

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. 2020009068

CORAL SPRINGS TOWER CLUB II CONDOMINIUM
ASSOCIATION, INC.

PETITIONER,

DS 2020-017

**FINAL ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR
DECLARATORY STATEMENT**

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

On February 20, 2020, the Division received a Petition for Declaratory Statement (Petition), from Coral Springs Tower Club II Condominium Association, Inc. (“Petitioner” or “association”). The Petition requests a declaratory statement as to the following: 1) Whether the association is permitted to limit an agent appointed by several unit owners as attorney in fact from attending and/or speaking at unit owner and board meetings of the association; and 2) Whether the sample power of attorney in fact form is legally sufficient to grant authority of the agent to attend and/or speak at unit owner or board meetings.

On February 20, 2020, the Division confirmed receipt of the Petition in a letter sent to Petitioner. Petitioner did not request a hearing.

FINDINGS OF FACT¹

1. Petitioner is a residential condominium association in Broward County, Florida.
2. Petitioner is a Not for Profit Corporation.
3. According to Petitioner, a group of unit owners have appointed an agent to serve as attorney-in-fact to attend and speak on behalf of association members at unit owner and board meetings.
4. The Association's governing documents are silent on the issue of power of attorney and limitations on who can attend and/or speak at unit owner and/or board owner meetings.
5. The Petition asserts that the agent has become disruptive at such meetings and hinders the progress of the association's business.
6. The agent is not a unit owner and her name does not exist on any deed or title interest at the association
7. According to the Petitioner, the Agent seeks to make decisions on association matters but is not directly moored to the needs or concerns of the association, as said agent is not a record title holder.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this Order. *See* §§ 120.565, 718.501, Fla. Stat. The Petitioner has standing to petition for a declaratory statement as a condominium association. *See* § 120.565, Fla. Stat.

¹ All of the facts presented in the Petition were duly considered, included in the record, and form the basis of this Final Order. The Division takes no position as to the accuracy of the facts and accepts them as submitted by Petitioner for the purpose of issuing this Final Order Denying Petition for Declaratory Statement.

2. Section 718.1035, Florida Statutes provides the following:

The use of a power of attorney that affects any aspect of the operation of a condominium shall be subject to and in compliance with the provisions of this chapter and all condominium documents, association rules and other rules adopted pursuant to this chapter, and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

3. Section 718.112(2), Florida Statutes, provides in part:

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

(d)(4)a. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid.

(d)(7) Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

4. The Petitioner's first question asks whether the association is permitted to limit an agent appointed by several unit owners as attorney in fact from attending and/or speaking at unit owner and board meetings of the association.

5. Section 718.1035, Florida Statutes, provides that the use of a power of attorney is subject to the governing documents of the association as well as chapter 718, Florida Statutes.

6. There is no provision in the Association's governing documents that limits or some other way restricts the use of a power of attorney beyond the provisions of chapter 718, Florida Statutes.

7. Furthermore, the only limitation provided in chapter 718, Florida Statutes, that limits the use of a power of attorney is a prohibition of voting by anyone other than the unit owner. §718.112(d)(4), Fla. Stat.

8. Where there is no statute, administrative rule, or condominium document to explicitly impose a restriction on the manner and use of a power of attorney, there should be no bar to prevent the use of power of attorney. See In re: Petition for Declaratory Statement, Fountainhead Ass'n, Inc., Docket No. 2001-011, Final Order No. 2001-04753 (Nov. 27, 2001)².

9. Because the issue of attendance and participation by a party holding a power of attorney is not restricted by any statutes, administrative rule, or the Association's governing documents, the Association cannot prohibit the use and participation of an agent holding a power of attorney in board and unit owner meetings.

10. Petitioner's second question requests the Division issue a declaratory statement on an issue outside of its statutory authority.

² In In re: Petition for Declaratory Statement, Fountainhead Ass'n, Inc., the Association sought to limit the use of a power of attorney in attending, participating, and speaking on agenda items at meetings of the board of administration. The Association did not adopt rules governing the use of a power of attorney, and was prohibited from restricting its use absent a provision of the governing documents, statute, or administrative rule.

11. Petitioner's second question asks whether a power of attorney in fact form is legally sufficient to grant authority of the agent to attend and/or speak at unit owner or board member meetings.

12. The second question would require the Division to go beyond its statutory authority to interpret chapter 709, Florida Statutes, regarding powers of attorney.

13. The Division's authority is derived from section 718.501(1), Florida Statutes, which limits its jurisdiction to financial issues, elections, and unit owner access to association records once turnover has occurred.

