

Department of Business and Professional Regulation
AGENCY CLERK

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By: Brandon M. Nichols
STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE PETITION FOR DECLARATORY STATEMENT

DS 2007-059

THE GRANDVIEW PALACE CONDOMINIUM ASSOCIATION, INC.

Docket No. 2007065048
/

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) hereby issues this Declaratory Statement pursuant to sections 120.565 and 718.501, Florida Statutes. The issue is how many directors the developer is entitled to elect to a five-member board at a turnover election for Grandview Palace Condominium Association, Inc. under section 718.301(1), Florida Statutes, and Florida Administrative Code Rule 61B-23.003(7)¹.

¹ Petitioners sought an opinion as to how Florida Administrative Code Rule 61B-23.003(7) would apply if Developer sold or transferred its remaining units to another entity for the sole purpose of having this entity vote the units for the majority of the board. Pet. for Dec. Stmt. at 2. Petitioner feels the Developer may try to do this type of transaction before the upcoming election. Declaratory statements must seek an opinion as to how a particular statute, rule, or order applies to a petitioner's particular circumstances, and cannot be an advisory opinion based on hypothetical questions. See § 120.565(1), Fla. Stat.; Fla. Dep't of Bus. and Prof'l Reg. v. Inv. Corp. of Palm Bay, 747 So. 2d 374, 378 n.7 (Fla. 1999) (noting that a declaratory statement is not available to those asking purely hypothetical questions). Because Petitioners have only stated a feeling and are speculating that this type of transaction is being contemplated by Developer without any evidence, the question regarding rule 61B-23.003(7) is a purely hypothetical question, and must be denied. Therefore, the petition will not provide any analysis on rule 61B-23.003(7).

PRELIMINARY STATEMENT

On November 26, 2007, the Division received a petition for declaratory statement from Sophia Lima, a unit owner of a commercial unit at the Grandview Palace Condominium (Grandview Palace). The Division sent a letter to Ms. Lima on December 7, 2007, acknowledging receipt of the petition and requiring Ms. Lima to send a copy of the governing documents. The Division received a copy of the governing documents on December 12, 2007.

On December 18, 2007, the Division received a letter from James Edwards, president of Grandview Palace Condominium Association, Inc., responding to Ms. Lima's petition.

On December 19, 2007, in response to Mr. Edward's letter to the Division, Ms. Lima amended her petition to request an interpretation as to the time requirements for the election to be held after the turnover date under section 718.301(2), Florida Statutes.

On December 20, 2007, the Division received a letter from Ms. Lima, further amending her petition to include questions on amendments made to the declaration and bylaws of Grandview Palace unilaterally by the developer-appointed directors, and also how Florida Administrative Rule 61B-23.002(6) applied to limited proxies under the governing documents.

Notice of receipt of the petition was published in Florida Administrative Weekly on December 21, 2007.

The Division received petitions from John Gonzales and Barbara Marquet, residential unit owners at Grandview Palace, and January 18 and January 24, 2008,

respectively, concerning the same issues as Ms. Lima's petition. Giovanni Chiampesan also filed a duplicate petition. Ms. Lima, Ms. Marquet, Mr. Chiampesan, and Mr. Gonzales shall hereinafter be collectively known as "Petitioners."

FINDINGS OF FACT

The following findings of fact are based on information submitted by Petitioners. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. First Equitable Realty III, Ltd. (Developer) submitted the land and property for Grandview Palace to the condominium form of ownership in July 2003. Declaration of Condominium Establishing The Grandview Palace Condominium (Declaration) at 1. Grandview Palace contains 532 units consisting of 506 residential units and 26 commercial units. Pet. for Dec. Stmt. at 3. The declaration adopts the Condominium Act. Declaration at 1.

2. The Grandview Palace Condominium Association, Inc. (Association), was created to operate and govern Grandview Palace. Art. I, sec. 1.02, art. III, sec. 3.04 Declaration; art II. Articles of Incorporation of The Grandview Palace Condominium Association, Inc. (Art. of Incorp.). Association is a condominium "association," as that term is defined by section 718.103(2), Florida Statutes (2007).

