

Final Order No. BPR-2000-00169 Date: **1-13-00**
FILED

Department of Business and Professional Regulation
AGENCY CLERK
Sarah Wachman, Agency Clerk

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 99-023

LUCKY'S LANDING MOBILE HOME
OWNERS ASSOCIATION,

DOCKET NO. MD 1999189

PETITIONER

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Land Sales, Condominiums, and Mobile Homes (Division) issues this declaratory statement pursuant to sections 723.006 and 120.565, Florida Statutes, based upon the following:

STATEMENT OF THE ISSUE

Whether pursuant to section 723.075, Florida Statutes, residents of recreational vehicles, located within the park, are eligible to be members of the homeowners association.

FINDINGS OF FACT

The following facts were taken from the Petition for Declaratory Statement. The Division takes no position concerning the truth or accuracy of these facts, but merely accepts them as presented for the purpose of this Declaratory Statement.

1. The Petition for Declaratory Statement was received on October 13, 1999, from Lucky's Landing Mobile Home Owners Association. A notice of receipt was published in the Florida Administrative Weekly on January 7, 2000.

2. Petitioner, is the association representing the homeowners in Lucky Landing Mobile Home Park.

3. The park contains thirty-nine (39) mobile home sites and six (6) recreational vehicle sites. At the present time there are twenty-nine (29) mobile homes, three (3) park models and thirteen (13) recreational vehicles.

4. The travel trailers are blocked up and tied down according to Monroe County Code and are permanent residents. Monroe County has always considered travel trailers on mobile home sites that are permanently installed on piers and anchored to be mobile homes. FEMA has now stated that no travel trailers are to be permanently installed and are forcing their removal from mobile home sites.

5. All residents of the park, both mobile home owners and recreational vehicle owners, are required to sign an annual lease, and until recently were all members of the association.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the Petitioner and the subject matter of the Petition for Declaratory Statement pursuant

to sections 723.006 and 120.565, Florida Statutes.

2. Section 723.002(1), Florida Statutes, states in pertinent part:

(1) The provisions of this chapter apply to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease. This chapter shall not be construed to apply to any other tenancy, including a tenancy in which a rental space is offered for occupancy for recreational-vehicle-type units which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle. [Emphasis added]

3. Section 723.003(3), Florida Statutes, states:

The term "mobile home" means a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

4. Section 723.003(6), Florida Statutes, states:

(6) The term "mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

5. The provisions of chapter 723, Florida Statutes, apply to

all mobile home parks as defined by section 723.003(6), Florida Statutes, regardless of the particular type of homeowners association that may or may not represent the homeowners.

6. The particular circumstances addressed by the Petitioner relate to the application of section 723.075, Florida Statutes that states:

In order to exercise the rights provided in s. 723.071, the mobile home owners shall form an association in compliance with this section and ss. 723.077, 723.078 and 723.079, which shall be a corporation for profit or not for profit and of which not less than two-thirds of all of the mobile home owners within the park shall have consented, in writing, to become members or shareholders. Upon such consent by two-thirds of the mobile home owners, all consenting mobile homeowners in the park and their successors shall become members of the association and shall be bound by the provisions of the articles of incorporation, the bylaws of the association, and such restrictions as may be properly promulgated pursuant thereto. The association shall have no member or shareholder who is not a bona fide owner of a mobile home located in the park. Upon incorporation and service of the notice described in s. 723.076, the association shall become the representative of the mobile home owners in all matters relating to this chapter. [Emphasis added]

7. Section 723.075 (1), Florida Statutes, specifically states the requirements a mobile homeowners association must fulfill to exercise the rights provided in section 723.071, Florida Statutes,

primarily, the right of first refusal. Section 723.075(1), Florida Statutes, does not provide a limitation on mobile homeowners associations with respect to the remainder of chapter 723, Florida Statutes, however, it is clear that in accordance with section 723.003(3), Florida Statutes, the recreational vehicles referred to in the petition are not mobile homes, regardless of the fact that they are "blocked up and tied down." Therefore the recreational vehicle residents cannot have the protections of chapter 723.

8. Section 723.006, Florida Statutes, lists the powers and duties of the Division. The Division does not have authority to require that a mobile home park form a particular type of homeowners association. It follows then that the recreational vehicle residents could be members of the association, although not eligible for chapter 723 protections.

9. Pursuant to section 723.075(1), Florida Statutes, in order to exercise the rights provided in section 723.071, Florida Statutes, the association shall have no member or shareholder who is not a bona fide owner of a mobile home located in the park.

WHEREFORE, the Division DECLARES that for the rights provided in section 723.071, Florida Statutes to be enforceable, the provisions of section 723.075(1), Florida Statutes must be met. A homeowners association that has members who do not own a mobile

home located in that park, does not comply with section 723.075(1), Florida Statutes.

The Division further DECLARES that there is no prohibition in chapter 723, Florida Statutes, that would preclude the recreational vehicle owners from being members of the association.

DONE this 11 day of January, 2000, at Tallahassee, Leon County, Florida.



Robin L. Suarez
ROBIN L. SUAREZ, ACTING DIRECTOR
Division of Florida Land Sales,
Condominiums, and Mobile Homes
Department of Business and
Professional Regulation
140 North Monroe Street
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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, (1996) 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 APPROPRIATE FILING FEES, AND WITH THE AGENCY CLERK FOR THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399-0792, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct of the foregoing has been furnished by U.S. mail to Alice Glendenning, President, Lucky's Landing Mobile Home Owners Association, 133 Barry Avenue, #21, Sumerland Key, Florida 33042 on this _____ day of _____, 2000.

KRISTIE L. HARRIS, DOCKET CLERK

cc: Jim Norred, Chief
Bureau of Mobile Homes

Denise O'Brien
Assistant General Counsel