



## DEPARTMENT OF FINANCIAL SERVICES

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

In re the Matter of

Edwards, Charles W.  
Petitioner

Case No.: 66550-02-SP

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 December 23, 2002, by the Department of Financial Services, hereinafter referred to as the Department, from Charles W. Edwards, 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:

A. The local fire jurisdiction is requiring fire sprinklers to be installed in the buildings of a two-story apartment project to comply with NFPA 101, Section 30.3.5.2.

B. The estimated cost for sprinkling the buildings within the project will increase the overall cost of the project by approximately \$600,000.

C. The cost substantially raises the cost of each unit to be non-competitive to similar style units constructed in other close jurisdictions.

D. The reason for this request for Declaratory Statement is because when questioning NFPA, they provided a verbal response that does not adhere to the written code, appendix or commentary, printed since 1991.

E. Building design.

i. The buildings are designed as two story buildings.

ii. Each of the units at grade level has an egress door to the outside at grade.

iii. In addition, there are sliding glass doors opening to an exterior balcony at grade and egress windows providing secondary means of egress from all living areas.

iv. Each second floor unit has an exit door opening directly to the street or yard at grade level by way of an interior stair serving only that unit.

v. Such stair is separated from all other portions of the building by fire barriers having a 1-hour fire resistance rating and opening protectives.

vi. The stair is open to the interior of the unit on the second floor.

vii. In addition, there are sliding glass doors opening to an exterior balcony and egress windows providing secondary means of egress from all living areas.

## QUESTIONS

5. The facts asserted are controlled by Subdivision 30.3.5.2 of NFPA 101, adopted as a part of the Florida Fire Prevention Code in Rule Chapter 4A-60, Florida Administrative Code. That subdivision provides:

**30.3.5.2** All buildings shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 30.3.5.1.

*Exception: Buildings where every dwelling unit is provided with one of the following:*

*(a) An exit door opening directly to the street or yard at ground level*

*(b) Direct access to an outside stair complying with 7.2.2 that serves not more than two units, both of which are located on the same floor*

*(c) Direct access to an interior stair serving only that unit, and such stair is separated from all other portions of the building by fire barriers having a 1-hour fire resistance rating with no openings therein*

6. Petitioner's questions are:

A. Question A: Would a stair configuration for a second floor unit that is open to the interior of the unit on the second floor and descending to an exit at grade be in compliance with NFPA 101, 30.3.5.2 (a), thereby allowing the building to not be sprinklered? (Assumption is that such stair is separated from all other portions of the building by fire barriers having a 1-hour fire resistance rating).

Response to Question A: No. The sub-section cited (a) applies to a one story building, since the same sub-section includes additional exceptions defining both an exterior (b) and an interior (c) stair arrangement. If (a) applied to a two-story building, there would be no need for (b) or (c) in its present context. The limitations of the stair serving only two units in (b) or to a single unit in (c) further clarifies its intent to apply (a) to one story buildings.

B. Question B:— If the answer to question A is no, would 30.3.5.2 (c) allow a stair open to the interior of the unit on the second floor and descending to an exit at grade? (Assumption is that such stair is separated from all other portions of the building by fire barriers having a 1-hour fire resistance rating).

Response to Question B: Yes. The Code language permits the stair only if it serves a single unit and is separated from all other portions of the building. This therefore does not require separation from the unit that the stair serves.

C. Question C: In either case, if an Interior stair is provided as an exception to the sprinkler requirement, would that stair need to be within a shaft with a fire rated door in the unit at the second floor or could it be open to the interior of the unit on the second floor?

Response to Question C: Refer to the response of Question B.

D. Question D: Understanding that section 30.2.1 requires compliance with chapters 30 and 7 for egress and section 24.2 for escape, Section 30.2.4 (Florida revised) permits a single exit provided (a) the unit entry door is the exit from the building and (b) the exit door serves only that unit, and (c) the unit is less than 3,500 sq. ft., and (d) the building is max two stories. (Each of the units in question comply with all four requirements)

However, section 24.2.2.4, addressing means of escape, requires every story more than 2,000 sq. ft. to be provided with two primary means of escape. If each apartment on the second floor is specifically permitted to have a single exit by 30.2.4, does the requirement in section 24.2.2.4 for a second primary means of escape apply if the floor area exceeds 2,000 sq. ft., thereby requiring the unit to have two primary means of escape while the unit is permitted to have a single exit?

Response to Question D: Yes Sub-section 30.2.1 of NFPA 101 specifically requires two conditions to be met. First, that the “means of egress” be in accordance with Chapter 7. Means of egress is defined in sub-section 3.3.121 as comprised of three distinct components, (a) exit, (b) exit access and (c) exit discharge. The second condition is for compliance with the requirement for two primary “means of escape.” A means of escape is defined in sub-section 3.3.122 as one that does not comply with the strict definition of means of egress but does provide an alternative way out. A means of egress and a means of escape are two separate egress components. The means of egress will meet or exceed the requirements of a means of escape. A means of escape however, cannot be used in place of a required means of egress.

Therefore, the requirement is that the unit meet the requirements of the Code as revised by the Florida Fire Prevention Code to include a single exit for units of less than 3500 square feet and the more restrictive requirement of sub-section 24.2 which requires two primary means of escape. The single means of egress will qualify as one of the primary means of escape and therefore a second means of escape must be provided for.

E. Question E: If the answer to Question D is no, would the second portion of Section 24.2.2.4 that requires a second primary means of escape if the travel distance exceeds 75' apply?

Response to Question E: Not applicable.

F. Question F: If a second primary means of escape is required, would an unenclosed spiral stair placed on an outside wall of the unit, outside of the usable floor space of the second and first floor units, usable solely for the second floor unit, qualify as a second primary means of escape?

Response to Question F: The Code only specifies what is required to comply with the provision. In this case, a means of escape must comply with sub-section 24.2.2.3. The approval of the actual design component rests with the local fire official.

#### 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 \_\_\_\_\_, 2003.

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Tom Gallagher

Copies furnished to:

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