3. "The Association shall have all of the common law and statutory powers of a corporation not-for-profit and all powers set forth in the [Condominium Act], Florida Statutes Chapter 607, and Florida Statutes Chapter 617 which are not in conflict with or limit the terms of the Declaration, these Articles, the By-Laws or the Act." Art. III, sec. A, Art. of Incorp.

Turnover Election

4. "The business of this Association shall be governed by a Board of Directors consisting of (5) persons." Art. V, sec. 1 Amended By-Laws of The Grandview Palace Condominium Association, Inc. (Bylaws). Currently, there are two unit-owner elected seats and three Developer appointed seats at Grandview Palace. Pet. for Dec. Stmt. at 3.

5. Article XXIII of the Amended Declaration contains the provisions pertaining to transfer of Association control. Article XXIII provides in part that:

23.01. When Unit Owners, other than the Developer, own fifteen (15%) percent or more of the Units in this Condominium that will be operated ultimately by the Association, the Unit Owners, other than the Developer, shall be entitled to elect not less than one-third (1/3) of the members of the Board of Administration of the Association. The first Unit Owner elected to the Board shall be a Residential Member. Unit Owners, other than the Developer, are entitled to elect not less than a majority of the members of the Board of Administration of the Association:

(1) Three (3) years after fifty (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

* * * * *

(4) When some of the Units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever comes first. The Developer is entitled to elect at least one (1) member of the Board of Administration of the Association as long as the Developer holds for sale in the ordinary course of business at least five (5%) percent in Condominiums with less than five hundred (500) Units and two (2%) percent in Condominiums with

more than five hundred (500) Units of the Condominium
Units operated by the Association;

Art. XXIII, sec. 23.01, Declaration (emphasis added).

6. The Developer has agreed in writing that the turnover date will be 12/15/2007. Pet. for Dec. Stmt. at 3. This date was arrived at according to article 23.01 of the Declaration and section 718.301(1)(a), which contains similar language. Id.

7. The Developer currently owns approximately 96 units of the total 532 units at Grandview Palace. Id.

8. Association notes that: Developer continues to hold more than 2 percent of the condominium units for sale in the ordinary course of business; the Association plans to hold the turnover election between 60 and 120 days following notice of the election under section 718.301(2), Florida Statutes; and Association defers to the Division's interpretation for whether the developer is entitled to appoint one or two seats to the five person board following turnover when Developer still holds more than 2% of the units for sale. Letter from Association to the Division (Dec. 13, 2007).

9. Petitioners seek an opinion as to how many seats the developer is entitled to elect at the turnover election, and how the election must proceed under section 718.301(1) and Florida Administrative Code Rule 23.003(7). Pet. for Dec. Stmt. at 2. Furthermore, Petitioners seek an explanation as to when the turnover election must take place after the turnover date has been established, under section 718.301(2), Florida Statutes. Pet. for Dec. Stmt. at 3-4.

Developer Amendments

10. Article IX, section 9.02 of the Declaration, provides that:

Notwithstanding anything contained herein to the contrary, while the Developer is entitled to appoint a majority of the Board of Directors, the Declaration may be amended by a majority of the Board of Directors provided that such Amendment shall not increase the proportion of Common Expenses nor decrease the ownership of Common Elements borne by a Unit Owner or change a Unit Owner's voting rights without the consent of the affected Unit Owners. Without limiting the generality hereof, such an amendment may include the changing of a Common Element to a Limited Common Element. No amendment pursuant to this subsection may change the configuration or size of any Residential Unit in any material fashion, materially alter or modify the appurtenances to the Unit or change the proportion or percentage by which the Owner of the parcel shares the Common Expenses or owns the Common Surplus. Said amendment need only be executed and acknowledged by the Board of Directors and the consent of the Unit Owners, the owner and holder of any lien encumbering a Unit in this Condominium, or any others, shall not be required.

11. Article Fifteen, section (e) of the Bylaws provides that:

Except as otherwise provided in Section 718.110(4), Florida Statutes, notwithstanding anything contained herein to the contrary, while the Developer is entitled to appoint a majority of the Board of Directors, the By-Laws may be amended by a majority of the Board of Directors, provided that such Amendment shall not increase the proportion of common expenses nor decrease the Unit Owner's voting rights without the consent of the affected Unit Owners. Said Amendment need only be executed and acknowledged by the Association and the consent of the Unit Owners, the owner and holder of any lien encumbering a Unit in this Condominium, or any others, shall be required.

12. The Developer-appointed directors recently made the following amendments to the declaration and bylaws of Grandview Palace unilaterally:

Declaration:

Section XXIII Transition of Association Control

Section 23.02: If the Developer holds Units for sale in the ordinary course of business, none of the

following actions may be taken without approval in writing by the Developer:

Modify Subsection (2) as follows: Any action by the Association that would be detrimental to the sale or lease of Units by the Developer, in its sole opinion; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sale of Units. Actions that require Developer approval under this section shall include, but are not limited to, modifications to the rules and regulations of the association, adoption of a special assessment, obtaining an Association loan, and the use of capital reserves for purposes other than those intended.

Section XV: Sale Lease or Transfer, para. 15.16:

15.16: All leases shall be deemed to include a clause requiring the tenant to comply with all terms and conditions of the Condominium Documents and shall include a copy of the current Rules and Regulations. Association management shall inform the Board of Directors when tenant damage or disturbances continue despite notice to the unit owner such that tenant removal should be considered. Association management shall have the authority, upon unanimous Board approval, to employ an attorney to evict tenants of owners, if the tenant has a history of repeated violations which remain uncorrected and which result in property damage or degradation, significant disturbance to others, or material negative impact on the common good. Any such removals would occur after at least two warnings to the unit owner and would be done at the owner's expense.

Bylaws:

Article 5: Section 16(c)

Section 16. Powers and Duties: The Board of Directors of the Association shall have the powers and duties.... These powers shall specifically include, but shall not be limited to the following:

Modify paragraph (c): To employ, dismiss and control the personnel necessary for the maintenance and operation of the project, and of the Common Elements and facilities, including the right and power to employ attorneys, accountants, contractors, and

other professional [sic] as the need arises, provided, however, that absent unanimous board approval, 2/3 majority of membership must vote in favor of instituting a lawsuit with a claim of more than \$50,000 other than for collecting delinquent assessments.

Article 9, Section 3

(a) Determination of Assessments, modify the last sentence:

In the event there is not unanimous Board support for a Special Assessment, obtaining a new loan, or use of reserves for other than intended purposes, should be recommended by a majority of the Board of Directors, membership approval by at least two-thirds of Unit Owners shall be required. Special Assessments and [sic] shall be levied in the same manner as hereinbefore provided for regular assessments, and shall be payable in the manner determined by the Board of Directors.

Pet. for Dec. Stmt. at 4-6.

13. Petitioners assert that these amendments are specifically designed to protect the Developer from law suits by requiring unanimous board approval or 2/3 vote of the unit owners, which would be impossible since the Developer still owns almost 100 units and has representation on the board. Id. at 5. Petitioners feel these amendments have stripped the unit owners of their statutory right to govern the association upon turnover. Id. at 6. Although Petitioners have not specifically referred to a statute, rule, or order, the language of the petition refers to how the amendments affect the rights regarding turnover under the applicable statutes. Therefore the Division, for purposes of this issue, assumes Petitioners are referring to section 718.301, Florida Statutes.²

Proxies

² The association's authority and its fiduciary duty to operate the condominium in the best interest of all of the owners under section 718.111, Florida Statutes, is also pertinent, but not discussed as not raised by the petitioners.

14. Article 3, section 5 of the Bylaws provides that "[i]f more than one (1) person owns a Condominium Unit (such as husband and wife), all must sign the proxy for it to be valid."

