), Florida Statutes, sets the requirements of keeping and maintaining official records by a condominium association:

(12) OFFICIAL RECORDS.—

- (b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 5 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association

governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

This subsection is silent on the question of costs and fees a condominium association may charge for making copies of official records. Therefore, section 718.111(12)(b), Florida Statutes, is inapplicable.

9. To the extent the Petitioner is asking whether the Association may impose a charge on a copy of an official record that exceeds the actual cost to the Association for that copy pursuant to section 718.111(12)(c), Florida Statutes, the question is also denied. Section 718.111(12)(c), Florida Statutes, provides in part as follows:

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, *at the reasonable expense, if any, of the member...* The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and *may charge its actual costs for preparing and furnishing these documents to those requesting the documents.* (Emphasis added).

10. Section 718.111(12)(c) generally provides that an association may charge a reasonable expense to a member for making copies of official records, however, with respect to certain official records, the association may charge its actual costs for preparing and furnishing the official records. The Petitioner does not indicate whether his question applies to official records for which the association may charge its actual costs or whether it applies to official records for which the association may charge a reasonable expense.
11. The Amended Petition does not provide sufficient facts to support a declaration as to the Petitioner's third question. When the Division is called upon to issue a declaratory statement that is not supported by specific facts, the Division may decline to issue the statement. Sun Coast Home Care v. Dep't of Ins., 710 So. 2d 120 (Fla. 2d DCA 1998). The Division does not have authority to issue a declaratory statement "when the record contains no competent, substantial evidence to support the declaration." Id. Because the Petition does not provide sufficient facts, the Petitioner's third question is properly denied.

For the reasons stated above it is hereby:

ORDERED that 1) the Association may impose a fee upon a unit owner for a requested print out of an official record accessible only on a computer screen pursuant to section 718.111(12)(b) and (c), Florida Statutes; and 2) the Association may impose a fee upon a unit owner making an electronic copy of an official record accessible only on a computer screen pursuant to section 718.111(12)(c), Florida Statutes.

DONE and ORDERED this 21th day of August 2015, at
Tallahassee, Leon County, Florida.





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; 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 John Nicholas Datesh, Jr., 4530 Botanical Place Circle, Unit 106, Naples, FL 34112, and to Botanical Place Condominium Association, c/o Goede & Adamczyk, PLLC, Registered Agent, 8950 Fontana Del Sol Way, Suite 100, Naples, FL 34109, on this 26th day of August 2015.

A handwritten signature in black ink that reads "Brandon M. Nibbs". The signature is written in a cursive style and is positioned above a horizontal line.

Agency Clerk's Office

Copies furnished to:

Robin E. Smith
Senior Attorney

PETITION FOR DECLARATORY STATEMENT

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Petitioner Name: John Nicholas Datesh, Jr.

Address: 4530 Botanical Place Circle – Unit 106
Naples FL 34112

DS 2015-027097

Phone: (236) 963-4791

E-Mail: john.nicholas.datesh@datesh.com

Petitioner's Attorney/Representative: N/A

Amended Petition

Statute on which the Declaratory Statement is sought:

Section 718.111(12), subsections (b) and (c).

Reasons Petitioner Needs a Declaratory Statement

Petitioner owns a unit in the Association and has requested access to official records and plans to do so in the future. The Association has imposed rules restricting such access in the past and will continue to do so in the future. Petitioner needs to know if certain of the Association's rules are valid under 718.111(12) as applied to future requests for access and the inspection, copying and scanning of records pursuant to those requests.

Undisputed Facts:

1. Petitioner is the owner of record of unit 4530-106 (Building 1, unit 106) and is a member of Botanical Place Condominium Association, Inc. ("Association"), a Not-for-Profit corporation.
2. The Declaration of Condominium was recorded in the Official Records of Collier County on November 21, 2005, at Official Records Book 3933, Page 2592. The Declaration incorporated the Association's Articles of Incorporation and Bylaws. The Declaration incorporated the Condominium Act, Chapter 718, Florida Statutes, "it existed the date hereof." The Bylaws incorporated 718.112(2)(a) through (m).
3. Under Chapter 718 and the Declaration, the Association is the entity responsible for the operation of the Condominium.
4. Petitioner frequently exercises unit owner rights, as set out in 718.111(12), to request access to Association Official Records for the purpose of inspecting and copying such records.
5. Petitioner intends to continue to exercise such unit owner rights to access such Association Official Records.
6. The Association has adopted a series of limitations on unit owner rights of access to inspect and copy, including the following:

[2](c) providing access to a computer screen.... In the event an owner requests any document be printed in accordance with F.S. 718.111(12) (b), a request for a printed copy shall be deemed a request for a written copy in accordance with Section (7) below of this Resolution and the Unit Owner shall pay a per page fee for printed copies. In the event documents are made available in this format, the Unit Owner or authorized representative shall be permitted to take a digital image of any document made available as provided for in F.S. 718.111(12) (c)....”

