

STATE OF FLORIDA
DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL

In re the Matter of

SUNRISE OPPORTUNITIES, INC.

Case No.: 33544-99-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on December 17, 1999, by the Department of Insurance, hereinafter referred to as the Department, from Sunrise Opportunities, Inc., hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. Pursuant to Chapters 120 and 633, Florida Statutes, the Treasurer and 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 it operates a group home for six persons with developmental disabilities which is presumed to be licensed pursuant to Section 393.067, Florida Statutes.

5. Petitioner asserts that the home fully meets the provisions of Chapter 21 of the 1988 edition of NFPA 101, as required by Rule Chapter 4A-38, Florida Administrative Code (F.A.C.), (hereinafter referred to as NFPA 101).

6. Petitioner further asserts that the Sunrise Fire Department has mandated that the alternative provisions of "Chapter 3 and Chapter 6 of NFPA 101M, "Alternative Approaches to Life Safety", [sic] as referenced in Rule 4A-3.012, F.A.C.," (hereinafter referred to as NFPA 101M), must be used in place of the requirements listed in the Rule, specifically its provisions for conducting fire drills.

7. The Petitioner requests the Department to render a Declaratory Statement on the following issue:

Whether the local authority having jurisdiction may require the Petitioner to meet the alternative requirements of NFPA 101M when the facility fully meets NFPA 101, in compliance with the specific requirements of Rule Chapter 4A-38, F.A.C.

8. The applicable provisions are Sections 4A-38.021, 4A-38.023, and 4A-38.024, F.A.C., which provide:

4A-38.021 Discretionary Powers of the Authority Having Jurisdiction.—

The authority having jurisdiction may modify these rules under the following conditions:

(1) The provisions of Chapter 3 and Chapter 6 of NFPA 101M, "Alternative Approaches to Life Safety", *[sic]* as referenced in Rule 4A-3.012, Florida Administrative Code, shall be considered acceptable as an alternative method.

(2) Alternatives/equivalency shall be documented and such documents shall be provided to the property owner to include but not be limited to:

(a) A list of those fire code issues modified, identified and/or considered in the alternative/equivalency process.

(b) If Chapter 3 and Chapter 6 of NFPA 101M, is used to establish equivalency then the evaluation documentation shall be provided to the property owner.

(c) A brief statement describing the alternative/equivalency concepts used and the results of these concepts with respect to fire code conditions that may not literally comply with required codes.

(3) Alternative or equivalency determinations of existing facilities shall be considered during subsequent inspections for fire safety. If in the opinion of the authority having jurisdiction, the previous determinations are no longer applicable, then fire code requirements may be imposed. A brief statement describing the fire code requirements in light of previous alternative/equivalency determinations shall be provided.

(4) This section in no way should be considered to limit the authority having jurisdiction in granting or denying alternative/equivalency procedures or methodologies.

4A-38.023 Standards of the National Fire Protection Association Adopted.—

The standards of the National Fire Protection Association for life safety from fire, as provided in NFPA 101, Life Safety Code, 1988 Edition, which is hereby adopted and incorporated by reference, shall be the uniform fire safety standards required for this state with respect to retardation facilities

except as modified by this rule chapter. Chapter 21, "Residential Board and Care Occupancies", shall be the uniform standard, with the exception as indicated in Section 21-3.1.3.2.

4A-38.024 Documentation of Client's Evacuation Status.—

Documentation of client's evacuation status shall be based on the speed of evacuation. Speed of evacuation is to be determined via documentation of actual fire drills conducted with the Department of Health and Rehabilitative Services personnel present, as evidenced by their signature on at least two fire drill reports during the preceding year.

9. The requirements of Section 633.022(1)(b), Florida Statutes, relating to uniform requirements supersede local minimum requirements for any specific structures named therein. (Op. Atty. Gen. 93-40, May 26, 1993).

10. Facilities for the developmentally disabled are named in Section 633.022(1)(b), Florida Statutes.

11. Therefore, with respect to those structures, the rules of the State Fire Marshal and the codes adopted therein supersede local minimum standards.

12. Rule 4A-28.023, F.A.C., requires the home to comply with NFPA 101.

13. Rule 4A-38.021, F.A.C., permits the authority having jurisdiction to accept NFPA 101M, as an alternative to the requirements of NFPA 101, with conditions.

14. The first and primary condition, as stated in the rule, is that "The provisions of Chapter 3 and Chapter 6 of NFPA 101M, 'Alternative Approaches to Life Safety,' as referenced in Rule 4A-3.012, [F.A.C.], shall be considered acceptable as an alternative method."

15. When the facility is in full compliance with the provisions outlined within the Rule NFPA 101, there is no cause to invoke the alternative provisions permitted by the Rule.

16. Section 4A-38.024, F.A.C., provides the standards for documentation of client's evacuation status, and supersedes any local minimum standards on the same subject.

17. The grant of authority to the local authority having jurisdiction means that the local authority having jurisdiction may consider NFPA 101M to be an acceptable alternative to NFPA 101.

18. It does not mean that the local authority having jurisdiction may require compliance with NFPA 101M in place of NFPA 101.

19. NFPA 101 and the requirements and standards contained therein must be followed in all cases except those cases in which the local authority having jurisdiction has chosen to accept NFPA 101M, in lieu of the requirements of NFPA 101.

20. Stated another way, the grant of authority in 4A-38.021, F.A.C., does not provide authority for the local authority having jurisdiction to require compliance with either NFPA 101 or NFPA 101M.

21. If the authority having jurisdiction has chosen to accept as an alternative NFPA 101M, then the decision of which provision to implement, NFPA 101 or NFPA 101M, belongs to the facility, not the authority having jurisdiction.

22. If, therefore, the facility chooses to and does comply with NFPA 101, it is in compliance with the uniform standards of Section 633.022, Florida Statutes; likewise, if the facility chooses to and does comply with NFPA 101M, and the authority having jurisdiction has chosen to accept that alternative under its grant of authority in 4A-38.021, then that facility is also in compliance.

Therefore, the authority having jurisdiction does not have the authority to require the Petitioner to meet either:

A. The alternative requirements permitted by the Rule, i.e., NFPA 101M, in place of the specific requirements of the Rule, i.e. NFPA 101,

or

B. Both the specific requirements of the rule (NFPA 101) and the alternative requirements permitted to be accepted by the authority having jurisdiction (NFPA 101M).

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, Fla.R.App.P., 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 this ____ day of January, 2000.

Bill Nelson, Insurance Commissioner
State Fire Marshal