15. Article 3, section 8 of the Bylaws provides that:

If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one person, the person entitled to cast the vote for the Unit shall be designated in a certificate, signed by all of the recorded Owners of the Unit and filed with the Secretary of the Association. If the Condominium Unit is owned by a corporation, the officer or employee thereof is entitled to cast the vote of the Unit for the corporation shall be designated in a certificate, for this purpose, signed by the President or Vice President, attested to by the Secretary or Assistant Secretary of the corporation and filed with the Secretary of the Association. The person designated in such certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a certificate is not on file with the Secretary of the Association, for a Unit owned by more than one person or by a corporation, the vote of the Unit concerned shall not be considered in determining the requirement of a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such certificates shall be valid until revoked or until superseded by a subsequent certificate, or until a change in the ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three (3) provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As provided herein, the vote of a Unit is not divisible.)

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote just as though he or

she owned the Unit individually and without establishing the concurrence of the absent person.

16. Petitioners assert that Article 3, section 5 of the Bylaws contradicts Florida Administrative Code rule 61B-23.002(6) and Article 3, section 8 of the Bylaws. Pet. for Dec. Stmt. at 7. Petitioners seek clarification of the law requiring signatures on a limited proxy for an upcoming vote. Id.

CONCLUSIONS OF LAW

17. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

18. Petitioners have standing to seek this declaratory statement.

19. As a condominium association, Association has standing to intervene. §§ 120.565, 718.103(2), 718.501(1)(g), Fla. Stat.; Fla. Admin. Code R. 28-105.0027

20. Condominiums are created and governed by statute. See, e.g., Suntime Condo. Ass'n, Inc. v. Div. of Fla. Land Sales and Condo., Dep't of Bus. Reg., 463 So. 2d 314 (Fla. 1st DCA 1984). In Florida, the governing statutes are in chapter 718, known as the Condominium Act. The law governing a particular condominium is the law in existence on the date of recording the declaration of condominium. Sans Souci v. Div. of Fla. Land Sales and Condos., 421 So. 2d 623, 628 (Fla. 1st DCA 1982); Suntime, 463 So. 2d at 317. But see Rothfleisch v. Cantor, 534 So. 2d 823, 825 (Fla. 4th DCA 1988) (limiting Suntime to its facts and applied the current version of the act on grounds that ignoring subsequent amendments to a law would limit precedent to only those condominiums created in the same year).

Turnover Election

21. Section 718.301(1), Florida Statutes (2003), provides that:

1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

* * * * *

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration. (emphasis added).

22. Part of the intent underlying the Condominium Act is to provide a mechanism whereby unit owners other than the developer will eventually control their own condominium association. See Bishop Assocs. Ltd. v. Belkin, 521 So. 2d 158, 160-61 (noting that the ability of non-developer unit owners to control the association triggers certain rights such as the right to institute, maintain, or appeal actions on its behalf).

23. The first issue to be addressed is the number of directors Developer is entitled to elect when it still holds units for sale in the normal course of business. Under section 718.301(1), the developer is "entitled to elect at least one member of the board ... as

long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units...." (emphasis added).

24. Developer still owns 96 of the 532 total units, well above the 2% requirement. Furthermore, Developer meets the requirement of holding for sale "in the ordinary course of business," which is defined in Florida Administrative Code Rule 61B-15.007(2)(a) as "[o]ffer[ing] more than 7 parcels ... within a period of 1 year." Therefore, under section 718.301(1), Developer is entitled to elect at least one member to the board.

25. The language of section 718.301(1), which entitles the Developer to elect "at least one member of the board" upon turnover to the non-developer unit owners, has been interpreted to mean that the Developer may vote to elect up to a minority of the board. See In Re: Pet. for Dec. Stmt. Bay Yacht Club Condo. Ass'n, (Feb. 4, 1983) (concluding that the developer is entitled to cast votes for only two members of a five-member board).

26. Bay Yacht Club provides for the guidelines for a turnover election in which the developer is entitled to vote at least one member of the board. The declaratory statement provides that:

No matter how votes are cast, whether for seats on the board individually or for the board generally with the top five vote-getters being elected, there will have to be two separate casting of ballots. One casting for the majority of the board (three members,) for which the developer may not cast votes, and the second for a minority of the board (two members) for which the developer and other units owners may all vote. (emphasis added).

Id. at 5.