7) A Unit Owner or a Unit Owner's authorized representative shall pay the reasonable expense of copying. In the event the copies are made by the Association, the cost shall not exceed twenty-five cents (\$0.25) per page. If copies are made by outside vendors, actual costs shall be charged to the owner.... The cost of printing records normally maintained on the computer shall be twenty-five cents (\$0.25) per page.

7. 718.111(12)(b) states, in part (emphasis supplied),

This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or *by allowing the records to be viewed in electronic format on a computer screen and printed upon request.*

8. 718.111(12)(c) states, in part (emphasis supplied),

The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.... An association shall *allow a member* or his or her authorized representative *to use a portable device*, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, *to make an electronic copy* of the official records ***in lieu of the association's providing the member or his or her authorized representative with a copy*** of such records. ***The association may not charge a member or his or her authorized representative for the use of a portable device.***

8. The Association's position that when the Association chooses to make available “the records to be viewed in electronic format on a computer screen and printed upon request” that such a print-out is a “copy”, no matter if the owner only wants the print-out to allow him or her to scan the print-out under 718.111(12)(c).

9. In the recent past, the Association has made many records available only by viewing of a laptop screen.

10. Petitioner plans to request that select screen-viewed records be printed out for the sole purpose of scanning the print-out. Petitioner does not intend to keep the print-out and will return it to the Association upon the completion of scanning.

11. 718.111(12)(c) requires that the use of scanner to make an electronic copy be permitted at no charge.

12. In the case of such screen-viewed records, the Association plans to charge the Petitioner for each page printed upon request for Charging an owner to put an electronic record into form suitable for scanning, thus imposing a fee for scanning the viewed record.

13. The Association's current contract with its management company, Cambridge Management sets the charge by Cambridge to the Association for black and white, letter-sized copies at \$0.15 per page.

14. As of May 4, 2015, the Association, via Cambridge CAM Heather Keel's email to Petitioner dated May 7, 2015, has established the fee it will charge for copies and print-outs at \$0.18 per page.

Questions to be Addressed by Declaratory Statement

1. Under 718.111(12)(b), is the Association barred from imposing a monetary charge on a requested print out of record that the Association chooses to make accessible only on a computer screen?

2. Under 718.111(12)(c), is the Association barred from imposing a monetary charge on any part of the process of an owner making an electronic copy of a record that the Association chooses to make accessible only on a computer screen?

3. Under 718.111(12)(b), is the Association barred from imposing a charge on a copy made by its management company that exceeds the actual cost of paper and ink or toner for that copy?

4. Under 718.111(12)(b), is the Association barred from imposing a charge on a copy made by its management company that exceeds the actual cost to the Association for that copy?

Request for Division's Official Position

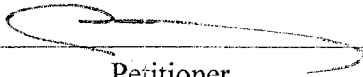
Petitioner requests the Division to answer the questions above in the affirmative and to interpret Section 718.111(12), subsections (a) and (c) accordingly.

Request for Hearing

Petitioner does not request a Hearing.

Respectfully submitted

7-11-2015
Date

By 
Petitioner
John Nicholas Datesh, Jr.

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **6/15/2015**
File #

PETITION FOR DECLARATORY STATEMENT

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

Petitioner Name: John Nicholas Datesh, Jr.
Address: 4530 Botanical Place Circle – Unit 106
Naples FL 34112
Phone: (236) 963-4791
E-Mail: john.nicholas.datesh@datesh.com

Docket #: 2015027097

DS 2015-

DS 2015-074

Petitioner's Attorney or Representative: N/A

Statute on which the Declaratory Statement is sought:
Section 718.111(12), subsections (b) and (c).

Reasons Petitioner Needs a Declaratory Statement

Petitioner owns a unit in the Association and has requested access to official records and plans to do so in the future. The Association has imposed rules restricting such access in the past and will continue to do so in the future. Petitioner needs to know if certain of the Association's rules are valid under 718.111(12) as applied to future requests for access and the inspection, copying and scanning of records pursuant to those requests.

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3. Under 718.111(12)(b), is the Association barred from imposing a charge on a copy made by its management company that exceeds the actual cost of paper and ink or toner for that copy?

4. Under 718.111(12)(b), is the Association barred from imposing a charge for the time spent by any person(s) in preparing official records for an inspection in the form chosen by the Association for that inspection?

Request for Division's Official Position

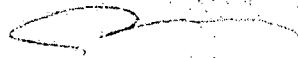
Petitioner requests the Division to answer the questions above in the affirmative and to interpret Section 718.111(12), subsections (a) and (c) accordingly.

Request for Hearing

Petitioner does not request a hearing.

Respectfully submitted

By



Petitioner

John Nicholas Datesh, Jr.

5-26-2005

Date