

STATE OF FLOR
DEPARTMENT OF BUSINESS AND PRO
DIVISION OF FLORIDA LAND SALES
MOBILE HOMES

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2003072402

B. D. FISCHER, unit owner.

DS 2003-024

DECLARATORY STATEMENT

B. D. Fischer (Fischer), unit owner, filed a petition for declaratory statement requesting an opinion as to whether River Run of Sebastian Condominium Association, Inc., operates a multicondominium as that term is defined by section 718.103(20), Florida Statutes, and/or a phase condominium under section 718.403, Florida Statutes, and Florida Administrative Code rule 61B-17.003, and what effect its status has on the association's operation and assessments for common expenses.

STATEMENT OF FACTS

The following facts are based on information submitted by Petitioner. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order. Petitioner requested a hearing to present the exhibits and answer questions. The Division did not hold a hearing as none was necessary to decide the question, which is answerable from a review of the documents.

1. Fischer filed his petition with the Division on July 16, 2003. Notice of the Petition was published in the Florida Administrative Weekly on September 26, 2003.
2. River Run of Sebastian Condominium Association, Inc. (Association), is the condominium "association" as that term is defined by section 718.103(2), Florida

Statutes, that operates River Run A, River Run B, River Run C, River Run D, River Run E, and River Run Dock, all condominiums.

3. Along with his Petition, Fischer also submitted in pertinent part the minutes of the Board of Directors meeting held on May 15, 2003, the River Run E Prospectus and Offering Circular, and the Declaration of Condominium for River Run E. It is not stated in the Petition, but based on the documentation submitted and for purposes of this declaratory statement, the Division assumes Fischer is a unit owner in River Run E.

4. According to the Petition, the Board of Directors of the Association voted on May 15, 2003, to recognize River Run (including River Run A, River Run B, River Run C, River Run D, River Run E, and River Run Dock) as a multicondominium. The minutes of the May 15, 2003, Board of Directors meeting states:

There has been discussion on whether River Run is a phase condominium or a multi condominium. The board takes the position River Run is a multi condominium. . . .Some feel it is a phase condominium. In a multi, you have a foot print which is property around each building. . . .The motion was unanimously approved.

5. The Division received the first amendment to the petition from Fischer on October 14, 2003. The letter of amendment makes additional general assertions that reiterate Fischer's arguments, but do not add substantive factual information.

6. The Division received the Association's notice of intervention on September 22, 2003. The Association requested the deadline be extended in order that the Association would have adequate time to prepare a response. The Division granted the extension, and the Association's response was received on October 10, 2003.

7. The Association's response to Fischer's petition provides:

Item #5 of Mr. Fischer's Petition states that the board took a vote that River Run would be a multicondominium rather than a phased condominium. There was no such vote . . . the Board of Directors was responding to questions raised by several members relative to a complaint that had been filed earlier this year with the Division from an owner who represented in his complaint that River Run was a phased condominium. Discussions followed in the Board meeting as to the differences between 'phased and multi' and the Board only motioned that River Run recognize that it was a multi rather than a phased condominium.

8. The Association attached Exhibit A to its response letter, which included the first pages, respectively, of the Articles of Incorporation of the Association, the Declarations of Condominium for River Run A, River Run B, River Run C, River Run D, River Run E, and River Run Dock, and the Minutes of the Association's Board of Directors' Meeting held on May 15, 2003. The included pages of the Declarations of Condominium for River Run A through E and River Run Dock establish when each Declaration was filed. The Declaration of Condominium for River Run B was filed June 18, 1985, for River Run C on March 16, 1987, for River Run Dock on June 1, 1987, for River Run D on December 30, 1988, for River Run A on August 29, 1989, and for River Run E on March 5, 1992.

9. Fischer filed a response to the Association's letter with the Division on October 22, 2003. This second amendment to the petition provides further legal argument. The Articles of Incorporation and By-laws of the Association were sent as an attachment to the second amendment. Article II of the articles provides that: "The purpose for which the Association is organized is to provide. . . for the operation of a group of no fewer than one (1) and no more than five (5) condominiums." The bylaws

provide that the Association “has been organized for the purpose of administering the operation and management of the condominiums.”

10. Article IV of the Prospectus and Offering Circular for River Run E, A Condominium, states:

River Run of Sebastian Condominium Association, Inc., a Florida corporation not-for-profit, shall be responsible for the operation and management of River Run A, River Run B, River Run C, River Run D, River Run E, River Run F, and River Run Dock, when and if these condominiums are constructed.

Article VI of the Prospectus provides: “There will be separate Declarations of Condominium for each complex, when and if built.”

11. Paragraph 3 of the Declaration of Condominium Establishing River Run E, A Condominium states: “It is anticipated that this Condominium will be the fifth of no more than six (6) separate condominiums to be established as a community of condominiums by the Developer and that the Association will be liable for the operation of all of said condominiums.”

12. On August 27, 2002, the Division issued a declaratory statement, Wallace v. Department of Business and Professional Regulation (BPR), Division of Land Sales, Condominiums, and Mobile Homes, Docket No. CD2002-043 (on file with Agency Clerk, BPR), aff’d 845 So. 2d 210 (Fla. 4th DCA 2003) (per curiam), that involved the same condominium association as in the present case. Finding of fact 3 states:

River Run is an “association” as that term is defined in section 718.103(2), Florida Statutes, that operates a multicondominium, as that term is defined by section 718.103(20), Florida Statutes (2001), of five condominiums, each of which is designated as a building A through E. . . .The first condominium, A, appears to have

been created with the association in 1984 or 1985 with the last condominium E being created in 1989.