27. While Bay Yacht Club provided for only two ballots in the election, one for the majority and one for the minority, this was due to the fact that the bylaws of Bay Yacht Club gave the developer the right to elect two directors to the five member board. Id. at 2. Therefore, Bay Yacht Club allows the developer to reserve the right to elect directors to the board in the governing documents, as long as the requirements of section 718.301(1) are met and as long as the developer does not reserve the right to elect the majority of the board after turnover has occurred.

28. Article XXIII of the Declaration mirrors the language of section 718.301(1), which allows Developer the right to elect at least one member to the Board of Directors. Because Developer only reserved the right to elect one member, while Bay Yacht Club allows the Developer the right to elect up to a minority of the board, the procedures will differ slightly from those provided in Bay Yacht Club.

29. Association must implement a class voting system while Developer is entitled to elect at least one member of the board using a three color-coded ballot system (e.g., red, white, and blue ballots). The first color will represent the votes of the non-developer unit owners only, which will elect the majority of the board (three members). The second color will represent the votes of the Developer only for its statutorily required one member, which will in effect be merely an appointment by the Developer. The third color will represent the votes of all non-developer unit owners and the developer for an at large vote for the fifth member of the board.

30. This method of voting will preserve the intentions of section 718.301(1) and uphold the conclusion of Bay Yacht: to provide a method for the non-developer unit

owners to take control of their association, while allowing a developer who still holds the statutorily required number of units for sale in the ordinary course of business to elect at least one member, and up to a minority representation, of the board. It has been asserted that the intent of section 718.301, Florida Statutes, in permitting a developer who holds the requisite number of units for sale a minority representation on the post-transition board, was to give the developer a continuing voice in the operation of the association and protect the interest in the units it still owns. Rodstein v. Rimini Beach Condo. Ass'n, Arb. Case No. 02-4250, Second Summary Final Order (June 18, 2002) (Scheuerman, Arb.). Therefore, this method will ensure that both the non-developer unit owners and the Developer have their rights protected in accordance with the Condominium Act and case law.

31. The next issue presented is when the turnover election must take place within the language of section 718.301(2), Florida Statutes. Section 718.301(2), Florida Statutes, provides that:

Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of an election for the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member. (emphasis added).

32. The Division interprets the language of section 718.301(2) to allow an association a maximum of 135 days after the date unit owners are entitled to elect members to the board to hold the turnover election. The turnover provisions of section

718.301 are "seen as deliberately interrupting the regular terms of the developer appointed board majority to require the scheduling and holding of the turnover election." Rodstein, Arb. Case No. 02-4250, at 4. The non-developer unit owners' argument that the turnover provision requires the developer to identify the event triggering a turnover, then call and hold a turnover election meeting within 75 days of the event would be a challenging task for a developer and inconsistent with the gradual turnover process and involved election process set out in the section 718.112(2), Florida Statutes. It would be a significant burden on developer boards to: become aware a triggering event has occurred; determine the rights granted to the non-developer unit owners by the triggering event; and prepare and send notice to all non-developer unit owners of an election within 14 days, thereby meeting the "at least 60 days" notice requirement under section 718.301(2). It also would impose narrow time constraints on non-developer unit owners who must determine whether they wish to run and to file a candidate information sheet or notice of intent to run for the unit owner seat. § 718.112(2)(d), Fla. Stat.

33. While in this case the Developer sent a letter to unit owners notifying them of the turnover date, it must be recognized that the time requirements of section 718.301(2) pertain to any time the unit owners other than the developer are entitled to vote for a member or members of the board. This includes the initial triggering provision of section 718.301(1), whereby when unit owners other than the developer own 15% or more of the units in the condominium, they are entitled to vote for 1/3 of the members of the board. The Division does not interpret section 718.301, Florida Statutes, to require a developer to prepare and notice an election within 14 days of the first event triggering turnover. A developer must give the initial notice of turnover and the intent to call a

turnover election meeting within 75 days after the date of the event triggering a turnover, and then provide at least 60 days notice to the unit owners of the actual meeting date, which must be within 135 days of the date of the first event requiring turnover.

