

State of Florida

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DIVISION OF LEGAL SERVICES
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Public Service Commission

ORIGINAL
FILE COPY

November 22, 1994

Homeowners of Bay Palms MHP, Inc.
Attn Mr. Frank Hunt, President
65183 Marion
Punta Gorda, FL 33950

Mr. Hunt:

Thank you for taking the time to come to the meetings in Murdock last week regarding Docket No. ~~941044-WS~~, Resolution of the Board of County Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes. After having examined the exemption statutes and rules applicable to your situation, we have concluded that Homeowners of Bay Palms MHP, Inc. (Homeowners) does not qualify for exempt status from Public Service Commission regulation. The reason that Homeowners does not qualify is that the twelve renters who are served by your wastewater system are not members of the association.

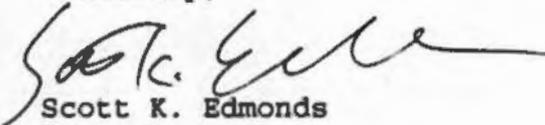
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- To qualify for a nonprofit exemption, it is imperative that ~~all~~ of the people served by the system are members of the corporation, association, or cooperative. You could qualify for exempt status by amending the bylaws of Homeowners to incorporate the renters as members of the association, with each member having one vote per unit of ownership. Otherwise, Homeowners by law will be a utility subject to Public Service Commission jurisdiction and regulation. This will require the filing of a grandfather certificate application specifying rates, charges and terms of operation. It will also require the utility to file a tariff and annual report, and pay 4.5% of its gross operating revenues to the Commission annually.

DOCUMENT NUMBER - DATE
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For your convenience, I have enclosed a copy of the applicable Florida Statute and Florida Administrative Code rule. If you have any further questions regarding this matter, please do not hesitate to call me at the number above.

Sincerely,


Scott K. Edmonds
Staff Attorney

Enclosures

cc: Division of Water and Wastewater (Messer, Coker)
Division of Records and Reporting

367.022 Exemptions.—

The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

- (1) The sale, distribution, or furnishing of bottled water;
- (2) Systems owned, operated, managed, or controlled by governmental authorities;
- (3) Manufacturers providing service solely in connection with their operations;
- (4) Public lodging establishments providing service solely in connection with service to their guests;
- (5) Landlords providing service to their tenants without specific compensation for the service;
- (6) Systems with the capacity or proposed capacity to serve 100 or fewer persons;
- (7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives; and
- (8) Any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price thereof, if such person files at least annually with the commission a list of charges and rates for all water service sold, the source and actual purchase price thereof, and any other information required by the commission to justify the exemption; but such person is subject to the provisions of s. 367.122.
- (9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.

History.—

s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 3, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 3, 26, 27, ch. 89-353; s. 1, ch. 90-166; s. 4, ch. 91-429.

(g) For an exemption pursuant to Section 367.022(7), Florida Statutes, a statement from the corporation, association, or cooperative that it is nonprofit; that it provides service solely to members who own and control it; stating whether it provides water service, wastewater service or both; specifying who will do the billing for such service; and specifying the service area. The applicant must submit its articles of incorporation as filed with the Secretary of State and its bylaws, which documents must clearly show the requirements for membership, that the members' voting rights are one vote per unit of ownership, and the circumstances under which control of the corporation passes to the non-developer members. Control of the corporation must pass: 1) at 51 percent ownership by the non-developer members or, 2) at some greater percentage delimited by a time period not to exceed 5 years from the date of incorporation. The applicant must provide proof of its ownership of the utility facilities and the land upon which the facilities will be located or other proof of its right to continued use of the land, such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative;