

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
425 Fifth Avenue North
NASHVILLE, TENNESSEE 37243-0497

April 30, 2004

Opinion No. 04-081

Proposed Amendment to TENN. CODE ANN. § 66-32-107.

QUESTION

Does SB2897/HB2755 impair the obligation of existing contracts in violation of Article I, Section 20, of the Tennessee Constitution and Article I, Section 10, of the United States Constitution?

OPINION

Because the Legislation does not reflect any intention that its provisions are to apply retroactively so as to alter the terms of existing contractual relationships, SB2897/HB2755 does not violate Article I, Section 20, of the Tennessee Constitution or Article I, Section 10, of the United States Constitution.

ANALYSIS

Senate Bill No. 2897/House Bill No. 2755 amends Tenn. Code Ann. § 66-32-107. This statute generally addresses the management of time-share estates by listing various topics that time-share instruments should include, such as the creation of an association of time-share estate owners. The proposed Legislation would add the following new subsection (b):

(B)(1) Whenever a time-share estate program is part of a subdivision as defined in the Federal Interstate Land Sales Full Disclosure Act and the subdivision provides for a property owners association which is governed by a board of directors, the board of directors shall represent the same proportion of time-share units, developed lots, and non-developed lots as is represented in the entire subdivision. In no case shall the number of representatives on the board of directors for each type of ownership be less than one (1).

(2) Nothing in this subsection shall affect the composition of the board of directors of any separate property owners association of a time-shared program, whether or not the time-share program is part

of a subdivision.

(3) Nothing in this subsection shall affect the developer control period as provided in the instruments, bylaws or other governing documents of the time-share program.

This amendment thus provides that owners of undeveloped time-share property and owners of developed time share property in subdivisions will have representation on the board of the property owners association that is proportionate to their numbers in the association.

The question is whether this amendment is unconstitutional on the theory that it would operate as an impairment of an existing contractual relationship, presumably preexisting time-share instruments that have treated developed lots and undeveloped lots differently with respect to representation in property owners associations. Article I, Section 20, of the Tennessee Constitution provides "[t]hat no retrospective law, or law impairing the obligations of contracts, shall be made." The Constitution of the United States, Article I, Section 10, also prohibits any state from passing any law impairing the obligation of contracts.

In an analysis of legislation under the Contract Clause, the first question to be answered is whether the amendment to Tenn. Code Ann. § 66-32-107 will operate as a substantial impairment of a contractual relationship. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716, 57 L. Ed.2d 727 (1978). This Legislation would require that owners of developed time-share property and owners of undeveloped time-share property in a subdivision receive the same proportion of representation on the board of directors of a property owners association. If applied to existing time-share instruments, this Legislation would directly affect the rights of time-share owners if, for example, their time-share instruments provide different proportions of representation for owners of developed lots and owners of undeveloped lots. If owners of developed lots received more representation due to their financial stake in their property, the amendment would operate to dilute their vote and, therefore, directly affect their contractual relationship set forth in the time-share instruments.

The Legislation does not indicate on its face whether it is intended to operate prospectively, thus affecting new subdivisions only, or whether it is intended to apply to existing subdivisions. It is well-settled law in Tennessee that a statute enacted by the General Assembly is usually given prospective operation, and will be so construed, unless a clear intention to the contrary is found in its provisions. *Woods v. TRW, Inc.*, 557 S.W.2d 274 (Tenn. 1977). See Tenn. Op. Atty. Gen. 81-416 (July 15, 1981). Therefore, given that the Legislation does not state that it acts retroactively, a court would construe the amendment to apply only to subdivisions created after the amendment goes into effect. Consequently, the amendment would not violate either the Contract Clause of the United States Constitution or Article I, Section 20, of the Tennessee Constitution.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

EUGENIE B. WHITESELL
Senior Counsel

Requested by:

The Honorable Rob Briley
State Representative
17 Legislative Plaza
Nashville, TN 37243-0152