

Department of Business and Professional Regulation
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DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND MOBILE HOMES

IN RE PETITION FOR DECLARATORY STATEMENT

DS 2007-038

GALT MILE APARTMENTS, INC.

Docket No. 2007043749

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 719.501, Florida Statutes. The issue is whether Galt Mile may properly amend the terms and provisions of the Occupancy Agreement under section 719.1055(4)(a), Florida Statutes.

PRELIMINARY STATEMENT

On July 30, 2007, the Division received a Petition for Declaratory Statement from Joseph Rosen, counsel for Galt Mile Apartments, Inc. (Galt Mile), a cooperative association operating the Coral Ridge Towers. The Division sent a letter to Galt Mile on August 14, 2007, requesting a complete copy of the cooperative documents and the occupancy agreement mentioned in the petition. The Division received a copy of the documents on September 18, 2007. Notice of the receipt of the petition was filed in Florida Administrative Weekly on August 24, 2007.

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FINDINGS OF FACT

The following findings of fact are based on information submitted by Galt Mile. 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. Galt Mile was incorporated as a Florida for-profit corporation in March 1961. Amended and Restated Articles of Incorporation of Galt Mile Apartments, Inc. (Am. Art. Incorp.) at 1. Galt Mile operates and manages Coral Ridge Towers, a cooperative located in Fort Lauderdale, Florida. Id. at Art. II.

2. Galt Mile adopts chapter 719, Florida Statutes, known as the Florida Cooperative Act, and has all the statutory powers given to a for-profit corporation under chapter 607, Florida Statutes, and "the powers and duties set forth in the Florida Cooperative Act and the cooperative documents, as amended from time to time, except as may be limited or otherwise provided by these Articles" of Incorporation. Id. at Art. II, art. III. (emphasis added).

3. Galt Mile is an "association," as that term is defined in section 719.103(2), Florida Statutes (2007).

4. Galt Mile is the owner in fee simple of all the real property and improvements located within the Coral Ridge Towers community. Pet. for Dec. Stmt. at 3.

5. Membership in Galt Mile consists of shareholders in the corporation. Art. V, Am. Art. of Incorp.; art. III, Bylaws of Galt Mile Apartments, Inc. (Bylaws). Each shareholder member is entitled to occupy a specific designated unit under a lease pursuant to an occupancy agreement. Occupancy Agreement for Galt Mile Apartments, Inc. (Occupancy Agreement) (2003 Version) at 1.

6. The occupancy agreement governs the terms and conditions of the member's right to occupy units in Galt Mile. Id. Prior to 2003, the occupancy agreement provided that Galt Mile was responsible for maintaining, repairing, and replacing the windows within each of the units at Coral Ridge Towers. Pet. at 2; art. 11, Occupancy Agreement (1999 version). However, in 2003 a new occupancy agreement provided that the members under the 2003 agreement would be responsible for the maintenance, repair, and replacement of the windows of the units. Pet. at 2-3; art. 11, Occupancy Agreement (2003 version). Both agreements are still in effect, so that the maintenance responsibility and cost for maintenance is different for unit owners based upon which occupancy agreement they signed.

7. The owners under the early version of the occupancy agreement pay a proportionate share of the assessment for the association's maintenance of the units. The owners under the 2003 version are responsible for repairing and maintaining the improvements within their units and also for their proportionate share of the assessment for the association's maintenance of the units under the earlier version of the agreement. Id. at 4. Galt Mile has found it difficult to administer the cooperative under two different versions of the occupancy agreement, and wants to amend the terms of the occupancy agreement to provide uniform applicability to all unit owners. Id. at 2, 4. It seeks an opinion as to the percentage vote required under section 719.1055, Florida Statutes, to amend the terms of the occupancy agreement(s). Id. at 4.

CONCLUSIONS OF LAW

8. The Division has jurisdiction to enter this order pursuant to sections 719.501 and 120.565, Florida Statutes.

9. Galt Mile has standing to seek this declaratory statement.

10. Section 719.1055, Florida Statutes (2004),¹ contains the provisions for properly amending the cooperative documents.² Section 719.1055(4)(a) provides that "if the cooperative documents fail to provide a method of amendment, the documents may be amended as to all matters except those described in subsection (1) if the amendment is approved by the owners of not less than two-thirds of the units." (emphasis added).

