



THE TREASURER OF THE STATE OF FLORIDA  
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

BOCA TOWERS CONDOMINIUM  
ASSOCIATION, INC.,

Case No.:

Petition for Declaratory Statement to  
The Florida Department of Insurance

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DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on January 23, 2001, by the Department of Insurance, hereinafter referred to as the Department, from the Boca Towers Condominium Association, Inc., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The Insurance Commissioner, 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. 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. The 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.

4. Petitioner asserts that:

A. The Division of State Fire Marshal is changing the Florida Fire Prevention Code, specifically NFPA 1, Section 7-3.2.21.2.2, to require fire sprinklers<sup>1</sup> in all high-rise<sup>2</sup> buildings, currently scheduled to be effective July 1, 2001.

B. Such requirement would cost Boca Towers several million dollars to retrofit an automatic fire sprinkler system in their two sixteen story buildings.

C. Such installation would also adversely affect the aesthetic quality of individual apartments and, possibly, their resale value.

D. Boca Towers' construction, automatic fire alarm system, around the clock security guards, and fire sprinkler protection of high risk common areas provide adequate life fire safety for residents.

E. Section 553.895, Florida Statutes, addresses similar firesafety issues, but limits installation of fire sprinkler systems to newer buildings; that is, those buildings whose contracts were let after January 1, 1994, regardless of occupancy classification.

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<sup>1</sup> Although not mentioned by Petitioner, such section also permits "engineered life safety systems" approved by the local authority having jurisdiction as an alternative to sprinklers. An engineered life safety system will typically be designed by an engineer and such systems may consist of partial fire sprinklers, smoke detection alarms, smoke controls, compartmentalization or any combination thereof.

<sup>2</sup> For purposes of this Statement, three story and higher buildings will be treated the same as high-rise buildings.

F. There is a conflict between Section 553.895, Florida Statutes, and NFPA 1, Section 7-3.2.21.2.2, to be adopted as part of the new Florida Fire Prevention Code.

5. Petitioner requests the Department to render a Declaratory Statement on the following issue:

Whether Section 553.895, Florida Statutes, supersedes NFPA 1 Section 7-3.2.21.2.2, by only requiring that sprinklers be installed on buildings three stories or higher whose contracts have been let after January 1, 1994, as opposed to NFPA 1 Section 7-3.2.21.2.2, which requires that sprinklers or an engineered life safety system be installed on all high-rise buildings.

6. Section 553.895, Florida Statutes, does not exempt buildings three stories or higher in existence on January 1, 1994, from the condition that such buildings will ever be required to install a sprinkler system; that section merely requires that all buildings three stories or higher whose construction contracts were let after January 1, 1994, must be equipped with sprinkler systems. In other words, nothing in Section 553.895, Florida Statutes, states that three story buildings or higher in existence as of January 1, 1994, shall forever be exempt from the requirement that they must install a sprinkler system.

7. Furthermore, Section 553.895, Florida Statutes, itself, provides that “...any building which is of three stories or more and for which the construction contract is let after January 1, 1994...shall be equipped with an automatic sprinkler system installed in compliance with the provisions of chapter 633 and the rules and codes adopted pursuant thereto.” (Emphasis supplied). This section therefore has built into it the requirements of compliance with Chapter 633, Florida Statutes, and the Florida Fire Prevention Code to be adopted by rule of the Department.

8. Section 633.025, Florida Statutes, required all local governments to adopt one of the four fire codes listed therein. In addition, it also required the local governments to adopt NFPA 101, the Life Safety Code, 1985 edition, or later.

9. After passage of Section 633.025, some municipalities adopted codes that required sprinklers for high-rise buildings. If such codes were adopted, high-rise buildings in those local jurisdictions were not exempt from the sprinkler requirements by Section 553.895, Florida Statutes. In those local jurisdictions, if sprinklers in high-rise buildings were previously required by the fire code they adopted locally, they are not affected by the subject portion of the Florida Fire Prevention Code. Those jurisdictions must continue to operate as they have been operating under any local code which previously required sprinklers.

10. In addition, some local governments adopted the 1991 edition, or a later edition, of NFPA 101, the Life Safety Code. The 1991 edition of NFPA 101, and later editions, required sprinklers on all existing apartments.<sup>3</sup> Therefore, if the 1991 edition or a later edition of NFPA 101 was adopted, apartments in those local jurisdictions were not exempt from the sprinkler requirements by operation of Section 553.895, Florida Statutes. In those local jurisdictions, if sprinklers in apartments were previously required by NFPA 101, 1991 edition or a later edition, they are not affected by the subject portion of the Florida Fire Prevention Code. Those jurisdictions must continue to operate as they have been operating under the 1991 or later edition of NFPA 101 requiring sprinklers.

