



THE TREASURER OF THE STATE OF FLORIDA  
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

Mark Fischer  
Deputy Fire Chief  
Cocoa Beach Fire Department

Case No.: 42721-01-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 July 13, 2001, by the Department of Insurance, hereinafter referred to as the Department, from Mark Fischer, Deputy Fire Chief, Cocoa Beach Fire Department, 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. They have several two-story 14 unit apartment Buildings in a complex with exterior walkway and shared manual fire alarm systems.
- B. The system is now nonfunctional and must be replaced.
- C. National Fire Protection Association (NFPA) 101, 1997 edition, *Existing Apartments*, Chapter 19-3.4.1,<sup>1</sup> states: “Apartment buildings with more than three stories or with more than 11 living units shall be provided with a fire alarm system.”
- D. Section 633.025(10), Florida Statutes, with respect to standards established by the NFPA 101, 1985 edition, Section 19-3.4.1, provides that those standards shall not apply to structures having direct access to the outside from each living unit and having three stories or less.
- E. Under previous interpretations of the State Fire Marshal, apartments with outside balconies are included under this exemption. Those interpretations also do not state the number of units. Using the referenced previous interpretations, the alarm system could be discontinued and removed.

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<sup>1</sup> Although your petition and Section 633.025(10), Florida Statutes, both refer to “19.3.4.2.1,” the context requires that it be read as 19.3.4.1. Therefore, throughout this Declaratory Statement, 19.3.4.1 will be used where 10.3.4.2.1 is referenced.

F. NFPA 101, 2000 edition, does not include an exemption that matches the State Fire Marshal's previous interpretation.

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

Is it the intent of the State Fire Marshal to continue the previous interpretations past December 31, 2001?

6. Any previous interpretation of the law or NFPA 101 by the State Fire Marshal relating to the above set of facts is null, void, and of no effect after the date of this Declaratory Statement.

7. The edition of NFPA 101 in effect in your municipality as of the date of this Declaratory Statement is the edition that controls until December 31, 2001.

8. NFPA 101, 2000 edition, controls on and after January 1, 2002.

NOW, THEREFORE, in specific response to your question relating to the interpretation of Section 19.3.4.1 of NFPA 101, it is the position of the Division of State Fire Marshal that:

A. The fire alarm system must be replaced because the building does not fit the 11 or fewer exemption.

B. The walkway does not constitute its own independent exit or its own independent stairway discharging at grade. See Subdivision 31.3.4.1 of NFPA 101, 2000 edition, which states:

**“31.3.4.1 General** 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, except as modified by 31.3.4.2 through 31.3.4.5.

*“Exception: Where each dwelling unit is separated from other contiguous dwelling units by fire barriers (see 8.2.3) having a fire resistance rating of not less than ½ hour, and where each dwelling unit has either its own*

*independent exit or its own independent stairway or ramp discharging at grade.*” (Emphasis supplied).

- C. The language in Subdivision 31.3.4.1 of NFPA 101 is the same in the 2000 edition as in the previous edition, which does not change anything. However, there is a change in Section 633.025(10), Florida Statutes, from 2000 to 2001. The 2000 version of Section 633.025(10), Florida Statutes, states: “*With respect to standards established by the National Fire Protection Association (NFPA) 101, Life Safety Code, 1985 edition, s. 19-3.4.2.1,<sup>2</sup> those standards shall not apply to structures having direct access to the outside from each living unit and having three stories or less.*” (Emphasis supplied).

Such language is not contained in the 2001 version of Section 633.025(10), Florida Statutes; therefore, the exemption for structures having direct access to the outside from each living unit, such as on a common balcony or a common walkway, and having three stories or less does not exist as of January 1, 2002. As of January 1, 2002, to meet the exemption the apartment must have a separate independent exit to the outside, or must have a separate independent stairway or ramp discharging at grade. If neither of those circumstances apply, the apartment must be protected by a fire alarm system.

#### 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 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

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<sup>2</sup> See footnote 1. Proper reference is to 19.3.4.1.

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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