



REPRESENTING
CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA
STATE FIRE MARSHAL

In The Matter Of:

BOCA RATON FIRE RESCUE

Case No.: 113018-10-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services,

RICHARD L. OWENS and
CYNTHIA M. OWENS,

Interveners.

_____ /

FILED

JAN 10 2011

Docketed by _____

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement (hereinafter "Petition") filed by Boca Raton Fire Rescue (hereinafter "Petitioner"), with the Department of Financial Services, Division of State Fire Marshal (hereinafter the "Department"), on October 12, 2010. A Petition to Intervene was timely filed by Richard and Cynthia M. Owens (hereinafter the "Interveners"), on October 21, 2010. 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 Petitions. 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 the questions are being answered as purely hypothetical. If any of the facts asserted by the

parties are untrue or materially incomplete, the conclusions of this Declaratory Statement could be significantly different.

3. If the petitions contain 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 parties are entitled to have the Department issue this Declaratory Statement.

BACKGROUND AND FACTS ASSERTED

4. The Petitioner has fire code enforcement authority within the city limits of Boca Raton, Palm Beach County, Florida. The Interveners own a unit within the subject property.

5. The Declaratory Statement was requested pursuant to the provisions of Sections 120.565 and 633.01(6), *Florida Statutes*, and Rule 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 the Petitioner's particular set of circumstances.

6. The subject of the Petition is Section 633.0215(14), *Florida Statutes*, effective July 1, 2010, relating to manual fire alarm systems.

7. The subject property, located at 921 Osceola Drive, Boca Raton, Florida, is a three story townhouse development built in 1999. The largest buildings in the development are three story, four unit buildings. Each building has a separate alarm system and sprinkler system.

8. The homeowners association voted to remove the fire alarm system that affected all occupants of the development, and requested Petitioner to allow the removal. One of the owners requested relief from the removal stating that it was not the state's intent in Senate Bill 1196 to lessen the fire protection and life safety of the individual units and homeowners.

9. A Petition to intervene was filed by Richard L. Owens and Cynthia M. Owens (hereinafter “Interveners”), owners of unit nine of the subject property.

10. According to the Petition to Intervene, the units are owned in fee simple absolute, and all of the fire alarm system apparatus is located on the homeowners property, not on the common area, including devices in the interiors of homes (e.g., manual pull-down alarms, automatic smoke detectors, strobes/sirens, etc., as well as attendant sprinkler system apparatus, including tamper and backflow switches (for the elevator shaft sprinkler system.) The fire alarm system control panel is located in a closet room, which is on and attached to homeowner property (at each of the four courtyard units, including Interveners’ unit.)

11. The units contain no public corridors or other public areas where fire alarm devices are located and the Boca Raton Fire Marshal has verified that a 13R system was installed at the property, and the property was classified as residential property under the then existing building code, according to Interveners, who also state that the monitoring and service of the alarm system is implemented by the homeowners association.

12. Notice of receipt of the Petition herein was published in Volume 36, Number 44 of the *Florida Administrative Weekly*, on November 5, 2010.

QUESTIONS

13. The Petitioner poses the following questions:

- A. Is the intent of the statute to include the subject property as multifamily residential buildings?
- B. Is the intent of the statute to apply to the existing structures such as the subject structure?
- C. If yes, is a previously required alarm system in a “condominium, cooperative, or multifamily residential building” less than four stories still required?

D. Is the intent of the legislation to allow only the removal of the “manual” portion of the alarm system from “condominium, cooperative or multifamily residential buildings?”

E. Is the intent of the statute to allow the removal of the “automatic” portion of the alarm system from “condominium, cooperative or multifamily residential buildings?”

F. If the intent of the statute is to apply to existing townhome buildings, is FFPC NFPA 1-10.4.2 applicable?

G. If the intent of the statute is to allow the removal of the alarm system, is the inside of a dwelling space considered an area “obvious to the public” where devices should be removed also?

