

Holly Benson, Secretary

Charlie Crist, Governor

January 7, 2008

**SENT VIA CERTIFIED U.S. MAIL No. 7007-0710-0002-0431-0440
RETURN RECEIPT REQUESTED**

Board of Directors
WaterGarden Condominium Association, Inc.
c/o Mr. Ricardo Martinez - President
347 North New River Drive East – Unit 310
Fort Lauderdale, Florida 33301-3134

RE: WaterGarden Condominium Association, Inc.
Case No. 2007054828

Dear Board of Directors

The D.B.P.R. Division of Florida Land Sales, Condominiums and Mobile Homes (the “Division”) has conducted an investigation concerning an allegation that WaterGarden Condominium Association, Inc. (the “Association”) is charging transfer fees in connection with the sale and leasing of units section 718.112(2)(i), Florida Statutes. The Division has completed its investigation of this allegation. In reviewing Chapter 718, Florida Statutes (the “Condominium Act”), the Association’s “Application Package to Purchase/Lease” and its condominium declaration, articles of incorporation, bylaws and amendments thereto, the Division makes the following conclusions:

- 1) The Association is charging unit owners a transfer fee in excess of \$100.00, in violation of section 718.112(2)(i), Florida Statutes. Specifically, the Association is charging unit owners a fee, which it defines as an “Impact Fee” of \$500.00 where a transfer involves moving into a vacant unit and \$250.00 where a transfer involves moving into a fully furnished unit at the Association. This “Impact Fee” as defined under item “10” of the Association’s “Application Package to Purchase/Lease” as a nonrefundable fee payable to the Association by cashier’s check or money order only and must be paid as a condition of the transfer application being processed.

Section 718.112(2)(i), Florida Statutes states as follows:

“No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which

are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made...”

The Division, in its responsibility to enforce the provisions of Chapter 718, Florida Statutes, takes the position that an association does not have the authority to charge a transfer fee unless its declaration, articles of incorporation or bylaws (the “governing documents”) specifically provide the association with the authority to levy such fees.

Pursuant to section 718.112(2)(i), where the association’s governing documents authorizes the levying of transfer fees, it may not charge a transfer fee that exceeds the amount set forth in the governing and that in no event shall such fee exceed \$100.00.

A transfer fee is any mandatory fee charged in connection with the sale or lease of a unit by an owner and includes such items as clerical fees, fees paid as a part of an applicant’s credit or background check or screening process and move-in fees.

- 2) The Association, in violation of section 718.112(2)(i), Florida Statutes, is levying a transfer fee in excess of the amount it is authorized to collect under its governing documents.

Item “7” of the Association’s “Application Package to Purchase/Lease” requires that the the transfer application be submitted to the Association’s management office together with a *“cashier’s check or money order for \$100.00 payable to WinterGarden Condominium Association. The \$100.00 fee is your Application Fee, and covers the credit report and background investigation which will be performed by an outside investigation company.”*

Article 18.3 of the Association’s condominium declaration, filed with the Broward County Property Clerk’s Office on March 3, 2004 in Book 36985, Pages 1584 – 1773, at Page 1627, specifically states as follows:

“18.3 Other Matters Regarding Sale or Transfer. The Association shall have the right to require that a substantially uniform form of purchase agreement be used. No fee shall be charged in connection with the proposed transfer or approval in excess of the expenditures reasonably required for credit report expenses which shall not exceed fiftydollars (\$50.00).”

A further examination of the Association’s records on file with the Broward County Property Clerk’s Office indicates that this provision of the condominium declaration has not been amended to date. Relevant portions of the declaration are enclosed herein.

Pursuant section 718.112(2)(i), Florida Statutes, an association may not levy transfer fees in an amount in excess of the amount set forth in its governing documents.

The Division takes the position that a mandatory fee, which an association requires an owner, purchaser or leasee to pay in connection with the sale or lease of a condominium unit is a transfer fee for purposes of section 718.112(2)(i), Florida Statutes.

Please provide a response or explanation to the Division's finding and conclusion set forth above on or before January 15, 2008 and include any documents or evidence which you feel supports why the Division should make a different finding and conclusion.

Please address your response to my attention by FAX at 954.202.3990 or by mail to the following address:

**Bureau of Enforcement
D.B.P.R. Division of Florida Land Sales,
Condominiums and Mobile Homes
1400 W. Commercial Blvd. Suite 185
Ft. Lauderdale, Florida 33309**

If the Association is represented by legal counsel please forward this letter to its attorney(s) and have counsel respond on the Association's behalf and advise the Division if all future communications are to be done through their office.

A copy of the referenced statute is enclosed for your information together with the relevant provisions of the Association's condominium declaration and the "Application Package to Purchase/Lease" which the Division reviewed. I will be happy to assist you with questions or concerns regarding the foregoing. You may contact me at (954) 202-3982, Extension #227 or by email at Steven.Antonoff@dbpr.state.fl.us.

YOUR ATTENTION IS DIRECTED TO RULE 61B-23.002(7)(b)1., FLORIDA ADMINISTRATIVE CODE, WHICH REQUIRES THAT YOUR ASSOCIATION RETAIN THIS LETTER, OR A COPY THEREOF, AMONG THE OFFICIAL RECORDS OF YOUR CONDOMINIUM ASSOCIATION.

Sincerely,

Steven Antonoff

Steven Antonoff
Investigation Specialist II
BUREAU OF COMPLIANCE
D.B.P.R. Division of Florida Land Sales,
Condominiums and Mobile homes

Encls.

cc: Mr. James Keating, Director and Vice President
347 North New River Drive East – Unit # 1710
Fort Lauderdale, FL 33301-3162

Mr. Leonard Steinbaum, Director and Treasurer
347 North New River Drive East – Unit # 1601
Fort Lauderdale, FL 33301-3161

Mr. John Gershkoff, Director and Secretary
347 North New River Drive East – Unit # 602
Fort Lauderdale, FL 33301-3136

Mr. Roger Ferris, Director
347 North New River Drive East – Unit # 611
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Randall K. Roger, Esq. – Registered Agent
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Boca Raton, FL 33487-8240

WaterGarden Condominium Association, Inc.
Management Office
347 North New River Drive East
Fort Lauderdale, FL 33301-3131

**CHAPTER 718
CONDOMINIUMS**

718.112 BYLAWS

(2) REQUIRED PROVISIONS.--The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(i) *Transfer fees.*--No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property..."