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<sup>3</sup> Still later editions, including the 2000 edition, required sprinklers in all high-rise buildings.

11. The Florida Legislature, by Chapter 98-287, Laws of Florida, enacted statutes<sup>4</sup> requiring the State Fire Marshal to adopt National Fire Protection Association (NFPA) 1 and NFPA 101, by rule as the Florida Fire Prevention Code, with such amendments as the State Fire Marshal deems appropriate.

12. NFPA 1, Section 7-3.2.21, High-rise Buildings, states:

**7-3.2.21.1** New high-rise buildings shall be protected throughout by an approved, automatic sprinkler system in accordance with this chapter.

**7-3.2.21.2** Existing high-rise buildings shall be protected throughout by an approved, automatic sprinkler system in accordance with this chapter and 7-3.2.21.2.1 and 7-3.2.21.2.2.

**7-3.2.21.2.1** Each building owner shall, within 180 days of receiving notice, file an intent to comply with this regulation with the authority having jurisdiction for approval. The authority having jurisdiction shall review and respond to the intent to comply submittal within 60 days of receipt.

**7-3.2.21.2.2** The entire building shall be required to be protected by an approved, automatic sprinkler system within 12 years of adoption of this Code.

13. The State Fire Marshal amended NFPA Section 7-3.2.21.2.2 to read:

Each existing high-rise building shall be required to be protected by an approved, automatic sprinkler system or equipped with an engineered life safety system, approved by the authority having jurisdiction, not later than 12 years after the adoption of the Florida Fire Prevention Code.

14. The reason for the change was to provide for engineered life safety systems under this subdivision of NFPA 1 so it would conform to NFPA 101, Subdivision 31.3.5.6, Exception No. 2.

15. In addition, NFPA 101, Section 31.3.5.6, states:

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<sup>4</sup> Sections 633.01, 633.0215, and 633.025, Florida Statutes, effective July 1, 2001.

**31.3.5.6** All high-rise buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 31.3.5.1.

*Exception No. 1: Where every dwelling unit has exterior exit access in accordance with 7.5.3.*

*Exception No. 2: Buildings in which an engineered life safety system has been approved by the authority having jurisdiction.*

16. The State Fire Marshal did not change the basic requirements of NFPA 1, subdivision 7-3.2.21.2.2 or NFPA 101, subdivision 31.3.5.6, to require sprinkler systems. The sprinkler requirements were already contained in those subdivisions when Chapter 98-287, Laws of Florida, was passed by the Legislature, and in fact many local governments had already adopted the 1991 or a later version of NFPA 101.

17. There is no provision for a 12 year grace period in NFPA 101, Section 31.3.5.6; therefore, the State Fire Marshal amended NFPA 101, Section 31.3.5.6, to read:

31.3.5.6 All high-rise buildings shall be protected throughout by an approved, supervised automatic sprinkler system or an engineered life safety system approved by the authority having jurisdiction in accordance with 31.3.5.1. Existing high-rise buildings shall be protected within 12 years of the adoption of the Florida Fire Prevention Code.

18. Section 633.25(5), Florida Statutes, effective July 1, 2001, by operation of Chapter 98-287, Laws of Florida States:

(5) The new building or structure provisions enumerated within the firesafety code adopted pursuant to this section shall apply only to buildings or structures for which the building permit is issued on or after the effective date of this act. Subject to the provisions of subsection (6),<sup>5</sup> the existing building or structure provisions enumerated within the firesafety code adopted pursuant to this section shall apply to buildings or structures for which the building permit was issued or the building or

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<sup>5</sup> Subsection (6) is not applicable for purposes of this Statement.

structure was constructed prior to the effective date of this act. (Emphasis supplied).

19. By Chapter 98-287, Laws of Florida, the Legislature mandated that the State Fire Marshal adopt NFPA 1, and NFPA 101, with such local amendments that the State Fire Marshal deemed appropriate, as the Florida Fire Prevention Code, and that certain portions of the Florida Fire Prevention Code operate retroactively.<sup>6</sup>

20. If there were a conflict between Section 553.895, Florida Statutes, and Chapter 98-287, Laws of Florida, Chapter 98-287, Laws of Florida would prevail.<sup>7</sup>

21. However, there is no conflict between Section 553.895, Florida Statutes, and Chapter 98-287, Laws of Florida, because, as noted above, Section 553.895, Florida Statutes, does not exempt buildings built before January 1, 1994, from ever being required to have sprinklers. It simply requires all buildings built after January 1, 1994, to have sprinklers. The question of whether buildings built before January 1, 1994, would at some point in the future be required to install sprinklers was not addressed by Section 553.895, Florida Statutes.