H. Is the intent of the statute to allow the total removal of an alarm system from multifamily dwellings?

I. Is the intent of the statute to allow for the removal of alarm systems that provide monitoring of sprinkler systems?

J. Is the intent of the statute to allow the removal of an alarm system from an NFPA 13R system in a multifamily dwelling?

14. The Interveners ask the following questions:

A. Does the statute apply to Interveners’ residence?

B. If the statute allows for removal of the manual portions of an alarm system, would removal of manual portions of an alarm system trigger the requirement of a complete removal (i.e., all other components) of the alarm system in a multifamily residential building such as Intervener’s residence?

DISCUSSION

15. The Department is authorized pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements; the Department is required to issue Declaratory Statements relating to the

Code, when requested by a substantially affected person or a local enforcing agency, pursuant to Section 633.01(6), *Florida Statutes*,

16. The Department adopted the 2006 editions of NFPA 101, the “Life Safety Code” and NFPA 1, the “Uniform Fire Code,” by reference in Rule 69A-60.003, *Florida Administrative Code*, as part of its triennial update of the Florida Fire Prevention Code (hereinafter the “Code”), pursuant to the authority of Section 633.0215, *Florida Statutes*.

17. At the heart of the questions are two statutory provisions enacted by the 2010 Florida Legislature. Because of a numbering error, both provisions were published in Section 633.0215(14), *Florida Statutes*; however, the relevant provision was published as a footnote. According to staff of the Statutory Reviser’s office, both sections are good law, and will be referred to the legislature to clarify any apparent conflict in the next session.

18. The footnote to Section 633.0215(14), *Florida Statutes*, provides:

A condominium, cooperative, or multifamily residential building that is less than four stories in height and has a corridor providing an exterior means of egress is exempt from the requirement to install a manual fire alarm system under s. 9.6 of the Life Safety Code adopted in the Florida Fire Prevention Code.

19. The phrase “residential building” is not defined in *Florida Statutes*; however, the Code addresses firesafety requirements by type of “occupancy,” defined at NFPA 101-3.3.168 as, “the purpose for which a building or other structure, or part thereof, is used or intended to be used.” The subject property is treated as a “residential occupancy,” defined at NFPA 101-3.3.168.13, as an “occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional.” One and two family residential occupancies are excluded from regulation under

Chapter 633, *Florida Statutes*,¹ and the Code explains that townhouse units are considered to be apartment buildings if there are three or more units in the building.²

20. New residential apartment building occupancies, “with three stories or with more than 11 dwelling units” are required pursuant to the Code to be protected with a manual fire alarm system. Existing residential apartment building occupancies “with **more than** three stories” (emphasis added) are required by be protected with a manual fire alarm system.³

21. NFPA 1-10.4.2 of the Code provides that “no existing life safety feature shall be removed or reduced where such feature is a requirement for new construction.”

22. In considering a statute’s operation, a well-established rule of construction is that an exemption from a statute enacted to protect the public welfare is strictly construed against a person claiming the exemption, and in the absence of a clear legislative intent to the contrary, a law is presumed to act prospectively. Specifically, a statute that is substantive will not operate retrospectively absent a clear legislative intent to the contrary, but instead will apply prospectively.⁴

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

1. The Petitioner is a substantially affected person entitled to the issuance of this Declaratory Statement.

2. Petitioner’s questions and answers:

Question A. Is the intent of the statute to include the subject property as a multifamily residential buildings?

¹ Section 633.025(8), *Florida Statutes*.

² NFPA 101-A.3.3.28.3.

³ NFPA 101-30.3.4.1.1 and NFPA 101-31.3.4.1.1.

⁴ 48A Fla. Jur2d, “Statutes,” Sections 108 and 208; *Hepburn v. Dep’t of Children and Families*, 772 So.2d 561 (Fla. 1st DCA 2000); *State v. Nourse*, 340 So.2d 966, 969 (Fla. 3d DCA 1976); *Astral Liquors v. Dep’t of Business Regulation*, 463 So.2d 1130 (Fla. 1985).

