IN RE: PETITION FOR DECLARATORY STATEMENT

THE SUMMIT OWNERS ASSOCIATION, INC.

DECLARATORY STATEMENT

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

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement on March 17, 2016, from The Summit Owners Association, Inc. (“Petitioner” or “Summit”) seeking a declaratory statement as to the following two questions:

1. Whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes?

2. Whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms?

The Division counsel responded on March 22, 2016, to confirm receipt of the Petition and request a complete copy of the governing documents.

Notice of receipt of the Petition was published in the March 23, 2016, issue of the Florida Administrative Register.

The Petitioner provided the Division with the governing documents on March 29, 2016.

Petitioner did not request a hearing.
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 Petitioner for the purposes of issuing this declaratory statement.

1. Petitioner is the managing entity of The Summit, A Condominium ("Condominium"), located in Panama City Beach, Florida.

2. The Condominium was created pursuant to the Declaration of Condominium recorded on August 23, 1984 at Book 988, Page 1046, in the Official Records of Bay County, Florida.


   TIME-SHARE APARTMENTS MAY BE CREATED WITH RESPECT TO APARTMENTS IN THE CONDOMINIUM. The Developer or any apartment owner may create time-share estates with respect to any apartment in the condominium upon compliance with all requirements imposed by law, including Chapters 718 and 721 of Florida Statutes...

4. The Condominium consists of one, fifteen story building, comprised of four hundred and forty-nine (449) units. Currently, thirty-two (32) of the units are operated as timeshare units, comprising 1,632 timeshare interests, and the remaining four hundred seventeen (417) units are wholly residential condominium units. Petitioner manages both the timeshare and residential units.

5. In 1989, Petitioner passed an amendment to its By-Laws changing the term limits of its board of directors to three-year terms.

6. Paragraph 15 of Association's By-Laws, as amended in 1989, states:

   Number of Directors. The affairs of the Association shall be managed by a Board consisting of nine (9) directors.

7. Paragraph 17 of the Association's By-Laws, as amended in February 1989, states:

   Director's Term and Staggered Directorships. Beginning with the year 1989, directors shall be elected to serve terms of three years except that during the 1989 annual meeting of the members, only three directors shall be elected to serve a three year term. The remaining directors shall be elected to serve a one year term. During the 1990 annual meeting of the members, only three of the six directors then
elected shall be elected to serve a three year term. Thereafter, members at subsequent annual meetings shall only elect as many directors as are needed to fill the vacancies of those directors whose term expires during that year.

For the purpose of the 1989 and 1990 elections, the three directors receiving the most votes shall be directors elected to serve three year terms as specified above.

8. Since the 1989 amendment, directors have continued to be elected for three-year terms.

9. Petitioner also cites to consent orders, correspondence, and complaint and arbitration cases where the Association was declared a timeshare. Specifically, the following instances were mentioned:

   a. A July 20, 1999 letter issued by the Division in case number 19990712CC11803 against the Association. The Division determined that it did not have jurisdiction over that particular election issue, stating in part that the "statute does provide for the process of election procedures for condominium associations. However the statute also states that the provisions of that subparagraph shall not apply to timeshare condominium associations. Therefore, our office would not have jurisdiction in the matter."

   b. A January 26, 2001 Final Order Dismissing Petition filed in Arbitration Case 00-1867 against the Association. The arbitrator determined that she did not have jurisdiction over that particular election issue "[b]ecause the voting provisions of Section 718.112(2)(d)3., do not apply to timeshare condominium associations..."

   c. A February 18, 2013 letter issued by the Division to the Association requesting financial documents to be submitted pursuant to Chapter 721, Florida Statutes.

   d. A March 20, 2013 "Investigative Memorandum" of the Division in case number 2012052400 against the Association. The memorandum provides in part: "Summit, A Condominium is a timeshare resort, located in Bay County, Florida. The Summit Owners Association, Inc. is the managing
entity of Summit, A Condominium and is the Respondent in this case. There are 1,632 timeshare interests available."

e. A May 1, 2013 Consent Order entered into between the Division and the Association. The Consent Order provides "Summit, A Condominium is a condominium "timeshare plan," as those terms are defined in section 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida. [Petitioner] is the "managing entity," as that term is defined in section 721.05(22), Florida Statutes, that operates Summit, A Condominium."

f. An April 9, 2014 letter from the Division in response to a complaint against the Association. The Division stated, "The project is considered a timeshare-condominium because it contains both whole units and timeshare units. Whenever there is one or more timeshare units in a condominium the entire project is considered a timeshare condominium and classified as a timeshare project and is subject to both Ch. 721 and 718, Florida Statutes... The handling of timeshare-condominium election ballots is specifically excluded in Chapter 718 and is not addressed in Chapter 721, or applicable administrative rules."

g. An April 9, 2014 Consent Order entered into between the Division and the Association. The Consent Order provides "Summit is a 'condominium,' 'timeshare plan,' as those terms are defined in section 718.103(11) and 721.05(39), Florida Statutes, containing 1,632 timeshare interests located in Bay County, Florida. [Petitioner] is the "managing entity," as that term is defined in section 721.05(22), Florida Statutes, that operates Summit."

10. The Petitioner believes that Association is a timeshare condominium for purposes of 718.112(2)(d)2, and therefore may continue to elect directors for three-year staggered terms.

11. The Petitioner is seeking a declaratory statement as to the following questions:

1. Whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes?
2. Whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms?

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.


5. Section 721.03(1), Florida Statutes, provides, in part:

   This chapter applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations and facilities, if any, are located within this state or offered within this state.

6. Section 718.103(11), Florida Statutes, provides in pertinent part:

   “Condominium” means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.
7. Section 721.05(39), Florida Statutes, provides:

"Timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term "timeshare plan" includes:

(a) A "personal property timeshare plan," which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and

(b) A "real property timeshare plan," which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

8. The Petitioner's first question, whether Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes, is answered in affirmative. The Condominium consists of thirty-two (32) units operated as real property timeshare units, comprising 1,632 timeshare interests, for more than three years. Therefore, Summit is a condominium timeshare plan for purposes of sections 718.103(11) and 721.05(39), Florida Statutes.

9. The Petitioner's second question, whether Summit, if determined to be a condominium timeshare plan, is exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms, is also answered in affirmative.

10. Section 718.112(2)(d)2., Florida Statutes, provides, in pertinent part:

Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms....This subparagraph does not limit the term of a member of the board of a nonresidential condominium. (Emphasis added).
11. Section 718.112(2)(d)2., Florida Statutes, provides a specific exemption for timeshare and nonresidential condominiums. Since Summit is considered a condominium timeshare plan, it is exempt from the term limits outlined in section 718.112(2)(d)2., Florida Statutes. Therefore, Petitioner may continue to elect directors for three-year terms.

For the reasons stated above it is hereby:

ORDERED that Summit is considered a condominium timeshare plan pursuant to sections 718.103(11) and 721.05(39), Florida Statutes, and is therefore exempt from the term limits in section 718.112(2)(d)2., Florida Statutes, and may continue to elect directors for three-year terms.

DONE and ORDERED this 23rd day of May 2016, at Tallahassee, Leon County, Florida.

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 AVERSELY 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@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 Timothy J. Sloan, Attorney for Petitioner, Timothy J. Sloan, P.A., Post Office Box 2327, Panama City, Florida 32402-2327, on this 23rd day of May 2016.

[Signature]
Agency Clerk’s Office

Copies furnished to:

Ryan Lumarberas
Senior Attorney

In re: Petition for Declaratory Statement
The Summit Owners Association, Inc., Docket No. 2016013701