

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	10/12/2016
File #	2016-07804

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2016033188

ARDA RESORT OWNERS COALITION, INC.;
VENTURA CONDOMINIUM ASSOCIATION, INC.;
CARIBBEAN BEACH CLUB ASSOCIATION, INC.;
LEHIGH RESORT CLUB CONDOMINIUM
ASSOCIATION, INC.,

DS 2016-054

AMENDED DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("Division") hereby issues this Amended Declaratory Statement pursuant to sections 120.565, 718.501, and 721.26, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on July 14, 2016, from Petitioners ARDA Resort Owners Coalition, Inc. ("ARDA"), Ventura Condominium Association, Inc. ("Ventura"), Caribbean Beach Club Association, Inc. ("Caribbean"), and Lehigh Resort Club Condominium Association, Inc. ("Lehigh") seeking a declaratory statement as to the application of the firesafety provisions provided in sections 721.24 and 718.112(2)(l), Florida Statutes, to Petitioners' respective timeshare condominiums.

The Division counsel responded on July 22, 2016, to confirm receipt of the Petition.

Notice of receipt of the Petition was published in the July 25, 2016, issue of the Florida Administrative Register.

No parties intervened.

Petitioners did not request a hearing at this time.

FINDINGS OF FACT

The material facts are set out in the Petition. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the Petitioners for the purposes of issuing this declaratory statement.

1. Ventura, Caribbean, and Lehigh are each an "owners' association," as defined by section 721.05(27), Florida Statutes. As owners' associations, Petitioners are charged with the maintenance and operation of their respective timeshare condominium.
2. Ventura's Declaration of Condominium was recorded on June 26, 1981 in the public records of Palm Beach County, Florida; Caribbean's Declaration of Condominium was recorded on November 20, 1979 in the public records of Lee County, Florida; and Lehigh's Declaration of Condominium was recorded on August 26, 1986 in the public records of Lee County, Florida.
3. ARDA is a trade association whose purpose is to engage in public policy advocacy and educational activities, legislative advocacy, and public interest litigation on behalf of timeshare owners of vacation resort properties and timeshare vacation resort associations.
4. According to the petition, the Petitioners' accommodations and facilities are currently compliant with the firesafety provisions of section 721.24, Florida Statutes. However, Petitioners state that their accommodations and facilities may not be compliant with the certificate of compliance provisions of section 718.112(2)(l), Florida Statutes.¹
5. Petitioners are requesting this declaratory statement as they believe they may be substantially affected by section 718.112(2)(l), Florida Statutes.
6. Section 718.112(2)(l), Florida Statutes, provides in pertinent part:

Certificate of compliance.—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing,

¹ See page 12 of the Petition for Declaratory Statement

an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium... By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation... (emphasis added).

7. Section 721.24, Florida Statutes, provides in pertinent part:

Firesafety.— (1) Any:

(a) Facility or accommodation of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719, which is of three stories or more...shall be equipped with an automatic sprinkler system installed in compliance with the provisions prescribed in the National Fire Protection Association publication NFPA No. 13 (1985), "Standards for the Installation of Sprinkler Systems."...

(2) Any timeshare unit of a timeshare plan, as defined in this chapter, chapter 718, or chapter 719 which is of three stories or more and for which the construction contract was let before October 1, 1983, shall be equipped with:

(a) A system which complies with subsection (1); or

(b) An approved sprinkler system for all interior corridors, public areas, storage rooms, closets, kitchen areas, and laundry rooms, less individual timeshare units, if the following conditions are met.....

(3) The Division of State Fire Marshal of the Department of Financial Services may prescribe uniform standards for firesafety equipment for timeshare units of timeshare plans for which the construction contracts were let before October 1, 1983. An entire building shall be equipped as outlined, except that the approved sprinkler system may be delayed by the Division of State Fire Marshal until October 1, 1991, on a schedule for complete compliance in accordance with rules adopted by the Division of State Fire Marshal, which schedule shall include a provision for a 1-year extension which may be granted not more than three times for any individual requesting an extension. The entire system must be installed and operational by October 1, 1994. The Division of State Fire Marshal shall not grant an extension for the approved sprinkler system

unless a written request for the extension and a construction work schedule is submitted. The Division of State Fire Marshal may grant an extension upon demonstration that compliance with this section by the date required would impose an extreme hardship and a disproportionate financial impact. Any establishment that has been granted an extension by the Division of State Fire Marshal shall post, in a conspicuous place on the premises, a public notice stating that the establishment has not yet installed the approved sprinkler system required by law.

