



THE TREASURER OF THE STATE OF FLORIDA  
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

David P. Rose

Case No.: 43276-01-SP

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 September 14, 2001, by the Department of Insurance, hereinafter referred to as the Department, from David P. Rose, 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. Town homes are being built in the Orlando area.
- B. The town homes consist of five units in each building.
- C. The units have a four hour wall between each unit and are of combustible construction.
- D. Because of the four hour wall, the town homes have been designated as single family occupancies.
- E. Sprinkler systems are being installed in accordance with NFPA (National Fire Protection Association) 13D.

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

Is a Class IV Fire Sprinkler Contractor permitted to install fire sprinkler systems in town homes:

- a. which are located in a building consisting of five units (or five town homes) each,
- b. with each building having a four hour wall between each town home unit,
- c. which is of combustible construction, and
- d. each of which is designated as a single family occupancy due to the four hour wall,
- e. with the installation performed under the requirements of NFPA 13D?

NOW, THEREFORE, in specific response to your questions, it is the position of the Division of State Fire Marshal that:

6. For the reasons stated below, it is NOT permissible for a Fire Sprinkler Contractor IV to install fire sprinkler systems in town homes in a building consisting of five units, with a four hour wall between each unit, which is of combustible construction, and each of which is designated as a single family occupancy due to the four hour wall, with the installation performed under the requirements of NFPA 13D.

7. Section 633.021(5), Florida Statutes, states:

(d) "Contractor IV" means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. (Emphasis supplied).

8. Therefore, by definition,<sup>1</sup> a Contractor IV is restricted to performing the installation of systems in detached one-family dwellings, detached two-family dwellings, and mobile homes. Section 633.021, Florida Statutes, specifically excludes from its definition preengineered fire systems and single-family homes in cluster units such as apartments, condominiums, and assisted living facilities or any building connected to other dwellings.

### 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

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<sup>1</sup> "Under the principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another." *Moonlit Waters Apartments Inc. v. Cauley*, 666 So.2d 898, 900 (Fla. 1996), cited in *Progressive Southeastern Insurance Company .v. Young*, Petitioners No. SC93544, Supreme Court of Florida, Feb. 10, 2000.

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 \_\_\_\_\_, 2001.

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GREG GAY  
Deputy Commissioner,  
Treasurer and State Fire Marshal

Copies furnished to:

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