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Department of Business and Professional Regulation

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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 2006-006**

Docket No. 2006007766

PARK LAKE TOWERS CONDOMINIUM ASSOCIATION, INC.  
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**DECLARATORY STATEMENT**

Park Lake Towers Condominium Association, Inc. (Park Lake), by and through its counsel, filed a Petition for Declaratory Statement requesting an opinion as to whether digital video images captured by the association's digital video security cameras and copied by the association are official records subject to inspection and copying pursuant to section 718.111(12), Florida Statutes, and rule 61B-23.002(7), Florida Administrative Code, and, if so, then may the association pass on the actual and direct cost of producing this record to the requesting unit owner.

**PRELIMINARY STATEMENT**

On February 14, 2006, the Division received a petition for declaratory statement from Park Lake. Notice of receipt of the petition was published in Florida Administrative Weekly on March 3, 2006. The 90 days for the Division to respond to the petition was stayed while the association provided additional information. No hearing was requested or held.

### FINDINGS OF FACT

The following findings of fact are based on information submitted by Park Lake. 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. Park Lake is a condominium "association," as that term is defined by section 718.103(2), Florida Statutes.

2. Park Lake received a unit owner request to inspect and copy certain portions of digital video captured by the association's security system.

3. The daily video images captured by the security cameras are downloaded and maintained on a computer hard drive for thirty days, after which time the images are "dumped" to accommodate the next thirty day's images on the hard drive.

4. The digital video images are not routinely reviewed. Park Lake's Petition indicates that "the only time the digital video images are reviewed is in the event of an 'incident' such as criminal activity or vandalism of the condominium property." The Petition continues that "[a]s such, the routine and ordinary digital video images captured by the security cameras are not necessarily related to the 'operation of the association' as apparently contemplated by Section 718.111(12)(a)15, Florida Statutes."

5. However, in this case, Park Lake obtained copies of the images that the unit owner requested to prevent the automatic "dumping" of the requested images from the hard drive. The images requested by the unit owner did not concern an "incident" of criminal activity or vandalism; Park Lake secured a copy



solely for the purpose of preventing the images from being "dumped." Park Lake only secured a copy of the images based on the request of the unit owner. Park Lake expended \$807.00 to secure the requested copy of the video images.

6. Park Lake admits that any images related to an "incident" reported by the association to the police "are or would be 'official records' because such video images would clearly relate to the 'operation' of the Petitioner." Park Lake argues though that in this case "the video images sought to be reviewed and copied by the requesting unit owner are unrelated to any 'incidents' . . . ."

### CONCLUSIONS OF LAW

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

2. Park Lake has standing to seek this declaratory statement.

3. Section 718.111(12), Florida Statutes, provides the following in part (emphasis added):

(a) From the inception of the association, the association shall maintain each of the following items, when applicable, which shall constitute the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and of each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and of each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and of each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books which contain the minutes of all meetings of the association, of the board of directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium which the association operates. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

12. Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners, which shall be maintained for a period of 1 year from the date of the election, vote, or meeting to which the document relates.

13. All rental records, when the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described by s. 718.504.

15. All other records of the association not specifically included in the foregoing which are related to the operation of the association.



(b) The official records of the association shall be maintained within the state. The records of the association shall be made available to a unit owner within 5 working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. . . . Notwithstanding the provisions of this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502; and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction; which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Medical records of unit owners.

4. Rule 61B-23.002(7), Florida Administrative Code, provides the following (emphasis added):

(a) Beginning April 1, 1992, each association must prepare and maintain as part of its official records, a completed Frequently Asked Questions and Answers Sheet substantially conforming to BPR form 33-032, as referenced in Rule 61B-17.001, Florida Administrative Code. The association shall update the information provided in the answers to the Frequently Asked Questions and Answers Sheet and prepare a revised sheet every 12 months beginning from when the sheet was last revised. The answers to the questions may be summary in nature, in which case the answer shall refer to identified portions of the condominium documents.

