



REPRESENTING
ALEX SINK
CHIEF FINANCIAL OFFICER
STATE OF FLORIDA

In The Matter Of:

LILY OBRENOVIC

Case No.: 91168-07-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 (hereinafter "Petition") from Lily Obrenovic (hereinafter "Petitioner"), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on July 31, 2007. 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 party 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 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 Sections 120.565 and 633.01(6), *Florida Statutes*, and Chapter 28.105, *Florida Administrative Code*, which authorize a substantially affected person to seek a Declaratory Statement regarding an agency's opinion as to the applicability of a statutory or rule provision as it applies to Petitioner's particular set of circumstances.

5. Petitioner is in the process of opening an Adult Family Care Home (hereinafter "AFCH"), for five or fewer clients, in St. Petersburg, Florida; she will live on the premises.

6. The local Fire Marshal issued an order requiring Petitioner to install a fire alarm system with three pull stations, and monitoring. Petitioner's appeal to the City of St. Petersburg Fire & Rescue was not successful. It is noted that the appeal letter attached to the Petition relates to a proposed "adult living facility."

7. Notice of receipt of the Petition herein was published in Volume 33, Number 33 of the *Florida Administrative Weekly*, on August 17, 2007.

QUESTION

8. The Petition poses the following question: Do the provisions of Rule 69A-57, *Florida Administrative Code*, require Petitioner to install a fire alarm system with three pull stations and monitoring in her AFCH?

DISCUSSION

9. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements, and is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements relating to the Code, when requested by a substantially affected person or a local enforcing agency.

10. The appeal letter attached to the Petition references Petitioner's facility as an Adult Living Facility, which has different firesafety requirements than an AFCH. However, Petitioner alleges that her facility will be licensed as an AFCH and the question will be answered based on that assertion of fact. If the actual facts are different from those facts set forth in the Petition, a different result might be reached.

11. AFCHs are governed by the provisions of Rule Chapter 69A-57, *Florida Administrative Code*, entitled "Uniform Firesafety Standards For Adult Family Care Homes." These rules apply to all new, existing, and proposed AFCHs licensed in accordance with Chapter 429, *Florida Statutes*.

12. The phrase "Adult Family Care Home" is defined at Section 429.65 (2), *Florida Statutes*, as a "full-time, family-type living arrangement, in a private home, under which a person who owns or rents the home provides room, board, and personal care, on a 24-hour basis, for no more than five disabled adults or frail elders who are not relatives." Every person who intends to be an adult family-care home provider must be licensed by the Agency for Health Care Administration, and the licensee must live full time in the home.

13. The Department is authorized by the provisions of Section 633.022, *Florida Statutes*, to promulgate uniform firesafety rules for special buildings and structures, including adult family-care

homes. A local authority is prohibited by the provisions of Subsection 633.022(b), *Florida Statutes*, from requiring more stringent uniform firesafety standards for adult family care homes.

14. As it relates to the question at issue, the Department’s AFCH rule adopts NFPA 101 (2000 edition), Sections 32-3.3.4.7 and 32-3.3.4.8. Section 32.3.3.4.7 provides that each sleeping room must be provided with an approved smoke alarm that is powered from the building electrical system. Section 32.3.3.4.8 provides that all living areas and corridors be provided with smoke detectors in accordance with NFPA 72, National Fire Alarm Code, that are arranged to initiate an alarm that is audible in all sleeping areas.

15. These provisions require that each sleeping room, living area and corridor be equipped with a smoke alarm powered from the electrical system; i.e., not battery operated. If the AFCH is not able to attain an evacuation capability of “prompt,” the licensing agency will be notified that the AFCH no longer meets firesafety requirements. If the AFCH receives an evacuation capability of “slow,” and the AFCH is in compliance with Subdivisions 32.2.3.5.1, 32.2.3.5.2, and 32.2.3.5.3, Chapter 32, NFPA 101, 2000 edition, which require an approved fire sprinkler system, the AFCH shall be deemed to have met the required firesafety requirements and no notification shall be provided to the licensing agency.¹

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

1. Petitioner is a substantially affected person entitled to the issuance of this Declaratory Statement.
2. Do the provisions of Rule Chapter 69A-57, *Florida Administrative Code*, require Petitioner to install a fire alarm system with three pull stations and monitoring in her AFCH? No. The specific

¹ Rule 69A-57.005(3)(4), *Florida Administrative Code*.

requirements for an adult family care home are set forth in paragraphs 14 and 15 of this Declaratory Statement.

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 in the City of Tallahassee, Leon County, Florida, this ____day of _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

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