14. Section 120.565(1), Florida Statutes, only permits the Division the authority to provide an opinion as to the applicability of a statute, rule, or order under the jurisdiction of the Division.

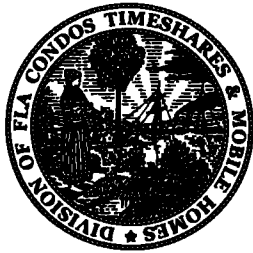
15. Because the issue of power of attorney falls outside of its statutory jurisdiction, the Division is unable to exceed the powers, functions, and duties delegated by the Legislature and issue a response regarding the sufficiency of a power of attorney form.

[SIGNATURE PAGE TO FOLLOW]

Based on the foregoing, it is hereby:

ORDERED that the Petition for Declaratory Statement is **GRANTED IN PART** and **DENIED IN PART**.

DONE and **ORDERED** this 17 day of JUNE 2020, at Tallahassee, Leon County, Florida.



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

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 Coral Springs Tower Club II Condominium Association, Inc., Care of Kara Tanis, Esq., Kelley & Grant, P.A., 370 Camino Gardens Bld., Ste. 301, Boca Raton, FL 33432 on this 22nd day of June, 2020.


Agency Clerk's Office

Copies furnished to:

James Richardson
Chief Attorney

Coral Springs Tower Club II Condominium Association, Inc.,
Care to Kara Tanis, Esq.
Kelley & Grant, P.A.
370 Camino Gardens Blvd., Ste. 301
Boca Raton, FL 33432

FILED
Department of Business and Professional Regulation
Senior Deputy Agency Clerk
CLERK Brandon Nichols
Date 2/20/2020
File #

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIME SHARES, AND MOBILE HOMES**

IN RE: PETITION FOR DECLARATORY STATEMENT BEFORE THE DEPARTMENT OF
BUSINESS AND PROFESSIONAL REGULATION

DS 2020-017

CORAL SPRINGS TOWER CLUB II CONDOMINIUM
ASSOCIATION, INC., A Florida Not For Profit
Corporation,

CASE NO. 2020009068

PETITIONER,

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

To Department of Business and Professional Regulation
Attn: Division of Florida Condominiums, Time Shares, and Mobile Homes
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

Petitioner Coral Springs Tower Club II Condominium Association, Inc., A Florida Not For Profit
Corporation
c/o Kara Tanis, Esq. FBN 85491
Kelley & Grant, P.A.
370 Camino Gardens Blvd., Ste. 301
Boca Raton, FL 33432
Email: Kara@kelleygrantlaw.com; eservice@kelleygrantlaw.com
Tel.: 561-672-1161; Fax: 877-838-2912

Comes now, Petitioner, Coral Springs Tower Club II Condominium Association, Inc., a Florida
Not For Profit Corporation ("Association"), by and through its undersigned counsel, and requests a
Declaratory Statement from the State Of Florida, Department Of Business And Professional Regulation
Division Of Florida Condominiums, Time Shares, And Mobile Homes ("Division") regarding the below
stated issue(s):

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I Procedure

A declaratory statement is a limited administrative proceeding. The purpose of a declaratory statement is to give the division's position before action is taken. Rule 28-105.001, Florida Administrative Code, states:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of any statutory provision, rule 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.

II. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on which the Declaratory Statement is sought:

1 Florida Statute Section 718.103(28) on Definitions states,

"Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

2 Florida Statute Section 718.112(5)(c) on Board of Administration Meetings states,

Meetings of the board of administration at which a quorum of the members is present are *open to all unit owners*. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. *The right to attend such meetings includes the right to speak at such meetings* with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements (emphasis added).

3. Florida Statute Section 709.2201(1) on Authority of Agent (to act under Limited Power of Attorney) states,

(1) Except as provided in this section or other applicable law, an agent *may only exercise authority specifically granted to the agent in the power of attorney* and any authority reasonably necessary to give effect to that express grant of specific authority. *General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent.* Court approval is not required for any action of the agent in furtherance of an express grant of specific authority. (emphasis added)

4. The Division's prior Declaration Statement, Fountainhead Association, Inc , Docket No. CD2001-036, Final Order No BPR 2001-04753, DS 2001-011, finding that, "where the condominium documents are silent regarding the use of power of attorney, Petitioner is required by section 718 1035 and 718.112(2)(c), F.S., to allow a person holding power of attorney from a unit owner to attend speak at, and participate in the association's board of administration meetings"

III. Evaluation: Is a request for Declaratory Statement appropriate?

1. Do you have an actual and practical need for a statement?

Yes, the set of facts and events stated below are current, relevant, and occurring in real time, affecting the Association and its membership