CONCLUSIONS OF LAW

13. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes (2003).

14. Fischer, as a unit owner of River Run, is substantially affected by the application of the multicondominium and phase condominium sections of chapter 718, Florida Statutes, to River Run.

15. Fischer asks a number of specific questions in his original petition for declaratory statement. However, several of the questions asked are beyond the Division's authority to issue declaratory statements in that the questions are either too broad or do not ask for a specific application of a statute, rule, or order to the particular circumstances stated in the petition.¹ See Fla. Stat. § 120.565 (2003), Fla. Admin. Code R. 28-105.001 (2003); see also Tampa Electric Co. v. Fla. Dep't of Community Affairs, 654 So. 2d 998 (Fla. 1st DCA 1995) (stating that an agency should decline to issue a declaratory statement where the issuance would amount to a broad policy statement applying to a large class of persons). The Division addresses petitioner's remaining questions as follows.

16. A "multicondominium" is defined by section 718.103(20), Florida Statutes (2003), as "a real estate development containing two or more condominiums, all of which are operated by the same association."

¹ For example, Fischer asks if the "footprint" of the building links it to the condominium? "Footprint" is a term of art not used in the Condominium Act. Some declarations and surveys show the common elements being contained within the footprint of the building and not extending beyond the footprint of the building.

17. The concept of a multicondominium is further explained by Chmil v. Mediterranean Manors Association, Inc., 516 So. 2d 1109 (Fla. 2d DCA 1987). In this case, the district court of appeal held that the cost of repair for a unit located in one condominium within an association containing eleven condominiums could be assessed only against the unit owners of the condominium in which the unit was located. Id. at 1110. The declaration for the plaintiff's condominium provided that "[e]ach building. . . shall constitute a separate Condominium Property, but all of the Condominiums in this development shall be governed by the same Association" and that "[e]ach Apartment owner shall be liable for a proportionate share of the common expenses of the Association, such share being the same as the undivided share in the common elements, which is appurtenant to his apartment." Id. In interpreting the condominium documents, the court explained that "[i]t is therefore apparent that each apartment, i.e., unit, owner owns a share of common elements only in the condominium in which his unit is located and does not own a share of the common elements in any of the other ten condominiums within the project. Thus, each unit owner's share of the common expenses is equal to his share of the common elements in the condominium in which his unit is located." Id. at 1111.

18. In this case, the association operates distinct and separate condominiums: each condominium was formed by its own declaration. Paragraph 6(g) of the Declaration of Condominium for River Run E provides that the owners of the thirty-one units comprising River Run E all have a 1/32 interest in the common elements (except for the unit owner of the penthouse, who has a 2/32 share interest in the common elements). Therefore, the unit owners only have an interest in the common elements in River Run E,

and do not own a share of interest of the common elements in any of the other condominiums within the project. Therefore, River Run meets the definition of a multicondominium, as that term is defined by section 718.103(20), Florida Statutes, and as explained in Chmil.

19. “Phase condominium” is not defined within the definitions contained in section 718.103, Florida Statutes. However, the requirements of a phase condominium can be found in section 718.403, Florida Statutes, and rule 61B-17.003, Florida Administrative Code. Chapter 718, Florida Statutes, and the rules promulgated thereto, allow a developer to develop a condominium in phases if certain requirements are met. Section 718.403(1), Florida Statutes (2003), provides:

[A] developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period (which may not exceed 7 years from the date of recording the declaration of condominium) within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

In addition, rule 61B-17.003, Florida Administrative Code (2003), adds specific requirements to the filing of the declaration and amendments to a phase condominium.

Paragraph (7) provides that “[t]he declaration for an initial phase shall include a description of each anticipated phase.” Paragraph (7)(c) provides that: “The declaration shall contain a formula by which a unit owner can compute that unit’s change in percentage or proportion of ownership in the common elements as each phase is added.”


20. Based on the information provided by Fischer and the association, River Run E is not a phase condominium. The documentation provided to the Division does not indicate that a phase filing was made for River Run E under section 718.403, Florida Statutes, or that any of the requirements for a phase filing were met under rule 61B-17.003, Florida Administrative Code. Accordingly, there is no indication in the Declaration or otherwise that River Run E was developed in phases. Therefore, River Run meets the definition of a multicondominium pursuant to section 718.103(20), Florida Statutes, but is not a phase condominium pursuant to section 718.403, Florida Statutes. Cf. Chmil, 516 So. 2d at 1112 (finding that the multicondominium had not been developed as a phase condominium because it had not been created as a phase under the Condominium Act).

ORDER

Based upon the findings of fact and conclusions of law, it is declared that River Run of Sebastian Condominium Association, Inc., operates a multicondominium as that term is defined by section 718.103(20), Florida Statutes (2003).

DONE AND ORDERED this 7th day of November 2003.





ROSS FLEETWOOD, DIRECTOR
Department of Business and
Professional Regulation
Division of Florida Land Sales,
Condominium, and Mobile Homes

1940 North Monroe Street
Tallahassee, Florida 32399-1030

RIGHT TO APPEAL

THIS FINAL ORDER 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
APPROPRIATE FILING FEES, AND WITH THE AGENCY CLERK, 1940 NORTH
MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-
2217, WITHIN 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 B. D. Fischer, 6049 North River Run Dr., Sebastian, Florida
32958 this 24 day of November, 2003.


ROBIN BRADWELL, Docket Clerk

Copies furnished to:
Ross Fleetwood, Director

Janis Sue Richardson
Chief General Counsel