

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	3/6/2019
File #	2019-01981

IN RE: PETITION FOR DECLARATORY STATEMENT

DS 2018-081

Docket No. 2018060200

DENISE HINDES, Unit Owner
SHORES OF PANAMA RESORT COMMUNITY ASSOCIATION, INC.

FINAL ORDER ISSUING DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("the Division") hereby issues this Declaratory Statement pursuant to sections 120.565 and 718.501, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement ("Petition") on November 28, 2018, from Denise Hindes ("Petitioner"), a unit owner at the Shores of Panama Resort Community Association, Inc. ("the Association"), seeking a declaratory statement as to whether the Association's Board of Directors may conduct a new election due to occur at the rescheduled annual meeting, pursuant to section 718.1265(1)(b), Florida Statutes.

Petitioner also seeks a declaratory statement as to whether the Association's Board of Directors is required to provide ballots, along with a fourteen (14) day notice, to determine which candidate will serve the remaining one year term of a resigned seat on the board, pursuant to section 718.112(2)(d)2., Florida Statutes.

On December 5, 2018, the Division confirmed receipt of the Petition in a letter to Petitioner.

Notice of receipt of the Petition was published in the December 6, 2018, issue of the Florida Administrative Register

On December 18, 2018, the Association submitted a Petition for Declaratory Statement, Docket No. 2018-063562, involving the same facts and posing similar questions as the present Petition.

On December 20, 2018, the Division requested that the Association submit a complete and current set of its governing documents.

On December 27, 2018, the Association submitted the requested documents to the Division, as well as its Motion to Intervene ("Motion") and Response to Petition for Declaratory Statement ("Response") regarding the present Petition.

The Association's Motion requests to withdraw its Petition for Declaratory Statement, Docket No. 2018-063562.

As the Association is a substantially interested party, the Division grants its Motion, pursuant to rule 28-105.0027, Florida Administrative Code, as more detailed below.

Neither Petitioner nor the Association requested a hearing.

FINDINGS OF FACT

All of the facts presented in the Petition and provided by the interested parties were duly considered, included in the record, and form the basis of this order. The Division takes no position as to the accuracy of the facts and accepts them as submitted by the Petitioner for the purposes of issuing this declaratory statement.

1. Petitioner is a unit owner at the Shores of Panama Resort Community, located at 9900 S. Thomas Drive, Panama City Beach, Florida 32408.
2. The Association is a condominium association governed under chapter 718, Florida Statutes ("Condominium Act").
3. Petitioner asserts that the Association sent the first notice of its 2018 Board of Directors Election ("Election") and Annual Meeting ("Meeting") 60 days prior to the Meeting date of November 11, 2018.
4. The Petition specifies that the Meeting notice contained solicitations for intents to run as a candidate, which were due to the Association office by October 2, 2018.
5. Petitioner states there were five seats available for the November 11, 2018 election. Four of the seats were for two year terms and one seat was for a one year term.
6. The Petition indicates that seven candidates submitted their intent to run and received a "receipt of timely notice of intent to run for the Board of Directors" from the Association.

7. Petitioner declares that on October 10, 2018, two of the seven candidates withdrew their names, leaving five candidates to fill the five vacant seats.

8. According to the Petition, due to Hurricane Michael, on October 17, 2018 the Board of Directors postponed the scheduled Meeting, prior to sending the second Meeting notice.

9. Petitioner indicates that the current Board of Directors now wants to reschedule the Meeting and conduct another Election, versus ratifying the remaining five candidates as newly inducted members of the board, notwithstanding that the number of vacant board seats was the same as the number of candidates running.

CONCLUSIONS OF LAW

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

2. Section 120.565, Florida Statutes, provides in pertinent part:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

3. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

4. Petitioner has standing to petition for a declaratory statement as a unit owner at the Association pursuant to section 718.103(28), Florida Statutes.

I. MOTION TO INTERVENE IN PETITION FOR DECLARATORY STATEMENT

5. On December 27, 2018, the Association submitted their Motion and Response with regards to the current Petition.

6. The Motion states that the Association's subsequent petition is withdrawn provided that the Association's Motion is granted and its Response accepted.