Section 719.1055(1), provides that:

Unless otherwise provided in the original cooperative documents, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment. Cooperative documents in cooperatives created after July 1, 1994, may not require less than a majority of total voting interests for amendments under this section, unless required by any governmental entity.

11. Section 719.103(13), Florida Statutes (2007), defines "cooperative documents"

as:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association,

¹ The governing documents expressly adopt and incorporate the current version of the Cooperative Act. Kaufman v. Shere, 347 So. 2d 626 (Fla. 3d DCA 1977) (finding that current law was not retroactive in application because declaration expressly provided that all amendments to the Condominium Act were incorporated into the declaration as it was from time to time amended).

² Two other provisions in the Cooperative Act govern amendments to the cooperative documents; however, neither is at issue in the Declaratory Statement. Section 719.106(1)(h), Florida Statutes (2006), requires that a method for amending the bylaws be provided for in the cooperative documents, and section 719.304, Florida Statutes (2006) provides for the amending of cooperative documents due to omissions or errors. Section 719.1055 provides the only proper way to amend the Occupancy Agreement when an error or omission does not exist.

bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner's membership or share in the association.

(c) The document recognizing a unit owner's title or right of possession to his or her unit.

12. An occupancy agreement can be considered a cooperative document. See Bayshore Coop., Inc. v. Russcol, 386 So. 2d 1207, 1207 (Fla. 3d DCA 1980) (discussing provisions "provided for in the cooperative documents, particularly the occupancy agreement"). The occupancy agreement of Galt Mile provides for the unit owner's share of the corporation, and also for the right to occupy a unit in Coral Ridge Towers. Occupancy Agreement (2003 version) at 1. The occupancy agreement meets the requirements of subsections (b) and (c) of section 719.103(13), and therefore falls within the definition of a cooperative document.

13. The occupancy agreement does not provide for a method of amending the document; therefore the language of section 719.1055 controls. The proposed amendment by Galt Mile seeks to uniformly apply the terms of the occupancy agreement to all members, specifically with regards to maintenance responsibilities.³ Pet. at 2-4. It does not attempt to change the size of a unit, materially alter or modify the appurtenances, or change the proportion or percentage unit owners share in the common expenses and common surplus. Because the proposed amendment does not meet one of these three situations, the provisions of section 719.1055(1) do not apply.

³ Review section 607.0602(3), Florida Statutes. Accord Wapnick v. Seven Park Ave. Corp., 240 A.D. 2d 245 (N.Y. App. Div. 1997) (general corporation law required shares of the same class to be treated equally, so cooperative may not assess varying fees against unit owners).

14. Section 719.1055(4)(a) provides that the cooperative documents may be amended by approval of not less than the owners of two-thirds of the units.⁴ Therefore, Galt Mile may amend the provisions of the occupancy agreement with a vote of approval by not less than the owners of two-thirds of the units.

ORDER

Based on the findings of fact and conclusions of law, it is ordered that Galt Mile may properly amend the terms and provisions of the occupancy agreement under section 719.1055(4)(a), Florida Statutes, with a vote of not less than two-thirds of the unit owners.


⁴ The articles of incorporation and the bylaws may be amended by a two-thirds of the members present at a meeting and voting. Art. X(C), Am. Art. of Incorpor.; art. VIII, Bylaws.

DONE and ORDERED this 5th day of October, 2007,

at Tallahassee, Leon County, Florida.



Division of Florida Land Sales,
Condominiums & Mobile Homes


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

NOTICE OF 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(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 Joseph J. Rosen, Randall K. Roger & Associates, P.A., 621 N.W. 53rd Street, Suite 300, Boca Raton, Florida 33487, on this 16th day of October, 2007.

Robin McDaniel
Robin McDaniel, Division Clerk

Copies furnished to:

Janis Sue Richardson
Chief Attorney