Answer: Yes, because the subject property meets the definition of a residential occupancy in the Code in that it provides sleeping accommodations, and is comprised of three or more residential units.

Question B. Is the intent of the statute to apply to existing structures such as the subject structure?

Answer: Yes, because the subject property is a multifamily residential occupancy.

Question C. If yes, are previously required alarm systems in a “condominium, cooperative, or multifamily residential building” less than four stories still required? The Department interprets your question to ask whether the existing alarm system in the subject property can be removed.

Answer: No. The Code requires a fire alarm system in a new three story multifamily residential building; therefore, a fire alarm system previously installed in a three story multifamily residential building is still required by the Code and may not be removed. Section 633.0215(14), note one, *Florida Statutes*, doesn't address removals, only installations. Statutory exemptions must be strictly construed and apply prospectively unless otherwise clearly indicated.

Question D. Is the intent of the legislation to allow only the removal of the “manual” portion of the alarm system from “condominium, cooperative or multifamily residential buildings?”

Answer: See answer to question C above.

Question E. Is the intent of the statute to allow the removal of the “automatic” portion of the alarm system from “condominium, cooperative or multifamily residential buildings?”

Answer: See the answer to Question C above.

Question F. If the intent of the statute is to apply to existing townhome buildings, is FFPC NFPA 1-10.4.2 applicable? The Department interprets this question to ask whether NFPA 1-10.4.2 of the Code is applicable to the removal of the existing fire alarm system from the subject property.

Answer: Yes, the cited provision of the Code prohibits removal of the manual alarm system because it is a required system for a new three story residential apartment building.

Question G. If the intent of the statute is to allow the removal of the alarm system, is the inside of a dwelling space considered an area “obvious to the public” where devices should be removed also?

Answer: See the answer to Question C above.

Question H. Is the intent of the statute to allow the total removal of an alarm system from multifamily dwellings?

Answer: See answer to Question C above.

Question I. Is the intent of the statute to allow the removal of alarm systems that provide monitoring of sprinkler systems?

Answer: See answer to Question C above.

Question J. Is the intent of the statute to allow the removal of an alarm system from an NFPA 13R system in a multifamily dwelling?

Answer: See answer to Question C above.

3. Interveners’ questions and answers:

Question A. Does the statute apply to Interveners’ residence? The Department interprets the question to ask whether the statute applies to the building that houses Interveners’ residence.

Answer: See answer to Petitioner’s Question A above.

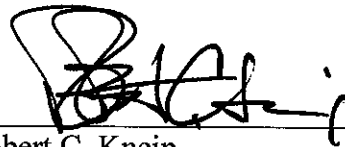
Question B. If the statute allows for removal of the manual portions of an alarm system, would removal of manual portions of an alarm system trigger the requirement of a complete removal (i.e., all other components) of the alarm system in a multifamily residential building such as Intervener’s residence?

Answer: See answer to Petitioner's Question C above.

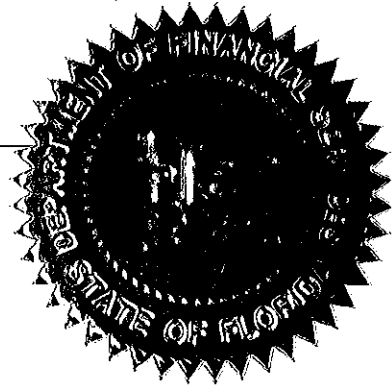
NOTICE OF RIGHTS

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 Julie Jones, Agency Clerk, at 612 Larson Building, Tallahassee, Florida, 32399-0333 and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement. A copy of the notice may also be served by email addressed to Julie.Jones@myfloridacfo.com or by facsimile transmission at 850-488-0697

ENTERED in the City of Tallahassee, Leon County, Florida, this 10 day of January, 2011.



Robert C. Kneip
Chief of Staff



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