



FLORIDA DEPARTMENT OF FINANCIAL SERVICES

TOM GALLAGHER
CHIEF FINANCIAL OFFICER
State Fire Marshal

In re the Matter of

Miami-Dade County Fire Department,
Fire Prevention Division, c/o Donald
C. James, Chief,

Petitioner.

Case No.: 70763-03-FM

Petition for Declaratory Statement
to the Florida Department of
Financial Services

_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on September 2, 2003, by the Department of Financial Services, hereinafter referred to as the Department, from the Miami-Dade County Fire Department, Fire Prevention Division, c/o Donald C. James, Chief, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. Except as set forth below, 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. Senate Bill 592,¹ amending Section 718.112(2)(l),² Florida Statutes, became effective on May 21, 2003.

¹ Senate Bill 592, in pertinent part, states:

"718.112 Bylaws.—

(1) GENERALLY.—

...

(2) REQUIRED PROVISIONS.—

...

(l) *Certificate of compliance.*--There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with ~~to~~ the applicable fire and life safety code. Notwithstanding the

B. Included in Senate Bill 592 were provisions allowing associations, condominiums, and unit owners³ to forego retrofitting of fire sprinkler systems if two-thirds of all voting members elect to do so.

provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

1. A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required fire sprinkler system, in at least 16-point bold type, by certified mail, within 20 days after the association's vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

2. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

...
(3) OPTIONAL PROVISIONS.—
....”

² Petitioner recited Section 517.1803, Florida Statutes; however, the correct reference is to Section 718.112, Florida Statutes.

³ As well as cooperative owners under Section 719.1055, Florida Statutes; however, the Petition in this case was limited to condominium associations.

C. The association may not forego retrofitting the fire sprinkler installation of common areas in a high-rise building.

D. Also included in Senate Bill 592 was a statement that, "In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014."

E. There are numerous condominium buildings within the Fire Department's enforcement jurisdiction that are directly affected by the legislation. The Fire Department must determine the extent and the timeframe within which code requirements are to be made.

QUESTIONS

5. Petitioner's questions are:

A. Does the Fire Department have the authority to enforce all life safety violations other than for fire sprinkler retrofitting during the interim period before the year 2014?

B. Does the Fire Department have the authority to require the association to state their decision before 2014 on whether they will install or forego the retrofitting of fire sprinkler systems?

C. If the association does not vote to forego the installation of fire sprinklers, does the Fire Department have the authority to demand a plan of action including fire

sprinkler installation or an engineered life safety plan during the interim period before the year 2014?

D. If the association has an approved existing engineered life safety plan, can the Fire Department require the association to complete the work prior to 2014 [if the plan provides for such early completion]?

E. If an approved existing engineered life safety plan includes common area fire sprinkler protection, does the Fire Department have the authority to require that all portions of the life safety plan be completed prior to 2014 [if the plan provides for such early completion]?

DISCUSSION

6. The questions all involve the effect of the recent amendments to Section 718.112, Florida Statutes, upon the provisions of Chapter 633, Florida Statutes, and the Florida Fire Prevention Code,⁴ adopted by the Department of Financial Services in Rule Chapter 69A-60.

7. Pursuant to Section 633.01(6), Florida Statutes, the State Fire Marshal has the authority and responsibility to issue declaratory statements relating to the Florida Fire Prevention Code.

⁴ The Florida Fire Prevention Code includes all life safety codes and fire prevention codes adopted by the Department of Financial Services.

8. Section 718.112, Florida Statutes, as amended, creates a limited exception to the requirements of Chapter 633, Florida Statutes, and applicable rules.

9. If unit owners of a condominium which has been certified for occupancy have voted by the affirmative vote of two-thirds of all voting interests in any affected condominium to forego retrofitting individual condominium units in buildings over 75 feet,⁵ provisions of Chapter 633, Florida Statutes, or any rule requiring such retrofitting are superseded.

10. However, if there has been no such affirmative vote, the statutory amendment has no effect on retrofitting requirements which are otherwise applicable.

11. Further, the legislative amendment does not affect any provisions of Chapter 633, Florida Statutes, and the Florida Fire Prevention Code other than those dealing with retrofitting buildings with a fire sprinkler system or other engineered life safety system.

ACCORDINGLY, the questions are answered as follows:

Question 5.A. Does the fire department have the authority to enforce all life safety violations other than for fire sprinkler retrofitting during the interim period before the year 2014? The authority of Miami-Dade Fire Department to enforce the requirements of the Florida Fire Prevention Code other than those provisions requiring

⁵ No requirement to retrofit buildings under 75 feet, either as to common areas or individual units, existed.

sprinkler retrofitting is not affected by the amendment of Section 718.112, Florida Statutes.

Question 5.B. Does the Fire Department have the authority to require the association to state their decision before 2014 on whether they will install or forego the retrofitting of fire sprinkler systems? The question of whether the fire department has the authority to request a condominium association to state by a date certain their decision as to whether to forego retrofitting of fire sprinkler systems does not involve an interpretation of any provision of Chapter 633, Florida Statutes, or the Florida Fire Prevention Code. Rather, this question relates exclusively to the provisions of Section 718.112, Florida Statutes. Accordingly, the State Fire Marshal does not have jurisdiction as to the interpretation of the statute in question.

Question 5.C If the association does not vote to forego the installation of fire sprinklers, does the Fire Department have the authority to demand a plan of action including fire sprinkler installation or an engineered life safety plan during the interim period before the year 2014? Unless and until an affected condominium association obtains the required affirmative vote the statutory exemption has no effect upon the provisions of Chapter 633, Florida Statutes, or applicable rules, and the fire department's enforcement authority is not affected. Consequently, the fire department may require a condominium which has not obtained the required affirmative vote to

install fire sprinklers or an engineered life safety system to the extent such safeguards are required by statute, rule, or ordinance, or interpretation thereof.

Questions 5.D. and 5.E. If the association has an approved existing engineered life safety plan, or if an approved existing engineered life safety plan includes common area fire sprinkler protection, can the Fire Department require the association to complete the work prior to 2014?

If an association which has not voted to forego sprinkler retrofitting has an approved existing life safety plan under which work is required to be completed before 2014, unless and until the affirmative two-thirds vote is obtained the authority of the fire department to require timely completion of the described work is not affected by the recent legislation. If the association has such a plan and has obtained the required affirmative vote, any provisions of the plan requiring sprinkler retrofitting or requiring the placement of sprinklers in common areas would be superseded to the extent those provisions were based upon the interpretations of Chapter 633, Florida Statutes, or applicable rules, codes, or ordinances. Whether, in fact, any given plan was based upon such an interpretation is dependent upon the particular facts and plan provisions applicable in each instance.

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 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.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

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