7. The Response questions whether upon cancelling or postponing the Association's Meeting pursuant to section 718.1265(1)(b), Florida Statutes, can (or must) the Association conduct a new Election and reopen the period for owners to submit their intent to run, or can (or must) the Association keep the original eligible candidates.

8. The Association's Response and subsequent petition state identical facts and pose virtually the same questions.

9. The Association is a substantially affected party, pursuant to sections 120.565(1) and 718.103(2), Florida Statutes.

10. The Association has standing to intervene as a party whose substantial interests will be affected by the disposition of the declaratory statement and who desires to become a party, pursuant to rule 28-105.0027(1), Florida Administrative Code.

11. Having considered the facts and circumstances set forth in the Motion and Response, the Division hereby grants the Association's Motion to Intervene.

II. WHETHER THE BOARD OF DIRECTORS MAY CONDUCT A NEW ELECTION AT THE RESCHEDULED MEETING

12. Section 718.112(2)(d)2., Florida Statutes, provides, in pertinent part:

Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates... If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting.

13. As there are five remaining eligible candidates and five vacancies on the Board of Directors, a new election is not required.

14. Given the specific facts provided in this Petition combined with the language used in the Condominium Act, a new election is not required when the number of vacant seats on the Board of Directors is greater than or equal to the number of eligible

candidates, pursuant to section 718.112(2)(d)2., Florida Statutes, and rule 61B-23.0021(1)(d), Florida Administrative Code.

15. Pursuant to section 718.112(2)(d)2., Florida Statutes, the five remaining eligible candidates would become members of the board effective upon the adjournment of the rescheduled annual meeting.

III. WHETHER THE BOARD OF DIRECTORS IS REQUIRED TO PROVIDE BALLOTS, ALONG WITH A FOURTEEN (14) DAY NOTICE, TO DETERMINE WHICH CANDIDATE WILL SERVE THE ONE YEAR REMAINING TERM OF THE RESIGNED POSITION

16. Section 718.112(2)(d)3., Florida Statutes, directs, in pertinent part:

The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting...

17. Section 718.112(2)(d)4.a., Florida Statutes, dictates, in pertinent part, that "...an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist."

18. While Rule 61B-23.0021(8), Florida Administrative Code, provides that a ballot is to accompany the second notice of election, Rule 61B-23.0021(1)(d), Florida Administrative Code, states in part that "[b]alloting is not necessary to fill any vacancy unless there are two or more eligible candidates for that vacancy."

19. In light of the conclusion that no election is necessary when the number of vacant seats on the Board of Directors is greater than or equal to the number of eligible candidates, there is no requirement within the Condominium Act or the rules promulgated thereunder to provide ballots along with the fourteen day notice of the Meeting to determine which candidate will serve the one year remaining term of the resigned position.

CONCLUSION

Having considered the facts and circumstances set forth in the Petition, it is ORDERED that the Division hereby GRANTS Petitioner's Petition for Declaratory Statement, and answers Petitioner's inquiry as set forth above. This conclusion is based on the facts described in the Petition provided by Petitioner. Accordingly, this conclusion

has no application in the event that the factual circumstances described herein are incorrect or change. The conclusion relies on the application of the provisions of the Condominium Act in effect as of the date of this Order, and may not apply in the future if provisions of the Condominium Act pertinent to this conclusion are modified.

DONE and ORDERED this 28 day of February 2019, at Tallahassee, Leon County, Florida.



A handwritten signature in cursive script, appearing to read "BMcAd", is written above a horizontal line.

BOYD MCADAMS, Director
Department of Business and
Professional Regulation
Division of Florida Condominiums,
Timeshares, and Mobile Homes
2601 Blair Stone Road
Tallahassee, FL 32399-1030

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, 2601 BLAIR STONE ROAD, TALLAHASSEE, FLORIDA 32399; AGC.FILING@MYFLORIDALICENSE.COM; FAX (850) 488-5761, 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 Denise Hindes, Petitioner, 5503 Clipper Bay Drive, Powder Springs, Georgia 30127, and to Shores of Panama Resort Community, c/o Brandon Burg, Esq., 14101 Panama City Beach Parkway, Suite 160, Panama City Beach, FL 32413, on this 6th day of March 2019.