(b) Other records related to the operation of the association, which



the association shall maintain as official records pursuant to Section 718.111(12)(a)15., Florida Statutes, or as that subparagraph may be subsequently renumbered, shall include, for example:

1. Correspondence and other written communication from the division;
2. A copy of all insurance records; and
3. Audio and video recordings made by the board or committee or at their direction. Except, however, recordings of board of directors, unit owner, or committee meetings shall be maintained as official records at least until the minutes of the meeting which was the subject of a recording are approved by the body authorized to approve said minutes. After said approval, the recording may be discarded; however, if the body authorized to approve said minutes elects to preserve the recording, it shall maintain its status as an official record under this provision. It is not the intent of this rule to require that such recordings be made but to require that if they are made that they be maintained at least until minutes of the meeting which was recorded are approved. This accommodates associations which record meetings only as an aid for preparing minutes of the meeting. Thereafter, recordings purposely preserved shall be official records.

(c) Those copies of the declaration, articles of incorporation, bylaws, and amendments to the foregoing, which the association is required to keep pursuant to Section 718.111(12)(c), Florida Statutes, are the recorded declaration, recorded articles of incorporation, recorded bylaws, including exhibits, and the recorded amendments to each. The association may charge its actual costs for preparing and furnishing these documents to those requesting the same.

5. Section 718.111(12)(a)15, Florida Statutes, provides that the association shall maintain all records that are related to the operation of the association, which will constitute, along with other specifically listed items, the official records of the association.

6. Section 718.111(12)(c), Florida Statutes, provides that the association's official records are open to inspection by its members. The statute delineates three exceptions to the ability of unit owners to inspect the official records. Those exceptions are the following: (1) any documents protected by

the attorney-client or work-product privileges while litigation is pending; (2) information obtained by the association for approval of a transfer of a unit; and (3) unit owner medical records. § 718.111(12)(c), Fla. Stat.

7. Therefore, a unit owner has the statutory right to inspect any association record that relates to the official operation of the association if that record does not fall within one of the expressly delineated exceptions.

8. A Division arbitration decision concluded that where records are related to duties that are vested in the association, such as maintenance and repair, the records constitute official records under section 718.111(12), Florida Statutes, because the records are “related to the operation of the association.” Aldrich v. Tahitian Gardens Condo. Ass’n, Inc., 1996 WL 33663860 (Aug. 5, 1996). The powers of a condominium association include maintenance, management, and operation of the condominium property as well as the powers to contract, to sue, and be sued. § 718.111(3), Fla. Stat.

9. In this case, Park Lake chose to utilize security cameras as an avenue for maintaining and operating the condominium property. While usually video images are not routinely captured on the hard drive on a permanent basis, here, Park Lake secured a permanent copy of the video images in question. Because the copy is an association record that relates to the association’s maintenance duty, this copy of the digital video is an official record of the association.<sup>1</sup>

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<sup>1</sup> This Declaratory Statement does not address a situation where an association did not secure a permanent copy of video images that are routinely “dumped” after 30 days.



10. Further, unit owners have the right to inspect this copy of the digital video because from the facts contained in the Petition none of the exceptions listed in section 718.111(3), Florida Statutes, is present. The video copy is not a unit owner medical record. It is not information relating to the approval of a transfer of a unit, and it does not appear to be protected by attorney-client or work-product privileges.

11. The association may pass along its reasonable cost in securing a copy of the digital video for the requesting unit owner. Assuming the facts of this petition are accurate, the association may pass on the actual and direct cost of this video to the requesting unit owner.

#### ORDER

Based upon the findings of fact and conclusions of law, it is declared that video images captured by the association's digital video security cameras and copied by the association are official records subject to inspection and copying pursuant to section 718.111(12), Florida Statutes, and rule 61B-23.002(7), and, the association may pass on the reasonable cost of producing this record to the requesting unit owner.



DONE and ORDERED this 3rd day of April, 2006, at  
Tallahassee, Leon County, Florida.



A handwritten signature in dark ink, appearing to read "M. Cochran", written over a horizontal line.

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, Florida 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 James Olsen, Esq., Wean & Malchow, P.A., 646 E. Colonial Drive, Orlando, Florida 32803, this 11<sup>th</sup> day of April, 2006.

Robin McDaniel  
ROBIN MCDANIEL, Division Clerk

Copies furnished to:  
Janis Sue Richardson,  
Chief Assistant General Counsel