

THE COMMUNITY BUILDER

Special Florida Notification ...FIRE SPRINKLER RETROFITTING

Dear Board Members:

I have attempted to release information to you on the subject of Fire Sprinkler Retrofitting for the past month. Each time the information has been gathered in preparation for the send, new information has surfaced that superseded what I had written previously. But I am happy to say, the information that follows is the most accurate according to multiple, in-the-know sources.

The issue of Fire Sprinkler Retrofitting became a hot topic because of changes to FS 718 that eliminated a qualifying statement regarding the height of the building the statute applied to. The removal of that description, then caused the statute to be at odds with the Florida Fire Code regarding buildings that were required to either be retrofitted with a fire sprinkler system or an alternate called an Emergency Life Safety System or ELSS as it is referred to. Additionally, the statute allowed a process by which an association could "opt-out" of the retrofit through a vote of the membership at a duly noticed and called special membership meeting.

Multiple attorneys throughout Florida, the Association of Fire Marshalls, the Department of Business and Professional Regulation, all had opinions about who had to opt-out.

However, as of today, additional input by the Secretary of the Department of Business and Professional Regulation, Ken Lawson and Senator Jeremy Ring, who wrote the law, have provided clarification about the statute and the intent of the statute. They have indicated the removal of the term "high-rise" building (defined as "a building that is greater than 75 feet in height, where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story) did not automatically then require ALL low-rise and mid-rise condominiums to either retro-fit OR opt-out.



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The "opt-out" procedure had a deadline by which it was to be done: December 31, 2016. If associations had not opted-out with the prescribed vote, then the association was required to have applied for the requisite permits to allow the retro-fitting. The fact that the date for this process was so fast approaching and the issues that may have ensued for association's affected by the requirements, caused a great deal of consternation among many professionals related to community management.

Below is an excerpt from a letter from Florida Fire Sprinkler Association and the American Fire Sprinkler Association as it relates to the issue that speaks to the law and subsequent questions.

Florida Fire Sprinkler Association, Inc. and American Fire Sprinkler Association - FL

This is a joint news release presented by the Florida Fire Sprinkler Association and the Florida Chapter of the American Fire Sprinkler Association, August, 2016.

2016 Condominium Fire Sprinkler Retrofit in Florida

False and misleading information about condominium fire sprinkler retrofit requirements is causing condominium owners and managers serious confusion. This news release serves to provide clarity to this complex issue.

First and Foremost - There is no statutory fire sprinkler retrofit requirement for existing mid-rise or low-rise condominiums and therefore no need to vote to opt out. The Florida Fire Prevention Code requires high-rise buildings to retrofit fire sprinklers, or conduct an engineered life safety system. However, this code requirement does not apply to buildings under 75 feet – measured from the "lowest level of Fire Department vehicle access" to the floor level of the highest "occupiable story".

The substantive question is how do you exit a building in case of a fire? Fire department aerial apparatus cannot reach above 75 feet; the reason the 75-foot threshold was established decades ago. Fire departments have ladders to rescue those trapped in mid and low rise condominiums; the reason the fire sprinkler retrofit only applies to high-rise buildings.



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Questions and Answers

Q. Where does the fire sprinkler retrofit requirement for high-rise buildings come from?

A. The high-rise fire sprinkler retrofit requirement was added to the National model codes, which are adopted in Florida, as a result of tragic high-rise fires including the MGM Grand Hotel fire (87 deaths) and the DuPont Plaza fire (97 deaths) in San Juan. It is important to remember, this requirement is an NFPA 101 Life Safety Code requirement - a National model code - therefore is not exclusive to Florida. Over the past 15 years, the Florida Legislature has extended the compliance deadline several times to allow condominium associations time to budget and implement. As of this writing, Florida Statute 718.112 gives associations an opt-out deadline of December 31, 2016, and fire sprinkler system install or the implementation of an Engineered Life Safety System by December 31, 2019.

The idea that FS 718.112 (Condominium Law) has full authority over this issue is a misconception. While somewhat confusing, there are 4 important areas of law that works together to form the requirement;

1. FS 718.112 Condominiums - Bylaws. This law is widely believed to be the only applicable law. It is not. Its importance is based on the requirement to retrofit, the opting out language and when these events SHALL take place. Notice there is no mention of building height, i.e. high-rise, mid-rise.

718.112 ... "By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019."

2. Section 633.202, Florida Statutes. This statute section directs the State Fire Marshal to adopt the Florida Fire Prevention Code by rule to protect public health and safety.



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3. Florida Administrative Code 69A-3.012 Standards of the National Fire Protection Association and Other Standards Adopted {2016}. This FAC Rule is where the Florida Fire Prevention Code and all other life/fire safety codes get their authority from the Florida Legislature.

"(1) Except as specifically modified by statute or by the State Fire Marshal's rules, the "Florida Fire Prevention Code, 5th Edition {2014}," which is comprised of the Florida specific edition of NFPA 101, the Life Safety Code (2012 edition) and the Florida specific edition of NFPA 1, the Fire Code {2012 edition), are hereby adopted and incorporated by reference "

4. Florida Fire Prevention Code, 5th Edition. These Sections clearly define the NFPA code requirement to retrofit, applicability ONLY to high rise buildings, timelines, and the definition of "high rise".

If you still have questions as to whether or not your association may be required to address the retro-fit issue, we suggest that you contact your legal counsel to provide community specific information.