



**TOM GALLAGHER**  
CHIEF FINANCIAL OFFICER  
STATE FIRE MARSHAL  
STATE OF FLORIDA

In re the Matter of

Duanne P. Anderson,  
Petitioner.

Case No.: 77617-04-FM

Petition for Declaratory Statement  
to the Florida Department of  
Financial Services

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### DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on August 2, 2004, by the Department of Financial Services, hereinafter referred to as the Department, from Mr. Duanne P. Anderson, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. The Chief Financial Officer as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition for Declaratory Statement. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's question is being answered purely as a hypothetical one. If any of the facts asserted by

the Petitioner are untrue or materially incomplete the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition for Declaratory Statement contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

#### BACKGROUND and FACTS ASSERTED

4. Petitioner asserts that NFPA 101, 2000 edition, in Chapter 31, "Existing Apartment Building," Section 31.2, "Means of Egress Requirements," in Subdivision 31.2.1 says, "Means of egress from dwelling units to the outside of the building shall be in accordance with Chapter 7 and this chapter. Means of escape within the dwelling unit shall comply with the provisions of Section 24.2 for one and two-family dwellings."

#### QUESTION

5. Petitioner's question is, Does this code chapter give municipal firesafety inspectors in their jurisdiction the authority to enforce the "Means of escape requirements provided in Section 24.2 which is for one and two-family dwellings?"

#### DISCUSSION

6. The response to your question is found not in the Fire Codes or Chapter 633, Florida Statutes, but in the state's Criminal Code.

7. Since the apartment building to which you refer is occupied by private citizens and, indeed, the apartments are their private dwellings, there are considerations other than simply inspecting a structure or building which are not relevant in inspections of buildings other than those containing private dwellings.

8. The first and foremost consideration of inspecting a private dwelling is that the firesafety inspector is not permitted to inspect the private dwelling unit which is contained in the apartment building because the inspector is not permitted by law to enter the private residence to make an inspection.

9. To make an inspection, the only way a government official may invade a person's private dwelling without that person's permission is through the use of a search warrant. Of course, if the occupant of the private dwelling requests an inspection, nothing prohibits the authority having jurisdiction from making that inspection.

10. In business type occupancies, administrative search warrants may be issued if the inspector is lawfully entitled to inspect the building or structure.<sup>1</sup>

11. Private residences, however, may only be searched (i.e., inspected) without permission under certain circumstances.

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<sup>1</sup> *Camara v. Municipal Court*, 387 U.S. 523, 528-529, and *See v. Seattle*, 387 U.S. 541, 543.

12. Those circumstances are found in Section 933.18, Florida Statutes, which states:

**933.18 When warrant may be issued for search of private dwelling.—** No search warrant shall issue under this chapter **or under any other law of this state** to search any private dwelling occupied as such unless:

- (1) It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;
- (2) Stolen or embezzled property is contained therein;
- (3) It is being used to carry on gambling;
- (4) It is being used to perpetrate frauds and swindles;
- (5) The law relating to narcotics or drug abuse is being violated therein;
- (6) A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;
- (7) One or more of the following misdemeanor child abuse offenses is being committed there:
  - (a) Interference with custody, in violation of s. [787.03](#).
  - (b) Commission of an unnatural and lascivious act with a child, in violation of s. [800.02](#).
  - (c) Exposure of sexual organs to a child, in violation of s. [800.03](#).
- (8) It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;

(9) It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein;<sup>2</sup> or

(10) The laws in relation to cruelty to animals, as provided in chapter 828, have been or are being violated therein.

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to chapter 39. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for the search of any private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some credible witness that he or she has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based. (**Emphasis supplied**).

13. As can be seen, nothing in Section 933.18, Florida Statutes, provides authority for any kind of code inspection of a private residence without the resident's permission.

ACCORDINGLY, the question is answered as follows:

Question: Does this code chapter give municipal firesafety inspectors in their jurisdiction the authority to enforce the "Means of escape requirements provided in Section 24.2 which is for one and two-family dwellings?"<sup>3</sup>

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<sup>2</sup> Cf. Section 372.761, Florida Statutes.

<sup>3</sup> The technical response to your question under the Florida Fire Prevention Code, if the prohibitions against inspecting private residences are ignored, follows.

Section 31.2 is actually discussing two differing sets of facts:

Response: Even if the response to the question were “yes,” the enforcement would be impossible because of the provisions relating to inspections (searches) of private dwellings. Therefore, the response to your question is, “for all practical purposes, No.”<sup>4</sup> Nevertheless, regardless of whether the dwelling is inspected or not, the owner of each one and two-family dwelling is responsible for full compliance with all applicable codes and standards.

#### NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the

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A. The means of egress requirements which relate to *egress from the dwelling units to the outside of the building* are to be governed by Chapter 7.

B. The means of escape requirements are limited to *means of escape within the dwelling unit*. In other words, the *means of escape* is not referring to the *means of escape from the dwelling units to the outside of the building*; as the means of egress requirements are referring to, the means of escape is only referring to the means of escape *within the dwelling unit*.

C. Therefore, since the means of escape “within the dwelling unit does not refer to means of escape from within the building to outside the building, the provisions in Section 24.2 which refer to means of escape from within the building to the outside of the building do not apply.

D. The only provisions that apply in 24.2 (24.2.1 through 24.2.6) are the means of escape that are *within the dwelling unit*.

E. There are a number of means of escape provisions in 24.2 which are applicable to going from inside the building to outside the building; there are also a number of means of escape provisions in 24.2 which are applicable only *within the dwelling unit*.

F. Since the operative provision, Section 31.2, in referring to means of escape only refers to means of escape *within the dwelling unit*, the only provisions in 24.2 which are applicable to Section 31.2 are those which refer to means of escape *within the dwelling unit*.

G. Nevertheless, since the inspection of private residences is so circumscribed, the technical response to your question is actually irrelevant.

agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

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<sup>4</sup> Nothing in this Declaratory Statement is intended to comment on, or provide any opinion on, a situation in which a private resident requests an inspection by a firesafety inspector.