

**PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES**

IN THE MATTER OF:

_____ Case No.: _____
(NAME OF PETITIONER) _____
_____ /

PETITION FOR DECLARATORY STATEMENT

**IMPORTANT: BEFORE FILING, PLEASE READ RULE 69A-60.007(5),
ON PAGE 5 OF THIS PETITION FORM**

Petitioner, _____, pursuant to Section 120.565, Florida Statutes, Rule Chapter
(Name of Petitioner)
28-105, Florida Administrative Code, and Rule 69A-60.007, the Florida Fire Prevention Code, hereby requests
a declaratory statement from the Florida Department of Financial Services and as grounds therefore states the
following (*IN ALL CASES, ATTACH ADDITIONAL PAGES IF NEEDED, USING THE CORRESPONDING NUMBER FOR EACH
SECTION ADDRESSED*).

1. Petitioner's Name and Address:^{1*}

Name

Address

Telephone

Number

Facsimile

Number

e-mail address (if any)

2. Name and Address of Petitioner's Attorney or Qualified Representative, if any:

Name,

(Attorney/Qualified

Representative)

^{1*} **NOTICE:** if this form is completed by an authority having jurisdiction for a county, municipality, or special firesafety district, it must be signed by the senior administrative firesafety official of the authority having jurisdiction, such as the fire marshal or a similarly situated or designated person or a fire chief. Only the senior

Address

Telephone

Number

Facsimile

Number

e-mail

address

(if

any)

3. Statute(s), Agency Rule(s), Agency Order(s) and/or Code Section(s) on Which the Declaratory Statement is Sought (Please Include Specific Subsections, if any):

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4. Description of How the Statute(s), Agency Rule(s), Agency Order(s), and/or Code Section(s) May Substantially Affect the Petitioner in the Petitioner's Particular Set of Circumstances:

5. Address of The Building or Structure, or Proposed Building or Structure, Affected by this Petition, if applicable:

6. If this Petition Involves a Ruling of an Authority Having Jurisdiction, the Name, Address and Phone Number of the Authority Having Jurisdiction:

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administrative firesafety official or a fire chief has standing to petition for a declaratory statement on behalf of an authority having jurisdiction.

7. Please Check the Box Indicating Whether You Filed an Appeal of a Ruling of the Authority Having Jurisdiction, if applicable:

PLEASE NOTE: Rule 69A-60.007(5), Florida Administrative Code, on the last page of this document, requires that a person having a dispute with a local fire official must complete the local appeal process PRIOR to filing a petition for declaratory statement. Therefore, if your circumstances involve a dispute with a local fire official and you have not appealed the decision of the local fire official, this petition will be dismissed until the local appeal process has been completed and you have received an adverse ruling by the local appeals board, commission, or council.

Yes, Appeal Filed No, Appeal Not Filed Not Applicable

8. If an Appeal Was Filed, Please State the Response or Outcome of the Appeals Board and Attach a Copy Of All Official Orders or Notices:

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-

9. Have You Filed or Do You Plan to File this or a Similar Question with any Other State or Local Agency?

Yes No

10. If Yes, Please State the Name of Each State or Local Agency:

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11. Are you involved in any litigation related to the question(s) presented in this case? Yes No

12. If yes, please describe briefly

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13. QUESTION(S) (Please be Specific):

Respectfully submitted this ____ day of _____, 200_.

2*

 Petitioner (or Attorney or Qualified Representative for Petitioner)

**Mail original to:
 General Counsel Acting as Agency Clerk
 Department of Financial Services
 612 Larson Building
 200 East Gaines Street
 Tallahassee, Florida 32399-0300**

(Send this three page form only. You need not send the accompanying rules or statutes on the next page which are provided for your information and convenience.)

Please note that the use of this form containing the information in it is neither solicited nor required; however, if used, it complies in all respects with the requirements of the law and all rules pertaining to declaratory statements, and will assist the division in expediting the proceeding.

