

AND MOBILE HOMES
DATE 4/17/90
DOCKET CLERK C. Black

STATE OF FLORIDA
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES
725 SOUTH BRONOUGH STREET - THE JOHNS BUILDING
TALLAHASSEE, FLORIDA 32399-1030

IN RE: PETITION FOR DECLARATORY
STATEMENT; DAYTONA BEACH OCEAN
TOWERS, INC.

DOCKET NO. DS89486

DECLARATORY STATEMENT

COMES NOW the undersigned as the Director of the Division of the Florida Land Sales, Condominiums and Mobile Homes, Department of Business Regulation, and issues this Declaratory Statement pursuant to Sections 718.501 and 120.565, Florida Statutes.

FINDINGS OF FACT

1. On or about November 29, 1989, the Division received a Petition for Declaratory Statement from the Daytona Beach Ocean Towers, Inc., the condominium association for the Towers Apartments Condominium located in Daytona Beach, Florida.

2. The condominium is a one hundred ninety-nine (199) unit condominium created in 1973 through recordation of a Declaration of Restrictions, Reservations, Covenants, Conditions and Easements. According to the petition, the condominium consists of one-hundred ninety (190) "living units" and nine (9) "business units". The living units consist of sixty-four (64) 2-bedroom units, sixty-four (64) 1-bedroom "deluxe" units and sixty-two (62) "standard" units.

3. The original declaration, as pertinent to the subject of assessments, provides as follows:

The total regular assessment against each unit (and the interest in the common elements appurtenant thereto) and all members owning an interest in each unit, shall be as follows: the sum of \$41 per month per one bedroom unit; the sum of \$47 per month per one bedroom deluxe unit; the sum of \$61 per month per two bedroom unit and the business units as follows: Unit #5, the sum of \$47 per month; Unit #9, the sum of \$20 per month; Unit #10, the sum of \$20 per month; Unit #11 and #12, the sum of \$20 per month; Units #14 and #10, the sum of \$10 per month; Unit #15, the sum of \$61 per month and Unit #16, the sum of \$47 per month, all payable in advance to the corporation on the first day of each month regardless of whether or not members are sent or actually receive a written notice thereof, the first payment to be made on the first day of the month succeeding the date of the unit deed.

The declaration further provides that each unit owner owns a one ninety-ninth (1/199) undivided interest in the common elements and in any common surplus.

4. Petitioner asks whether, under Sections 718.104(4)(g) and 718.115(2), Florida Statutes, the condominium association should assess in accordance with ownership interest in the common elements where the declaration, as originally recorded, with reference to the payment of assessments, simply provided for assessments in a fixed amount per unit type.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Sections 120.565 and 718.501, Florida Statutes.

2. Section 711.14, Florida Statutes (1973), in effect at the time of the creation of the condominium, with reference to the payment of assessments, simply provided as follows:

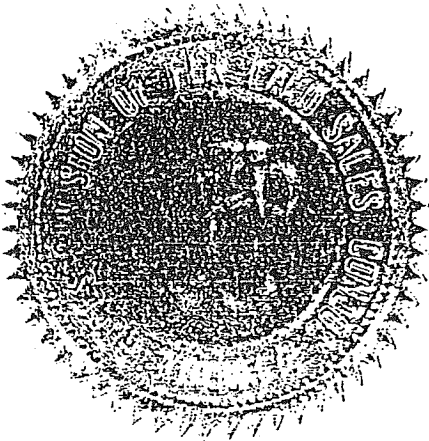
- (2) Funds for the payment of common expenses shall be assessed against unit owners in the proportions or percentages of sharing common expenses provided in the declaration.

The above stated section was amended, and effective July 1, 1975, Section 711.14, Florida Statutes, provided that common expenses must be assessed against the unit owners in the proportions or percentages of ownership of the common elements provided in the declaration. This amendment has only found application, however, in those condominiums in which the declaration of condominium was recorded after the effective date of the statutory amendment. Review, Suntide Condominium Association, Inc. v. Division of Florida Land Sales and Condominiums, 463 So.2d 314 (Fla. 1st DCA 1984) in which the Court, in affirming the declaratory statement of the Division, held that where the declaration was executed prior to July 1, 1975, but recorded after July 1, 1975, Section 711.14 as amended by Chapter 75-224, Laws of Florida (1975) found application. Review also, Island Manor Apartment of Marco Island, Inc. v. Division of Florida Land Sales, Condominiums and Mobile Homes, 515 So.2d 1327 (Fla. 2d DCA 1987), pet. for rev. den. 523 So.2d 577 (Fla. 1988), in which the Court ruled that even where a declaration automatically incorporated future amendments to the Condominium Act, the present Section 718.115(2), Florida Statutes requiring assessments in accordance with ownership interest, did not apply to a pre-recorded declaration.

Accordingly, Section 718.115(2), Florida Statutes does not find application in this case because the declaration was recorded prior to the effective date of that amendment.

3. Similarly, Section 718.104(4)(g), Florida Statutes, finds no application to this condominium as this provision was not contained in the law in effect at the time of the recordation of the declaration.

DONE AND ORDERED this 17th day of April, 1990.



Roger M. Nichols
ROGER M. NICHOLS
ACTING DIVISION DIRECTOR
Division of Florida Land Sales,
Condominiums and Mobile Homes
Department of Business Regulation
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RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER 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(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH THE DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, WITHIN 30 DAYS OF THE RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Certified Mail to Robert A. Merrell, III, 150 Magnolia Avenue, P.O. Box 2491, Daytona Beach, Florida 32115-2491, this 17th day of April, 1990.

Connie D. Blackman
CONNIE BLACKMAN, DOCKET CLERK