Agency Clerk's Office

Copies furnished to:

Chevonne Christian – Chief Attorney
Sharnett Love – Assistant General Counsel

FILED

Department of Business and Professional Regulation

Deputy Agency Clerk

CLERK Brandon Nichols

Date 11/28/2018

File #

DS 2018-081

Denise Hindes
5503 Clipper Bay Drive
Powder Springs, GA. 30127
Unit Owner 518 & 928
404-401-2444
dhindes@allinonemgmt.com

Docket #2018060200

Department of Business and Professional Regulation
Division of Florida Condominiums, Timeshares and Mobile Homes
2601 Blair Stone Road
Tallahassee, Florida 32399-1030

RE: Shores of Panama Community Association, Inc.
Denise Hindes' Petition for Declaratory Statement

Dear Division:

The Shores of Panama Condominium Association, Inc., hereby requests Declaratory Statement with regards to Statute 718.1265(2)(D) Association Emergency Powers and 718.112(2)(d)(2) Unit Owner Meetings

1. Name and address of Petitioner:

Denise Hindes
5503 Clipper Bay Drive
Powder Springs, GA. 30127

2. Specific provision of statute, rule or order on which seeking a declaratory statement:
F.S. 718.1265 (1)(b) as it relates to 718.112(2)(d)(2)

3. Statement of relevant facts:

The Shores of Panama Community Association Inc. a condominium in Panama City Beach, Florida sent the first notice of 2018 Election of Directors and Annual Meeting 60 days prior to the meeting date of 11/11/18. The meeting notice contained the "intent to run" which was due to the association office by 10/2/18. All deadlines as established by the Florida Statutes regarding the First Notice of Election and Annual Meeting and intent to Run were met. There were four candidates filling a two year term and one candidate filling a one year term for a Board Vacancy (a BOD member resigned with one year left on their term). There were five positions total.

Seven candidates submitted an "intent to run" and received "a receipt of timely notice of intent to run for the Board of Directors" from the association. I was one of those candidates who received a receipt of notice of intent to run. On 10/10/18 two of the seven candidates withdrew their names prior to the Annual Meeting being postponed leaving five candidates for five positions. Both candidates received notification that their withdrawals had been received by the association on 10/10/18. I was one of the five candidates left to fill one of

the five positions. Florida statute 718.112(2)(d)(2) states "...an election is not required if the number of vacancies equals or exceeds the number of candidates...the candidates become Board members effective upon adjournment of the Annual Meeting...".

Due to the hurricane, on 10/17/18 the Board of Directors utilized F.S. 718.1265(1)(b) and postponed the scheduled Annual Meeting prior to the Second Notice being sent out 14 days before the scheduled Annual Meeting on 11/11/18.

The Board of Directors is now trying to reschedule the Annual Meeting but instead of sending out a second 14 day notice of an Annual Meeting so the five candidates can become Board members effective upon the adjournment of the Annual Meeting as is stated in 718.112(2)(d)(2) the Board of Directors is proposing to start the entire process over (60 day notice with new slate of candidates). Some of the current Board of Directors do not like the slate of candidates and are using 718.1265 to try to prevent certain owners from obtaining director positions.

Does 718.1265(1)(b) give the Board of Directors the power to start the entire election process over when the Florida Statute 718.112(2)(d)(2) states an election is not required since the number of vacancies equals or exceeds the number of candidates? Wouldn't the Board of Directors only need to notice the meeting 14 days per section 718.112(2)(c)(1) prior to the newly selected Annual Meeting date since an election is not required per the Florida Statutes 718.112(2)(c) (1) and 718.112(2)(d)(2).

Since there are four (two year terms) and one(one year term) due to a resignation (Shores of Panama Community Association bylaws do not allow for the remaining directors to appoint a director), is it required per 718.112(d) to send out ballots along with the 14 day notice to determine which candidate will serve the one year term and which candidates will serve the two year term? Is there any statute that would prohibit the Board of Directors from determining among themselves who serves the one year term and who serves the two year terms?

4. There is no request for a hearing on this petition.

Thank you for your assistance in this matter. Should you need further information with regards to this petition, please do not hesitate to contact me.

Denise Hindes
Owner at Shores of Panama Community Association
Unit 518 and Unit 928