

Department of Business and Professional Regulation
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By: Sarah Wachman

DS 2001-012

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

IN RE: PETITION FOR DECLARATORY STATEMENT

ROBERT I. REA,
MAPLE LEAF ESTATES
HOMEOWNERS' CORP.,

Division Docket No. MD 2001-039

Petitioner.

DECLARATORY STATEMENT

The State of Florida, 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 ISSUES

Petitioner, Maple Leaf Estates Homeowners' Corporation (Maple Leaf) requests a
response to four issues:

1. Whether Maple Leaf can mandate the purchase of a share in the
corporation, acquisition of an "equity" ownership, as a condition of a purchase of a
mobile home from a mobile home owner who is not an equity owner.
2. Whether Maple Leaf is governed by the laws regulating homeowner
associations in chapter 720, Florida Statutes, or by the Florida Mobile Home Act, chapter
723, Florida Statutes.

3. Whether the equity owners are entitled to the protections afforded park residents, mobile home owners, under chapter 723, Florida Statutes.

4. Whether Maple Leaf is subject to the Florida not for profit corporation laws, chapter 617, Florida Statutes, if it is governed by chapter 720, Florida Statutes.

FINDINGS OF FACT

Notice of the petition was published in volume 27, number 39, of the Florida Administrative Weekly on September 28, 2001. The following facts are taken from the petition and the Division has relied on the statement of facts set out in the petition and does not take any position with regard to the validity of these facts. Fla. Admin. Code R. 28-105.003. By letter dated September 28, 2001, the Maple Leaf Estates Homeowners' Corporation supported the petition and the facts asserted by Mr. Rea.

1. Maple Leaf submitted its Articles of Incorporation, which show that it was incorporated under chapter 617, Florida Statutes, the not for profit corporation statutes.

2. Maple Leaf was established as a homeowners' association for the purpose of acquiring ownership of the park and operating the park for the benefit of the equity owners.

3. Maple Leaf Estates is a mobile home park consisting of 1,112 mobile home lots in Port Charlotte, Florida. There are 866 equity owners and 246 mobile home owners who are not equity owners.

4. When one of the equity owners sells his or her mobile home, the purchaser is required to purchase an equity membership in Maple Leaf.

5. Maple Leaf owns the land in the park, which includes the lots and the common areas. The equity owners do not own their individual lots, but own shares in Maple Leaf.

CONCLUSIONS OF LAW

6. The Division has jurisdiction to enter this order pursuant to sections 723.006 and 120.565, Florida Statutes.

7. Maple Leaf is a mobile home park association formed to own and operate a mobile home park. Fla. Stat. § 723.077. Maple Leaf is the “park owner” and “operator” of the “mobile home park” as those terms are defined by section 723.003(7), (6), and (9), Florida Statutes.

8. The 866 equity owners are members of Maple Leaf and are shareholders in Maple Leaf. The equity owners are “mobile home park owners” as that term is defined by section 723.003(7), Florida Statutes. See § 723.077, Fla. Stat. (articles of incorporation shall provide that an association acquiring ownership of a park is responsible for its operation).

9. The 246 mobile home owners, who are not members of Maple Leaf, but rent their lots from Maple Leaf, are “mobile home owners” as defined by section 723.003(5), Florida Statutes.

10. Maple Leaf is governed by the Florida Mobile Home Act. Maple Leaf owns and operates a mobile home park in which more than 10 lots are rented or leased. § 723.002, Fla. Stat.; *see also Aspen-Tarpon Springs Ltd. Partnership v. Stuart*, 635 So. 2d 61, 62 (Fla. 1994). As a park owner, Maple Leaf is subject to the same laws and regulations as all mobile home park owners.

11. The Division is without authority to address whether Maple Leaf has any rights, duties or obligations under chapters 617 or 720, Florida Statutes. Therefore, the Division is not able to respond to the questions 2 and 4 concerning these laws.