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<sup>6</sup> METROPOLITAN DADE COUNTY v. CHASE FEDERAL HOUSING CORPORATION, et al, 737 So.2d 494 (Fla. 1999); Reh. Den. Aug. 4, 1999: **“Two interrelated inquiries arise when determining whether statutes should be retroactively applied. The first inquiry is one of statutory construction: whether there is clear evidence of legislative intent to apply the statute retrospectively.”** See Landgraf v. USI Film Prods., 511 U.S. 244, 280, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994); Hassen v. State Farm Mut. Auto. Ins. Co., 674 So.2d 106, 108 (Fla.1996). If the legislation clearly expresses an intent that it apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible. See State Farm Mut. Auto. Ins. v. Laforet, 658 So.2d 55, 61 (Fla.1995); State Dep’t of Transp. v. Knowles, 402 So.2d 1155, 1158 (Fla.1981); see also Arrow Air, Inc. v. Walsh, 645 So.2d 422, 425 n. 8 (Fla.1994).” (Emphasis supplied). This statute meets the first prong of the test. Since statutes are presumed to be constitutional unless held unconstitutional by the courts, this statute also meets the second prong of the test until or unless determined otherwise by a court of competent jurisdiction.

<sup>7</sup> SPRADLEY v. DOE, et al, 612 So.2d 722 (Fla. 1<sup>st</sup> DCA 1993: “Under circumstances in which statutory provisions are inconsistent and cannot be harmonized, a court must reach a construction that will give effect to the purpose of the statute and the legislative intent. 49 Fla.Jur.2d Statutes Sec. 181 (1984). **One important maxim of statutory construction is that the last expression of the legislature prevails.** See State v. Parsons, 569 So.2d 437, 438 (Fla.1990); Askew v. Schuster, 331 So.2d 297, 300 (Fla.1976); Peterson v. Department of Env’tl. Reg., 350 So.2d 544, 545 (Fla. 1st DCA 1977); City of Jacksonville Beach v. Albury, 291 So.2d 82, 89 (Fla. 1st DCA1973), decision aff’d, cert. denied, 295 So.2d 297 (Fla.1974); Cable-Vision, Inc. v. Freeman, 324 So.2d 149, 152 (Fla. 3d DCA), appeal dismissed, 336 So.2d 1180 (Fla.1976), and appeal denied, 429 U.S. 1032, 97 S.Ct. 723, 50 L.Ed.2d 743 (1977).” (Emphasis supplied).

22. In 1998, the Legislature, in determining that the State Fire Marshal adopt NFPA 1 and NFPA 101, having knowledge of<sup>8</sup> NFPA 1, Sections 7-3.2.21.1, et seq., and NFPA 101, Section 31.3.5.6, mandated that those provisions should become part of the Florida Fire Prevention Code.

23. In doing so, the Legislature “filled in the gap” for high-rise buildings built before January 1, 1994, and required that all high-rise buildings contain either sprinkler systems or engineered life safety systems.

24. Aware that NFPA 1 contained a 12 year grace period and that NFPA 101 did not contain such a grace period, the State Fire Marshal amended NFPA 101 to the extent necessary to include the 12 year grace period in that publication, also.

WHEREFORE, it is the position of the State Fire Marshal that:

I. Section 553.895, Florida Statutes, neither conflicts with nor supersedes NFPA 1, Subdivision 7-3.2.21.2.2.

II. Subdivision 7-3.2.21.2.2 of NFPA 1, as well as NFPA 101, Subdivision 31.3.5.6, require sprinklers on all high-rise buildings within 12 years of the adoption thereof by operation of Chapter 98-287, Laws of Florida, Sections 633.01, 633.0215, and 633.025, Florida Statutes, and the Florida Fire Prevention Code proposed to be adopted as rules of the Department.

III. After the effective date of the adoption of NFPA 1 and NFPA 101,<sup>9</sup> mandated by the legislature, the portion of Section 553.895, Florida Statutes, that does not apply to construction contracts let before January 1, 1994, will no longer control and will be superseded by Chapter 98-287, Laws of Florida, Sections 633.01, 633.0215, and 633.025, Florida Statutes, and the Florida Fire Prevention Code proposed to be adopted as rules of the Department.

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<sup>8</sup> WOOD v. FRASER, 677 So.2d 15 (Fla. 2<sup>nd</sup> DCA 1996), Reh. Den. July 22, 1996: “We note, in that regard, **Florida’s well-settled rule of statutory construction that the legislature is presumed to know the existing law when a statute is enacted, including judicial decisions on the subject concerning which it subsequently enacts a statute.** Collins Inv. Co. v. Metropolitan Dade County., 164 So.2d 806, 809 (Fla.1964).”

<sup>9</sup> Currently July 1, 2001.

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 Section 120.565, Florida Statutes, and 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 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 \_\_\_\_\_, 2000.

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Tom Gallagher  
State Treasurer and State Fire Marshal

Copies furnished to:

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