

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 32399-1007

AND MOBILE HOMES  
DATE 4/10/91  
DOCKET CLERK C. Cannon

DOCKET NO. DS90255

IN RE: PETITION FOR DECLARATORY STATEMENT  
JOHN P. FEELEY,  
PETITIONER.

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DECLARATORY STATEMENT

Comes now the Director of the Division of Florida Land Sales, Condominiums and Mobile Homes, and renders this Declaratory Statement pursuant to Section 120.565, Florida Statutes, and Rule 7-3.001, Florida Administrative Code. The Petitioner, John Feeley, requests a Declaratory Statement regarding the validity of certain provisions contained in a proxy form which he received in regard to a special meeting of the condominium association.

The Division makes the following findings of fact based on information submitted by the Petitioner:

FINDINGS OF FACT

1. The Lakebridge Condominium is a condominium as defined by Section 718.103(9), Florida Statutes, located in Bradenton, Florida.
2. The Petitioner is a unit owner in the Lakebridge Condominium.

3. The Petitioner received a proxy form for a special meeting of the Lakebridge Condominium Association which meeting was to be held September 19, 1990.

4. The proxy form contained a provision which allowed substitution of the proxy holder.

5. The Petitioner requests a Declaratory Statement as to the validity of the following statements contained in the proxy form:

- a. This proxy shall remain in full force and effect until revoked.
- b. If you do not designate a particular person as proxy, your vote will be cast by Walter E. Hines on behalf of the association.

#### CONCLUSIONS OF LAW

1. The Division is the state agency responsible for enforcement of Chapter 718, Florida Statutes, and has jurisdiction to issue this Declaratory Statement pursuant to Section 120.565, Florida Statutes, and Rule 7-3.001, Florida Administrative Code.

2. The Petitioner is substantially affected by the issues raised in the petition and has standing to seek this Declaratory Statement.

3. Section 718.112(2)(b)2, Florida Statutes states:

Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

The proxy form which the Petitioner submitted with the Petition for Declaratory Statement contained a statement that the proxy holder was being appointed to vote at a meeting to be held at 10:00 a.m. on Wednesday, September 19, 1990, or any adjournments thereof. The statement that the proxy shall remain in full force and effect until revoked, when read in light of the provision contained in the proxy form stating the date, time and place of the meeting, and when read in light of Section 718.112(2)(b)2, Florida Statutes, does not violate that section. The provision means that the proxy would remain valid until revoked but not longer than the date of that specific meeting or lawful adjournments thereof for a period of up to ninety (90) days. Accordingly, the Division declares that based on the Petitioner's facts, the above-referenced provision in the proxy form is not violative of Chapter 718, Florida Statutes.

4. Regarding the second provision in the proxy form, Section 7D-23.002, Florida Administrative Code states:

(1). Each proxy shall specifically set forth the name of the person voting by proxy, the name of the person authorized to vote the proxy for him, and the date the proxy was given.

(2). Each proxy shall contain the date, time and place of the meeting for which the proxy is given, and if a limited proxy, set forth those items which the holders of the proxy may vote, and the manner in which the vote is casted.

(3). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his place. If such provision is not made, substitution is not authorized.

(4). No association shall deny or abridge the voting rights appurtenant to a unit. However, the association may place reasonable restrictions on the manner of exercising the right to vote if such restrictions are authorized by the Condominium Act, rules promulgated thereunder, or by other applicable law.

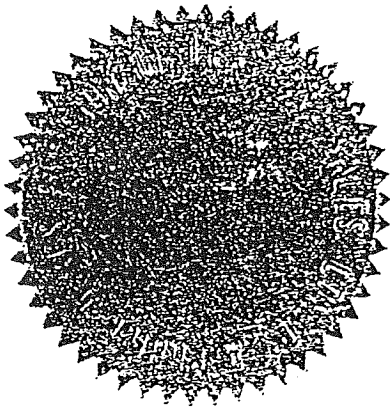
The above-referenced provision does not specifically address the situation raised by Petitioner where the association includes a provision in the proxy form which states that if the unit owner does not designate a particular person as proxy their vote will be cast by Walter Hines on behalf of the association. The inclusion of that statement, however, is not violative of the provisions of Rule 7D-23.002, Florida Administrative Code. Units owners are merely given the option of allowing Walter Hines to be their proxy. As previously stated by the Division

in the Declaratory Statement issued in Fountain Square Condominium Association, Inc. v. DBR, (July 19, 1983), the purpose of the requirement in Rule 7D-23.002(1), that the person authorized to vote the proxy be specifically named on the proxy form is to ensure a direct link between the unit owner and the person authorized to vote the proxy and to make the person voting the proxy accountable to the unit owner/member of the association. In the instant case, Walter Hines is specifically named on the proxy form, and would presumably be accountable under principles of agency law to the unit owner voting by proxy. Thus, the provision is not contrary to the purpose behind the above-referenced rule.

The Petitioner expressed concern over the fact that if a unit owner does not designate a proxy holder and signs the proxy form, anyone who has access to the proxy prior to the meeting could use the proxy to his advantage by filling in a name. The Petitioner's concern is attendant to the use of proxies in general, and a person voting by proxy is entitled to rely on the protections of the association's articles of incorporation and by-laws; corporations law; agency law; and other applicable laws in regard to misuse of his proxy. Additionally, unit owners may avoid the substitution of Walter Hines by naming a proxy holder or by appearing at the meeting and voting in person. Also, Section 718.112(2)(b)2 provides that every proxy is revocable at any time by the unit owner executing the proxy. Based on the foregoing, the inclusion of the provision does not violate Rule 7D-23.002, Florida Administrative Code.

Wherefore, the Division declares that the inclusion of the provisions referenced by the Petitioner in a proxy form does not violate Chapter 718, Florida Statutes, or Rule 7D-23.002, Florida Administrative Code.

DONE AND ORDERED this 10<sup>th</sup> day of April,  
1991.



A handwritten signature in cursive script, appearing to read "Matthew M. Carter II".

MATTHEW M. CARTER II, DIRECTOR  
Department of Business Regulation  
Division of Florida Land Sales,  
Condominiums and Mobile Homes  
725 South Bronough Street  
Tallahassee, Florida 32399-1007

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 CAROLYN  
CANNON, DOCKET CLERK FOR THE DIVISION OF FLORIDA LAND SALES,  
CONDOMINIUMS AND MOBILE HOMES, WITHIN THIRTY (30) DAYS OF THE  
RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Declaratory Statement has been sent by Certified U.S. Mail to Mr. John P. Feeley, 3619 57th Avenue Drive West, Bradenton, Florida 34210 this 10<sup>th</sup> day of April, 1991.

Carolyn Cannon  
CAROLYN CANNON, DOCKET CLERK

Copies furnished to:

Kathryn E. Price  
Assistant General Counsel

Sharon Malloy  
Bureau of Condominiums