



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

FILED

AUG 17 2010

Docketed by

In The Matter Of:

LOUIS M. GAGLIARDI,
Fire Marshal

Case No.: 110802-10-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the filing of a Petition for Declaratory Statement (hereinafter "Petition") by Louis M. Gagliardi, Fire Marshal (hereinafter "Petitioner"). The Petition was received by the Department of Financial Services, Division of State Fire Marshal (hereinafter "Department"), on June 10, 2010. 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. 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 questions are being answered as purely hypothetical. 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 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. The Declaratory Statement was requested pursuant to the provisions of Section 633.01(6), *Florida Statutes*, and Rules 28.105 and 69A-60.007, *Florida Administrative Code*, which authorize a substantially affected person to seek a declaratory statement regarding an agency's interpretation of its statutes, rules, and orders, as they apply to the Petitioner's particular set of circumstances. Section 633.01(6), *Florida Statutes*, requires the Department to issue a Declaratory Statement when requested by a substantially affected person and the Petition relates to the Florida Fire Prevention and Life Safety Code (hereinafter referred to as "the Code.")

5. The subject of the Petition is the application of National Fire Protection Association (hereinafter "NFPA") 101-31.3.4.5 relating to smoke detectors, to the Petitioner's particular set of circumstances.

6. Petitioner is the authority having jurisdiction ("AHJ") over the property located in Longboat Key, Florida.

7. Petitioner alleges the following:

A. Banyan Bay Club Condominiums (hereinafter "Banyan Bay") is located at 5250 Gulf of Mexico drive, in Longboat Key, Florida. Banyan Bay consists of six, two-story buildings constructed in 1972 containing a total of 44 units with independent cooking and bathroom facilities. The smallest building contains four units. Units on the second floor have their own stairway leading to grade and are separated from the first floor units by a poured concrete floor. Ground-to-roof cinder block fire breaks are located between each unit. None of the buildings are protected by a fire alarm system or a fire sprinkler system.

B. During the Petitioner's construction inspections of units renovated under appropriate building department permits, he discovered that the units previously had no hard-wired smoke alarms. Petitioner assumes that an unrenovated unit does not have the required smoke alarm protection.

C. Petitioner concluded that the lack of smoke alarm protection was a threat to life safety, and notified Banyan Bay Club Condominium Association of the deficiency, and advised them to comply with the Life Safety Code.

D. Banyan Bay disagrees that smoke alarm protection is required.

8. No litigation is currently pending on this matter.

9. Receipt of the Petition herein was published in Volume 36, Number 24 of the *Florida Administrative Weekly*, on June 18, 2010.

QUESTIONS

10. The Petition poses the following questions:

A. Are the buildings within Banyan Bay Club 'apartment buildings', as referenced in NFPA 101-3.3.28.3?

B. If yes, does the Town Fire Marshal have the authority under Section 633.025(6) and (7), *Florida Statutes*, to require that units within Banyan Bay Club immediately become compliant with NFPA 101-31.3.4.5?

DISCUSSION

11. The Department of Financial Services has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements when requested by a substantially affected person regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the Petitioner's particular set of circumstances. The

Department is required to issue a declaratory statement when requested by an AHJ and the request involves the application of the Code to the Petitioner's particular set of circumstances.¹

12. Section 633.0215, *Florida Statutes*, directs the State Fire Marshal to adopt the Code, and to update it every three years. NFPA 1, "Uniform Fire Code, Florida Edition" and NFPA 101, "Life Safety Code, Florida Edition," are adopted by reference in the Code. Section 633.025, *Florida Statutes*, provides that the Code is deemed adopted by each municipality, county, and special districts having firesafety responsibilities, and is enforceable by the local government.

13. The Department adopted the 2006 edition of NFPA 101, the "Life Safety Code" in its most recent update, effective December 31, 2008. NFPA 101-3.3.28.3, defines the term "apartment building" to mean a building or portion thereof containing three or more dwelling units with independent cooking and bathroom facilities." The term 'condominium' denotes a form of ownership of real property "which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."² The Life Safety Code is not concerned with forms of ownership, but rather types of occupancy.

14. NFPA 101-31.3.4.5 addresses smoke alarms in **existing** apartment building occupancies. It provides that for apartment buildings "other than those protected throughout with an existing, complete automatic smoke detection system, approved single-station smoke alarms shall be installed in accordance with 9.6.2.9, as modified by 31.3.4.5.2, outside every sleeping area in the immediate vicinity of the bedrooms and on all levels of the dwelling unit, including basements."

¹ Section 633.01(6), *Florida Statutes*.

² Section 718.103(11), *Florida Statutes*.

15. Section 633.025(2), (6) and (7), *Florida Statutes*, provides:

(2) Pursuant to subsection (1), each municipality, county, and special district with firesafety responsibilities shall enforce the Florida Fire Prevention Code and the Life Safety Code as the minimum firesafety code required by this section.

(6) With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the minimum firesafety code and that physical limitations may require disproportionate effort or expense with little increase in lifesafety. Prior to applying the minimum firesafety code to an existing building, the local fire official shall determine that a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to assure a reasonable degree of lifesafety and safety of property or the fire official shall fashion a reasonable alternative which affords an equivalent degree of lifesafety and safety of property. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73.

(7) Nothing herein shall preclude a municipality, county, or special district from requiring a structure to be maintained in accordance with the applicable firesafety code.

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. The answers to Petitioner's questions are as follows:

Question A: Are the buildings within Banyan Bay Club, 'apartment buildings,' as referenced in NFPA 101-3.3.28.3?

Answer: Yes, the buildings meet the definition of apartment occupancy.

B. If yes, does the Town Fire Marshal have the authority under Section 633.025(6) and (7), *Florida Statutes*, to require that units within Banyan Bay Club immediately become compliant with NFPA 101-31.3.4.5?


Answer: Yes.

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 Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0333, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED in the City of Tallahassee, Leon County, Florida, this 17 day of August, 2010.





Brian London
Deputy Chief Financial Officer

Copies furnished to:

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