2* Please see footnote 1 relating to the authorized signature for an authority having jurisdiction.

Declaratory Statements: FLORIDA STATUTES

120.565 Declaratory statement by agencies.—

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set or circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Weekly and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Weekly. Agency disposition of petitions shall be final agency action.

120.68 Judicial review.—

(1) A party who is adversely affected by final agency action is entitled to judicial review. A preliminary, procedural, or intermediate order of the agency or of an administrative law judge of the Division of Administrative Hearings is immediately reviewable if review of the final agency decision would not provide an adequate remedy. [Remaining subsections omitted].

Declaratory Statements: ADMINISTRATIVE RULES

28-105.1 Purpose and Use of Declaratory Statement.

28-105.2 The Petition.

28-105.3 Agency Disposition.

28-105.001 Purpose and use of Declaratory Statement.

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency. A petition for declaratory statement must describe the potential impact of statutes, rules, or orders upon the petitioner's interests.

28-105.002 The Petition.

A petition seeking a declaratory statement shall be filed with the clerk of agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

(1) The caption shall read:

**Petition for Declaratory Statement
Before (Name of Agency)**

(2) The name, address, telephone number, and any facsimile number of the petitioner.

(3) The name, address, telephone number, and any facsimile number of the attorney or qualified is sought.

(3) The name, address, telephone number, and any facsimile number of the attorney or qualified representative (if any) of the petitioner.

(4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.

(5) A description of how the statutes, rules or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.

(6) The signature of the petitioner or of the petitioner's attorney or qualified representative.

(7) The date.

28-105.003 Agency Disposition.

The agency may hold a hearing to consider a petition for declaratory statement, If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. If a hearing is held, it shall be conducted in accordance with Sections 120.569 and 120.57(2), F.S. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Section 69A-60.007, Florida Administrative Code

(5)(a) Section 633.01, F.S., provides that the State Fire Marshal may issue, and if requested in writing by a substantially affected person or by a local enforcing agency, i.e., an authority having jurisdiction, the State Fire Marshal shall issue declaratory statements to interpret the Florida Fire Prevention Code.

(b) To request an interpretation of the Florida Fire Prevention Code from the State Fire Marshal through a declaratory statement, a person who is not an authority having jurisdiction must proceed through the local appeal process and receive an adverse ruling from the local appeals board. A person does not become a substantially affected person until such person receives an adverse ruling after having completed the local appeal process because the local interpretation with which the person disagrees, if challenged, cannot be enforced until after having been upheld in the local appeal process.

(c) If the person who is not an authority having jurisdiction receives an adverse ruling after proceeding through the local appeal process, such person then becomes a substantially affected person within the meaning of Section 633.01, F.S., and may at that time petition for a declaratory statement from the State Fire Marshal.

(d) Any petition for declaratory statement that has been received by the State Fire Marshal from a person who is not an authority having jurisdiction and who has not proceeded through the local appeal process shall be dismissed, without prejudice to re-bring the petition after such person has received an adverse ruling through the local appeal process.

(e) An authority having jurisdiction may request a declaratory statement from the State Fire Marshal at any time, regardless of whether the interpretation of the authority having jurisdiction has been challenged; however, an authority having jurisdiction must, in compliance with Section 120.565, F.S., be presented with an actual particular set of circumstances prior to petitioning for a declaratory statement. Declaratory statements are not issued on a hypothetical set of facts if the authority having jurisdiction or any other substantially affected person is not presented with an actual particular set of circumstances.

(f)1. A petition for a declaratory statement is not required to be in any particular form; however, each petition must comply fully with Section 120.565, F.S., and Chapter 28-105, F.A.C.

2. Although there is no requirement that a petition be in any particular form, a form exists on the Division of State Fire Marshal website located at <http://www.fldfs.com/SFM/> which, if used, complies in all respects with the requirements of the law and will assist the division in expediting the proceedings.