

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	1/16/2015
File #	2015-00507

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2014044962

Kimberly Goedde, Unit Owner,  
Carmel Lakes Property Owners Association, Inc.

**DS 2014-138**

**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 October 27, 2014 from Kimberly Goedde (hereinafter "Petitioner"), unit owner in Carmel Lakes Building 6 and member of Carmel Lakes Property Owners Association (hereinafter "the association"), seeking an opinion whether Carmel Lakes Property Owners Association is a "condominium association" as defined in 718.103(2), Florida Statutes.

Division counsel responded November 21, 2014 to acknowledge receipt of the petition, and to inform Petitioner that the Division would serve a copy of the petition on the association, as required by 718.501(1)(g), Florida Statutes, so that the association could intervene and file a response if it chose to do so. The Division received a response from the association on December 2, 2014.

Notice of receipt of the petition was published in the November 24, 2014 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, as well as the governing documents of the association and the underlying condominium associations. The Division takes no position as to the accuracy of the facts and accepts them as submitted by petitioners and interveners for the purposes of issuing this declaratory statement.

1. Carmel Lakes Property Owners Association, Inc. is a Florida corporation not-for-profit, incorporated under chapter 617, Florida Statutes.

2. The Carmel Lakes community consists of 11 separate condominiums, each of which is also subject to the governing documents of the Carmel Lakes Property Owners Association, Inc. (hereinafter referred to as the "Carmel Lakes Project.")<sup>1</sup>

3. The powers of the association include the powers to:

Provide for the architectural control of the residence lots. . . and to promote the health, safety and welfare of the residents within the [condominium property] and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and in furtherance of these purposes, to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in [the Declaration of Restrictions and Easements]. . . .
- (b) fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;
- (c) Acquire. . . own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real property in connection with the affairs of the Association;

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<sup>1</sup> Pet. Decl. Stmt.

(d) Borrow money. . . .<sup>2</sup>

4. Membership in the association is mandatory for owners of condominium units within the project.<sup>3</sup>

5. Membership in the association is appurtenant to and may not be separated from ownership of a unit in the project.<sup>4</sup> Only owners of condominium units within the project may be members of the association.<sup>5</sup>

6. Each unit within the project is subject to a covenant for assessments to the association. Failure to pay assessments to the association will result in a lien upon the property.<sup>6</sup>

### CONCLUSIONS OF LAW

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

8. 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.

9. 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

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<sup>2</sup> Arts. of Inc., Carmel Lakes Prop. Owners Ass'n, Art. IV.

<sup>3</sup> Decl. of Rest. and Easements, Carmel Lakes Prop. Owners Ass'n, Art. III.

<sup>4</sup> *Id.*

<sup>5</sup> Ass'n Response Letter, Nov. 21, 2014.

<sup>6</sup> *Id.* at Art. V.

petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

10. Petitioner has standing to petition for a declaratory statement as a unit owner.<sup>7</sup>

11. The association has standing to intervene.<sup>8</sup>

12. Section 718.103(2), Florida Statutes (2011), 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.)

13. In 1991, the Legislature amended this provision to include substantially the same language quoted above.<sup>9</sup> Prior to this change, section 718.103(2), Florida Statutes, more narrowly defined the term 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 Ass'n*, 525 So. 2d 438 (Fla. 5th DCA 1988), and the Department of Business Regulation rule promulgated in response to *Downey*.<sup>10</sup>

14. Therefore, to be subject to regulation under chapter 718, Florida Statutes, 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.

15. Carmel Lakes Property Owners Association functions like a condominium association: it has the authority to collect assessments, to lien a unit for nonpayment of

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<sup>7</sup> §§ 718.103(28), 120.565, Fla. Stat.

<sup>8</sup> *Id.* § 718.103(2); Fla. Admin. Code r. 28-105.0027.

<sup>9</sup> See Ch. 91-103, Laws of Fla.

<sup>10</sup> 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).

those assessments, to hold and convey property, to borrow money, and to regulate the affairs of the property subject to the Declaration. Collecting assessments for the maintenance of commonly held property is the fundamental function of a condominium association.

16. 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.

17. Membership in the association is restricted to unit owners.<sup>11</sup> Membership is an appurtenance to unit ownership, and as such, membership may not be separated from unit ownership, and membership terminates when an owner sells his or her unit.<sup>12</sup>

18. Each unit owner within the project is required to be a member of the association.<sup>13</sup>

19. Therefore, because membership is both exclusive and mandatory to unit owners units within the project, the constituency requirement of section 718.103(2) is satisfied.

20. Because Carmel Lakes Property Owners Association, Inc., functions like a condominium association, and because membership in the association is exclusive to condominium unit owners and mandatory for owners of units within the project, the association is a condominium master association subject to chapter 718, Florida Statutes.

For the reasons stated above it is hereby:

**ORDERED** that Carmel Lakes Property Owners Association is a “condominium association” as defined in 718.103(2), Florida Statutes.

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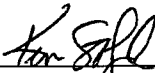
<sup>11</sup> See Facts, *supra*.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

DONE and ORDERED this 9<sup>th</sup> day of January 2014, 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@MYFLORICALICENSE.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 Kimberly Goedde, 468 NE 206<sup>th</sup> Lane #209, North Miami Beach FL, 33179, and to Carmel Lakes Property Owners Association, Inc., c/o Phoenix Management Services, Inc., Registered Agent, 4800 N State Road Seven, Suite 105, Lauderdale Lakes, FL 33319, on this 16<sup>th</sup> day of January ~~2014~~ <sup>2015</sup> (Bme).



Agency Clerk's Office

Copies furnished to:

Brittany Finkbeiner  
Chief Attorney