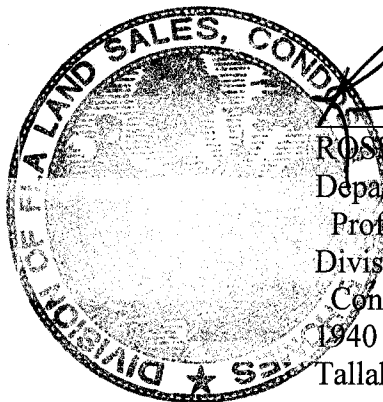
12. Maple Leaf's third question asks if its equity owners may also have the protections afforded the mobile home owners in the park. The answer is no. The equity owners are not "mobile home owners," but collectively are the park owner. *Compare* § 723.003(5) with § 723.003(7), Fla. Stat. The Florida Mobile Home Act balances the interests of park owners and mobile home owners in their unique contractual relationship. *See Aspen-Tarpon*, 635 So. 2d at 21 (finding that section 723.033, Fla.Stat., controlling unreasonable lot rental agreements, was a constitutional attempt to balance the economic interests of park owners and home owners). Therefore, the equity owners do not qualify for the protections of mobile home owners. The Division issued a declaratory statement reaching the same conclusion in *In re: Pet. for Declaratory Stmt., Howard Graves, Eagle Point Homeowners, Inc.*, DBPR DS 99-011 (Aug. 20, 1999). In *Eagle Point*, the Division found that "[w]hile the shareholders may avail themselves of the benefits of park ownership, they must also carry the burdens of park ownership, and cannot simultaneously qualify for the protections afforded park residents under Chapter 723, Florida Statutes." *Eagle Pt.* DBPR DS99-011 at 6.

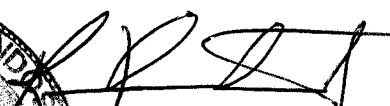
13. Maple Leaf asks whether it may require persons who buy a mobile home from one of the 246 mobile home owners to purchase an equity membership. The answer is no. Section 723.059(3), Florida Statutes, gives purchasers the right to assume the remainder of the term of the seller's rental agreement, which includes the terms and conditions set out in the prospectus for that lot lease. *See Magnolia Village Homeowners*

Ass'n v. Magnolia Village, Inc., 758 So. 2d 1201 (Fla. 5th DCA 2000). If the prospectus for the lot lease of the home being sold requires the purchase of an equity membership in Maple Leaf, then the buyer would be required to become an equity member. If not, then the buyer is not required to purchase an equity membership. Maple Leaf may amend the prospectus for any of the lots of the mobile home owners in accordance with sections 723.011 and 723.012, Florida Statutes, and Florida Administrative Code Rule 61B-31.001(4). In addition, section 723.058, Florida Statutes, prohibits a park owner from making or enforcing any rule, regulation, or rental agreement provision that restricts the home owner's right to sell his or her mobile home.

WHEREFORE, the Division declares that Maple Leaf equity owners are park owners subject to chapter 723, Florida Statutes, that Maple Leaf equity owners do not enjoy the protections afforded mobile home owners under chapter 723, Florida Statutes, and that Maple Leaf may not require purchasers of mobile homes from mobile home owners to also purchase an equity ownership in the park under section 723.059(3), Florida Statutes, unless the prospectus governing the tenancy for the mobile home being sold requires it.

DONE and ORDERED this 6th day of November, 2001.




ROSS FLEETWOOD, Director
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominiums, and Mobile Homes
1940 N. Monroe Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY ANY PARTY SUBSTANTIALLY AFFECTED BY THIS DECLARATORY STATEMENT 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 APPROPRIATE FILING FEES, AND WITH THE AGENCY CLERK FOR THE DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS AND MOBILE HOMES, 1940 NORTH MONROE STREET, TALLAHASSEE, FLORIDA 32399 WITHIN 30 DAYS OF THE RENDITION OF THIS ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Denying Petition for Declaratory Statement has been furnished by U.S. Mail to Robert I. Rea, Unit 12, 85 Beasley Crescent, Cambridge, Ontario, Canada, N1T 1P5 and to John Bradley, General Manager and Registered Agent for Maple Lease Estates Homeowners' Corporation, 2100 Kings Highway, Port Charlotte, Florida 33980, on this ____ day of _____, 2001.

Beatrice Pruitt
Docket Clerk

Copies furnished to:

Janis Sue Richardson,
Chief Assistant General Counsel

Laura Glenn, Chief
Bureau of Standards and Registration