



FLORIDA
DEPARTMENT OF
FINANCIAL SERVICES



TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA

In re the Matter of

**Tavss, James M., Community Manager,
Ro-Mont South Executive Council,
Petitioner**

Case No.: 83852-05-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 October 18, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from James M. Tavss, Community Manager, Ro-Mont South Executive Council, hereinafter referred to as Petitioner. 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 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 states:

A. Ro-Mont South Executive Council, Inc., as agent for the underlying condominium associations, has been ordered to install a fire alarm system.

B. One of the underlying condominium associations, "Condo J," has used Section 718.112, Florida Statutes, to "opt out," defining the fire alarm system as an "other engineered life safety system."

C. Condo J has taken a vote indicating that they have voted in favor of forgoing the installation of a fire sprinkler system or other engineered life safety system and are, therefore, not willing to pay their share of the fire alarm system and are encouraging other associations to do the same.

QUESTION

5. Petitioner's question is: Is a fire alarm system an "engineered life safety system" such that a condominium association may opt out of installing a fire alarm system as permitted for sprinkler systems and other "engineered systems" in Section 718.112, Florida Statutes?

DISCUSSION

6. According to Petitioner, the Miami-Dade Fire Rescue Department has required the owners to install a fire alarm system in accordance with the provisions of subdivision 31.3.4.1 of NFPA 101, Florida 2003 edition, the Life Safety Code, as adopted in Rule Chapter 69A-60, Florida Administrative Code, otherwise known as the Florida Fire Prevention Code.

7. Subdivision 31.3.4.1.1 states:

Apartment buildings with more than three stories or with more than 11 dwelling units...shall be provided with a fire alarm system in accordance with Section 9.6....¹

8. A condominium is an apartment building and must comply with the subject provision.

9. The National Fire Protection Association defines a Fire Alarm System as
...[A] system or portion of a combination system that consists of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

¹ Contains exceptions not relevant here.

10. In assembling an engineered lifesafety system, a fire alarm system may or may not be a component thereof; however, a fire alarm system is not in and of itself an engineered life safety system.

11. In lieu of a full fire sprinkler system, in some cases one may undertake the design and installation of an engineered life safety system, which may or may not include some components of a fire alarm system as well as compartmentation, fire rated partitions, partial automatic sprinkler protection, and other approved systems.

DECLARATORY STATEMENT

WHEREFORE, the State Fire Marshal, hereby rephrases and responds to the question presented as follows:

12. QUESTION: Is a fire alarm system by itself, without any other life safety system, feature, or attribute, an “engineered life safety system?”²

RESPONSE: No.

13. Finally, the Department notes that certain statements contained herein may generally constitute an “...agency statement of general applicability that implements, interprets, or prescribes law or policy...,” which is the definition of a “rule” as contained in Section 120.52(15), Florida Statutes; therefore, the Department intends to initiate rulemaking proceedings, pursuant to Section 120.54, Florida Statutes.³

² Omitted is the phrase, “...such that a condominium association may opt out of installing a fire alarm system as permitted for sprinkler systems and other “engineered systems” in Section 718.112, Florida Statutes,” because the Division of State Fire Marshal does not have jurisdiction over Chapter 718, Florida Statutes, and cannot offer a position with respect thereto; nevertheless, regardless of the context, a fire alarm system, in and of itself, is not an engineered life safety system. For an interpretation relating to Chapter 718, Florida Statutes, Petitioner is referred to the Department of Business and Professional Regulation.

³ Fla. Dept. of Bus. & Prof. Reg. v. Investment Corp. of Palm Beach, 747 So.2d 374 (Fla. 1999). For clarification and to eliminate confusion regarding whether a fire alarm system, by itself, can constitute an “engineered life safety system” such as was occasioned by this petition, during the next triennial review and amendment of the Florida Fire Prevention Code in 2006—2007, the Department of Financial Services intends to revise NFPA 101, Florida edition, subdivision 31.3.5.10.3 to read:

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 _____, 2005.

Karen Chandler
Deputy Chief Financial Officer

31.3.5.10.3 Where required by 31.3.5.10.2, any law, or any rule of the division, or where required or permitted by any authority having jurisdiction, an engineered life safety system shall be developed by a registered professional engineer experienced in fire and life safety system design, approved by the authority having jurisdiction, and include any two or more ~~at~~ of the following:

- (1) Partial supervised automatic sprinkler protection
- (2) Smoke detection and alarm systems
- (3) Smoke control systems
- (4) Compartmentation
- (5) Other ~~approved~~ systems approved by the authority having jurisdiction.

Copies furnished to:

James M. Tavss,
20314 Northeast 2nd Avenue
Miami Gardens, Florida 33179

Gabriel Mazzeo, Attorney
Division of State Fire Marshal
200 East Gaines Street
Tallahassee, Florida 32399-0340