2. Does your situation deal with a present set of undisputed facts?

Yes, the set of facts and events stated below are current, relevant, and occurring in real time, and the Association is without guidance as to how to address the situation

3. Has a controversy arisen over how the law applies to the question(s) that you are asking?

Yes, the facts and the law are at odds with each other

4. Are you depending on the law to guide proposed actions?

Yes, the Association is in need of clarification on this issue in order to evaluate and determine if changes to operational procedures, governing documents and/or a petition for arbitration are needed

5. Are you or your association directly involved in this question?

Yes, the Association is the subject party in question

IV. Statement of The Facts and Interpretation of Law

1. The Association is a residential condominium association in Broward County, Florida and consists of 85 units in a 5-story building
2. The Association's governing documents (copy attached hereto as Exhibit "A") are silent on the issue of power of attorney and limitations on who can attend and/or speak at unit owner and/or board member meetings
3. An individual ("Agent") has been appointed by the owner(s) of several units to serve as attorney-in-fact.

4. The Agent has been attending and speaking at unit owner and board member meetings on behalf of Association members
5. The owner(s) have obtained an attorney in fact form, designating this Agent to act on their behalf, to "handle real property" to maintain, manage, insure, lease, rent, improve, repair, and (on such terms and at prices my Agent may deem proper) deal with all, any part or any interest in my properties [insert Association address here] and any real or personal property or asset whatsoever, tangible or intangible (no owned or acquired in the future by me) and to execute any necessary document, instrument or deed for such transaction. This includes the right to remove tenants and to recover possession and the right to ask for, demand, sue for, collect, recover and receive all monies which may become due and owing to me by reason of such transaction". A sample of such power of attorney is attached hereto as Exhibit "B".
6. This Agent has become disruptive at such meetings and hinders the progress of the Association's business.
7. The Agent is not a unit owner and her name does not exist on any deed or title interest at the Association.
8. The Agent seeks to make decisions on Association matters but is not directly moored to the needs or concerns of the Association as said Agent is not a record title holder.
9. The Association feels such behavior is not in the best interests of the Association or its membership.
10. Florida Statute Section 718.103(28) on Definitions states,

"Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.
11. Florida Statute Section 718.112(5)(c) on Board of Administration Meetings states,

Meetings of the board of administration at which a quorum of the members is present are *open to all unit owners*. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. *The right to attend such meetings*

includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements (emphasis added)

- 12 Florida Statute, Section 709.2201(1) on Authority of Agent (to act under Limited Power of Attorney) states,

(1) Except as provided in this section or other applicable law, an agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority. General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent. Court approval is not required for any action of the agent in furtherance of an express grant of specific authority (emphasis added)

13. We interpret the above provisions, when read in conjunction with each other, to allow the Association's prohibition of a unit owner's representative (Agent) under limited power of attorney to attend and speak at Association meetings because the governing condominium statutes specially identify "unit owners" as record title holders and same being the only type of persons permitted to attend association meetings

- 14 The attorney in fact is not a title holder, and, the Limited Power of Attorney document does not specifically address the authority to attend Association meetings on a unit owner's behalf

- 15 This analysis presumes the power of attorney form was executed in accordance with Florida law

- 16 The Association requested the Division's assistance and guidance on this matter by correspondence dated August 15, 2019 (Exhibit "C") and was directed by the Division to file the instant Petition for Declaratory Statement

REQUEST FOR RELIEF

Wherefore, the Association request the Division to

- 1 Take jurisdiction over the subject matter and parties hereto

ii. Enter a Declaratory Statement finding

- (1) The Petitioner is permitted to limit the Agent from attending and/or speaking at unit owner and board member meetings of the Association;
- (2) The sample power of attorney in fact form is legally insufficient to grant authority of the Agent to attend and/or speak at unit owner or board member meetings of the Association as said form does not grant specific authority to act in the above manner
- (3) Granting the Association such other and further relief as the Division deems appropriate under the circumstances.

DATED this 13th day of February, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copies of the foregoing have been mailed via U.S Priority Mail Tracking # 9114 9023 0722 4765 5781 50 on 13th day of February, 2020 to Department of Business and Professional Regulation, Attn: Division of Florida Condominiums, Time Shares, and Mobile Homes, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202

Submitted by: /s/ Kara Tanis, Esq
Kara Tanis, Esq. FBN 85491
Kelley & Grant, P.A
Counsel for Petitioner: Coral Springs Tower Club II Condominium Association, Inc.
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