Developer Amendments

34. "The purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance." Novick v. Dep't of Health, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002). When a petition for declaratory statement seeks disapproval of action that has already occurred, it must be denied. Id.

35. The amendment provisions have been adopted by the board and recorded in the public records. Therefore, because the amendments have already occurred, the issue cannot be addressed by the Division. See In Re: Pet. for Dec. Stmt. Royal Arms Villas Condo., Inc., BPR-2002-03050 (Aug. 21, 2002) (concluding Division did not have the authority to determine the validity of amendment recorded in public records eight years earlier). Courts have jurisdiction to determine the validity of amendments recorded in the public records.

Proxies

36. Florida Administrative Code Rule 61B-23.002(6) provides that "[i]f the declaration, articles of incorporation or association bylaws require or authorize the use of voting certificates, the voter named on such certificate is the only person authorized to appoint a proxy even though the unit is owned by more than one person or entity or is owned by an entity which is not a natural person.

37. The bylaws of Grandview Palace, in article three, section 8, authorize, but do not require the use of voting certificates when a unit is owned by more than one person. In the event that a voting certificate is used, Florida Administrative Code Rule 61B-23.002(6), the voter on the certificate is the only person authorized to appoint a proxy. The bylaws are not in direct conflict with the rule. First, where a voting certificate is on file, the person voting or appointing the proxy would be the "voting member." Art. III, §§ 5 and 8, Bylaws. Where a unit is owned by more than one person or by a company, the vote will not be counted unless a voting certificate is on file. Art. III, § 8, Bylaws. So, co-owners would lose their right to vote or appoint a proxy if a voting certificate is not on file with the exception of married couples. For married couples where both own the unit jointly and have not filed a voting certificate, either may attend the meeting and vote the unit. Art. III, § 8, Bylaws. Under the bylaws, if the couple has not recorded a voting certificate, both must sign the proxy for the vote to count. Art. III, § 5, Bylaws.

38. The division's rule applies to those cases where a voting certificate for a jointly owned unit is on file with the association. Fla. Admin. Code R. 61B-23.002(6). Where the "voting member" is recorded, then no other owner may appoint a proxy under the bylaws or the rules. Where no voting certificate is on file, the bylaw and not the rule determines who can vote. Under the bylaws, both the husband and wife sign the proxy. This avoids the possibility of a duplication of a vote with one spouse voting by proxy and the other spouse voting in person at a meeting.

ORDER

Based on the findings of fact and conclusions of law, it is ordered that under sections 718.301(1) and (2), Florida Statutes, Developer is entitled to at least one

member, and may vote for two members, on the board of administration of Association following turnover based on the results of class voting at an election that Developer must hold within 135 days after the date of turnover. The proxy signature provisions of the bylaws are consistent with Florida Administrative Code Rule 61B-23.002(6). Finally, the Division declines to address the issue of the amendments made unilaterally by the developer-appointed board because the amendments have already been approved and recorded in the public records.

DONE and ORDERED this 18th day of February, 2008,

at Tallahassee, Leon County, Florida.



A handwritten signature in cursive script, appearing to read "Michael T. Cochran", written over a horizontal line.

MICHAEL T. COCHRAN, Director
Department of Business and
Professional Regulation
Division of Florida Land Sales, Condominiums
and Mobile Homes
Northwood Centre
1940 North Monroe Street
Tallahassee, FL 32399-1030

Division of Florida Land Sales,
Condominiums & Mobile Homes **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, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 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 Barbara Marquet, 7601 East Treasure Drive CU10, North Bay Village, FL 33141; John Gonzalez, 7601 East Treasure Drive #1923, North Bay Village, FL 33141; Sophia Lima, 7601 East Treasure Drive CU9, North Bay Village, FL 33141; Giovanni Chiampesan, 7601 East Treasure Drive Unit 622, North Bay Village, FL 33141; James Edwards, Registered Agent for Association, 7601 East Treasure Drive #25, North Bay Village, FL 33141 , on this 22nd day of February, 2008.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney

James Edwards
Registered Agent for First Equitable Realty III, Ltd.
7601 East Treasure Drive, Ste. 1701
North Bay Village, FL 33141