(4) The provisions for installation of single-station smoke detectors required in subsection (1) and subparagraph (2)(b)4. shall be waived by the Division of State Fire Marshal for any establishment for which the construction contract was let before October 1, 1983, and which is under three stories in height, if each individual timeshare unit is equipped with a smoke detector approved by the Division of State Fire Marshal.

(5) The Division of State Fire Marshal shall adopt, in accordance with the provisions of chapter 120, any rules necessary for the implementation and enforcement of this section. The Division of State Fire Marshal shall enforce this section in accordance with the provisions of chapter 633.

(6) Accommodations and facilities of personal property timeshare plans shall be exempt from the requirements of this section. (emphasis added).

8. Petitioners are seeking a declaratory statement as to the application of the firesafety provisions provided in section 721.24, Florida Statutes, and the certificate of compliance provisions provided in section 718.112(2)(l), Florida Statutes, to Petitioners' respective timeshare condominiums.

CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501, 721.26, 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. As defined by section 721.05(27), Florida Statutes, owners' associations Ventura, Caribbean, and Lehigh each have standing to petition for a declaratory statement.
5. As a trade association that represents timeshare condominiums, ARDA has standing to petition for a declaratory statement. See Fed'n of Mobile Home Owners of Florida, Inc. v. Dep't of Bus. Regulation, Div. of Fla. Land Sales, etc., 479 So. 2d 252, 253 (Fla. 2d DCA 1985).
6. Section 718.112(2)(l), Florida Statutes, is an unambiguous provision that does not impose an independent duty on Petitioners to retrofit their fire sprinkler systems.
7. Section 718.112(2)(l), Florida Statutes, provides residential condominium associations with a process to forego retrofitting fire sprinkler systems if otherwise obligated to retrofit via chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing.
8. There is no conflict between sections 721.24 and 718.112(2)(l), Florida Statutes, as section 721.24, Florida Statutes, places an affirmative duty for the installation of various firesafety systems upon select facilities, while section 718.112(2)(l), Florida Statutes, provides a process for waiving retrofitting requirements of fire sprinkler systems for residential condominiums.
9. The Petitioner's question as to the application of the certificate of compliance provisions of section 718.112(2)(l), Florida Statutes, and the firesafety provisions in section 721.24, Florida Statutes, to Petitioners' respective timeshare condominiums is answered that section 718.112(2)(l), Florida Statutes, does not

impose an independent obligation upon Petitioners to retrofit with a fire sprinkler system. Rather, section 718.112(2)(l), Florida Statutes, provides a process to forego retrofitting with a fire sprinkler system if otherwise obligated to retrofit via chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing.² Although section 718.112(2)(l), Florida Statutes, imposes no independent obligation upon Petitioners to retrofit with a fire sprinkler system, Petitioners remain statutorily required to comply with section 721.24, Florida Statutes.

For the reasons stated above it is hereby:

ORDERED that section 718.112(2)(l), Florida Statutes, does not impose an independent obligation on Petitioners to retrofit with a fire sprinkler system. Rather, section 718.112(2)(l), Florida Statutes, provides a process to forego retrofitting with a fire sprinkler system if otherwise obligated to retrofit via chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing.³ There is no conflict between the provisions, as section 721.24, Florida Statutes, provides an affirmative duty for various firesafety systems, while section 718.112(2)(l), Florida Statutes, provides a process for waiving retrofitting requirements for a fire sprinkler system only. Although section 718.112(2)(l), Florida Statutes, imposes no independent obligation upon Petitioners to retrofit with a fire sprinkler system, Petitioners remain statutorily required to comply with section 721.24, Florida Statutes.

² The Division does not have authority to issue a declaratory statement interpreting codes outside its jurisdiction and therefore did not look beyond Chapters 718 or 721, Florida Statutes. For purposes of this declaratory statement, the Division assumes that Petitioners are in compliance with the firesafety provisions in chapter 633 or any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing.

³ See footnote 2.

DONE and ORDERED this 11th day of October 2016, at Tallahassee, Leon County, Florida.



A handwritten signature in black ink, appearing to read "Kevin Stanfield".

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 32399-2217; 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 Brandon T. Crossland, Esq., Baker & Hostetler LLP, 200 South Orange Avenue, Suite 2300, Orlando, Florida 32801-3432 and to Mark Westbrook, Defender Resorts, Inc., P.O. Box 3849, Myrtle Beach, South Carolina 29578, on this 12th day of October 2016.



Agency Clerk's Office

Copies furnished to:

Mary Lambert
Administrative Assistant II, CTMH