

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	3/6/2019
File #	2019-01982

IN RE: PETITION FOR DECLARATORY STATEMENT

Case No. 2018029475

HERON AT DESTIN WEST BEACH AND
BAY RESORT CONDOMINIUM ASSOCIATION
INC.,

DS 2018-045

DECLARATORY STATEMENT

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

PRELIMINARY STATEMENT

On June 6, 2018, the Division received a Petition for Declaratory Statement (Petition), from Heron at Destin West Beach and Bay Resort Condominium Association, Inc. (Petitioner or Association), seeking a declaratory statement as to whether the Association may maintain its official records solely in electronic form pursuant to section 718.111(12)(b), Florida Statutes.

1. On June 11, 2018, The Division confirmed receipt of the Petition in a letter sent to Petitioner.
2. On June 12, 2018, the Notice of Receipt of the Petition was published in the Florida Administrative Register.
3. No parties intervened.
4. Petitioner did not request a hearing.

FINDINGS OF FACT

All of the facts presented in the Petition and provided by the interested parties were duly considered, included in the record, and form the basis of this order. 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 is a condominium governed under chapter 718, Florida Statutes (Condominium Act).
2. According to Petitioner, part of Petitioner's duties is maintaining official records under chapter 718, Florida Statutes.
3. Petitioner claims they are contemplating maintaining official records solely in electronic form.
4. According to Petitioner, Petitioner is uncertain if Heron at Destin West Beach and Bay Resort's records are required to be maintained solely in paper form, solely in electronic form, or in electronic and paper form.
5. Petitioner claims that the requirements of section 718.111(12)(b), Florida Statutes, are fulfilled by allowing the owner access to the records electronically via the internet.
6. According to Petitioner, the statute does not state whether Petitioner's records must be kept in paper form with the records made available in electronic form in order to comply with the statutes, or if Petitioner may maintain its records solely in electronic form with the documents being made available to owners in electronic form.

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 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. Petitioner has standing to petition for a declaratory statement as a condominium association. §120.565, Fla. Stat.

5. Petitioner's question as to whether the Association may maintain its official records solely in electronic form pursuant to section 718.111(12)(b), Florida Statutes, is answered in the affirmative only as it pertains to official records pursuant to section 718.111(12)(b), Florida Statutes.

6. Section 718.111(12)(b), Florida Statutes, provides in relevant part:

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. (Emphasis added).

7. “[W]hen given its ordinary meaning, the word ‘may’ denotes a permissive term rather than the mandatory connotation of the word ‘shall’.” Leghorn v. Wieland, 289 So. 2d 745, 747 (Fla. 2nd DCA 1974) citing Brooks v. Anastasia Mosquito Control District, 148 So. 2d 64 (Fla. 1st DCA 1963).

8. Given the specific facts provided in this Petition combined with the permissive language used in the statute, the statute does not preclude this Association from keeping its official records pursuant to section 718.111(12)(b), Florida Statutes, in electronic form, so long as the records are available to a unit owner electronically via the internet or as otherwise permitted by section 718.111(12)(b), Florida Statutes.

CONCLUSION

Having considered the facts and circumstances set forth in the Petition, it is ORDERED that the Division hereby GRANTS Petitioner’s Petition for Declaratory Statement on behalf of Heron at Destin West Beach and Bay Resort, and answers Petitioner’s inquiry as set forth above. This conclusion is based on the facts described in the Petition provided by Petitioner. Accordingly, this conclusion has no application in the event that the factual circumstances described herein are incorrect or change. The conclusion relies on the application of the provisions of the Condominium Act in effect as of the date of this Order, and may not apply in the future if provisions of the Condominium Act pertinent to this conclusion are modified.

DONE and ORDERED this 28 day of February 2019, at
Tallahassee, Leon County, Florida.



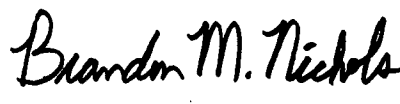
Boyd McAdams, Division Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
2601 Blair Stone Road
Tallahassee, FL 32399-1030

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, 2601 BLAIR STONE ROAD, TALLAHASSEE, FLORIDA 32399-2202; 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 Michael H. Casanover, Esq., Burg Law Firm, P. A., Panama City Beach Pkwy, Suite 160, Panama City Beach, Florida 32413 on this 6th day of March, 2019.



Agency Clerk's Office

Copies furnished to:

Chevonne Christian
Chief Attorney

FILED	
<small>Department of Business and Professional Regulation</small>	
<small>Deputy Agency Clerk</small>	
<small>CLERK</small>	Brandon Nichols
<small>Date</small>	6/4/2018
<small>File #</small>	

**PETITION FOR DECLARATORY STATEMENT BEFORE
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES**

DOCKET NO.: 2018029475

PETITION FOR DECLARATORY STATEMENT

1. The Petitioner is:

Heron at Destin West Beach and Bay Resort Condominium Association, Inc.
1326 Miracle Strip Parkway
Fort Walton Beach, FL 32548

2. The Petitioner's representative is:

Michael H. Casanover, Esq.
Burg Law Firm, P.A.
14101 Panama City Beach Pkwy.
Suite 160
Panama City Beach, FL 32413
(850) 851-0621
(850) 851-0622
Email: Michael@BurgLaw.com

DS 2018-045

3. The statutory provisions for interpretation is:

Sections 718.111(12)(b) (the "Statute"):

4. The Following narrative describes how the statute may substantially affect the Petitioner's particular set of circumstances:

Petitioner is a condominium governed under chapter 718 of Florida Statutes. Part of Petitioner's duties is maintaining official records under section 718 of Florida Statutes. Petitioner is contemplating maintaining official records solely in electronic form. Petitioner is uncertain if condominium association records are required to be maintained solely in paper form, solely in electronic form, or in electronic and paper form. Florida Statute § 718.111(12)(b) requires:

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.

The Statute requires: (1) a condominium association's records be kept for seven (7) years, (2) the records are kept within forty-five (45) miles of the association or within the county in which the association is located, and (3) and the records be made available to owners within five (5) days for a condominium association. The requirements of the statute are fulfilled by allowing the owner access to the records electronically via the internet.

The Statute does not state if condominium association records must be kept in paper form with the records made available in electronic form in order to comply with the Statutes, or if the condominium association may maintain condominium association records solely in electronic form with the documents being made available to owners in electronic form.

5. The Petitioner does not request a hearing.

WHEREFORE, the Petitioner desires a declaratory statement regarding whether the condominium association may maintain its official records solely in electronic form.

Dated this 31st day of May 2018.



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