

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	9/14/2018
File #	2018-07582

IN RE: PETITION FOR DECLARATORY STATEMENT

Case No. 2018023783

THE APOLLO CONDOMINIUM ASSOCIATION, INC.,

DS 2018-035

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 sections 120.565 and 718.501, Florida Statutes.

PRELIMINARY STATEMENT

On May 2, 2018, the Division received a Petition for Declaratory Statement (Petition) from The Apollo Condominium Association, Inc. (Petitioner or Association) seeking a declaratory statement as to whether the statutory limit of eight consecutive years includes years of service prior to the effective date of the amendment to section 718.112(2)(d)2., Florida Statutes.

1. On May 8, 2018, the Division confirmed receipt of the Petition in a letter sent to Petitioner.
2. On May 9, 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.
5. Petitioner subsequently provided supplemental information as requested by the Division.

FINDINGS OF FACT

All of the facts presented in the Petition 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 Petitioner for the purposes of issuing this declaratory statement.

1. Petitioner is a condominium association located in Marco Island, Florida.
2. According to Petitioner, the Association is scheduled to have an election after July 1, 2018.
3. Petitioner claims that one of its current board directors has served on the board for more than eight consecutive years.
4. According to Petitioner, this current above-mentioned director is planning to run for re-election in the upcoming board election.
5. Petitioner claims it is concerned with the validity of the upcoming board election scheduled to be held after July 1, 2018.
6. In response to the Division's request for supplemental information, Petitioner's attorney indicated that the Association did not have an election scheduled for July 1, 2018, and would not be holding its next election until 2019. Petitioner's attorney further advised that there would be three directorship seats available for the next election and six candidates running in that election. Petitioner's attorney went on to explain that the directors of the Association serve two-year terms and that the Association believed the director who has already served eight years will receive votes from a majority, but less than two-thirds of those voting.

7. Accordingly, Petitioner is seeking a declaratory statement as to whether the new statutory limitation to serve a maximum of eight consecutive years as a director, pursuant to section 718.112(2)(d)2., Florida Statutes, includes years of service prior to the effective date of the statute or only those years thereafter and whether the current above-mentioned director may run for re-election in the upcoming board election to held after July 1, 2018.

APPLICABLE STATUTES

1. Prior to July 1, 2017, there were not term limits within the Condominium Act.
2. In 2017, section 718.112(2)(d)2., Florida Statutes, was amended to include the following:

Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

3. The amendments to this statute were included in Laws of Florida, chapter 2017-188, section 3.
4. The last section of Laws of Florida, chapter 2017-188, states “[t]his act shall take effect July 1, 2017.”
5. In 2018, section 718.112(2)(d)2., Florida Statutes, was further amended to state:

Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

6. The amendments to this statute were included in Laws of Florida, chapter 2018-96, section 2.

7. The last section of Laws of Florida, chapter 2018-96, states that “[t]his act shall take effect July 1, 2018.”

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 Association has standing to petition for a declaratory statement regarding this matter as it is substantially affected. §§ 120.565, 718.103(2), Fla. Stat. (2017).

5. The Division has reviewed Petitioner’s Petition for Declaratory Statement and is issuing this statement.

6. Petitioner's question as to whether the new statutory limitation to serve a maximum of eight consecutive years as a director, pursuant to section 718.112(2)(d)2., Florida Statutes, includes years of service prior to the effective date of the statute or only those years thereafter and whether the current above-mentioned director may run for re-election in the upcoming board election to held after July 1, 2018 is answered by citation to the relevant portion of the statute.

7. Section 718.112(2)(d)2., Florida Statutes, mandates, in pertinent part,

Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.

8. As such, if at the next scheduled election the current board member has served on the board for eight consecutive years, that board member would be ineligible to serve as a board member unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.

For the reasons stated above, it is hereby:

ORDERED that, pursuant to the amendments made to section 718.112(2)(d)2., Florida Statutes, if at the time of the next scheduled election the current board member has served on the association board for eight consecutive years, that board member would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is approved

by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.

DONE and **ORDERED** this 12th day of September 2018, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "Kevin Stanfield", written over a horizontal line.

Kevin Stanfield, 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 William G. Morris, P.A., Post Office Box 2056, Marco Island, Florida 34146-2056 on this 14th day of September, 2018.

Brandon M. Nichols

Agency Clerk's Office