

COMMUNITY ASSOCIATION LAW ALERT

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Last Call for Opt-Out: Summary of Condominium Sprinkler Retrofit Requirements and Opt-Out Provisions

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The deadline for opting-out of the Condominium Sprinkler Retrofitting Requirements is December 31, 2016. The following is a general summary of the state of the law for those who still need to opt-out or who want to review whether they have complied. It is important that each condominium association make its own decision on how to handle the matter by relying upon its own advice of counsel and life safety engineer.

For the Sprinkler Retrofitting Requirements and Opt-Out Provisions, condominiums are generally separated into two distinct categories: high-rises and non high-rise condominiums. High-rise buildings are greater than 75 feet in height; the building height is measured from the lowest level of Fire Department access to the floor of the highest occupiable level.

High-Rise Condominiums

Under the Florida Fire Prevention Code, all high-rise condominiums must be protected by either 1) a complete automatic fire sprinkler system or 2) an Engineered Life Safety System ("ELSS") by no later than December 31, 2019. The Condominium Act, Section 718.112(2)(l), states that a residential condominium that does not have a sprinkler system must either initiate a building permit for the installation of a system showing compliance by December 31, 2019, or vote to opt-out of the retrofitting requirements. Therefore, high-rise condominiums must either hold an opt-out vote or initiate a building permit for sprinkler installations.

Of note, in the event that a high-rise condominium opts-out of the automatic fire sprinkler system retrofitting requirement, it must still have an ELSS completed by December 31, 2019. Currently, there is no opt-out provision related to the ELSS. You should work with a life safety engineer to determine your obligations under this requirement.

An opt-out vote is accomplished by holding a member's meeting where a majority of the total voting interests of the condominium must vote (in person or by proxy) in favor of opting-out of installing a fire sprinkler system. The opt-out must be completed by December 31, 2016. The condominium association must meet certain requirements to provide notice of a successful opt-out.

Non High-Rise Condominiums

Previously, association attorneys throughout Florida were confident in advising that non high-rise condominiums were not required to hold an opt-out vote from the fire sprinkler retrofitting requirements. However, earlier this year, the Department of Business and Professional Regulation ("DBPR") published media statements seeming to state that all Florida condominiums, regardless of height, must perform an opt-out vote or retrofit. Contrary to the DBPR's position, the Division of State Fire Marshall's opinion is that the fire code only requires high-rise buildings to retroactively install fire sprinklers. The DBPR stated that the Division of State Fire Marshall has jurisdiction to interpret the fire code, but that it in fact interprets what the requirements are related to condominiums. Obviously, this has created concerns about low-rise condominiums that have not performed opt-outs and do not have sprinklers. The change in position of the DBPR comes from the deletion of certain wording from the Condominium Act in 2010. The sponsor of that change, Senator Jeremy Ring, has specifically said that the Division of State Fire Marshall's interpretation is contrary to the legislative intent of the changes.

It is important to note that nothing within the Condominium Act requires a retrofitting requirement. The Condominium Act (Fla. Stats. Chapter 718) instead states how to properly opt-out if a condominium must install fire sprinklers. Whether or not a condominium has to install fire sprinklers is set forth in Florida Statutes Chapter 633 (The Florida Fire Prevention Code). The Florida Fire Prevention Code incorporates the National Fire Protection Association Fire Code ("NFPA") 101 Chapter 31, Section 3.5.11, which is really the source of the fire sprinkler system installation requirements. This section states in 31.3.5.12 that "all high-rise buildings shall be protected through an approved, supervised automatic sprinkler system or an Engineered Life Safety System approved by the Fire Official in compliance with the provisions of this section not later than December 31, 2014, subject to the provisions of any Statute or rule adopted thereunder which may supersede these rules." This deadline was extended to 2019.

What does this mean? If your building is approaching 75 feet, it may be prudent to avoid an interpretation later that might force you into installing fire sprinklers. As a matter of risk avoidance, the board could make a business decision that the cost of obtaining an opt-out vote is far less than the cost of legal fees and engineering fees later, in the event that there is a question as to your requirement to opt-out. Other low-rises should consult with a life safety engineer to determine whether there is another basis for retrofitting based on the number of stories, date of construction or type of usage, such as whether your building is a public lodging establishment. Opting-out may be ultimately more cost-effective in light of the contradictory opinions from state agencies, and the fact that any legislation clarifying this issue will not be approved or effective prior to December 31, 2016, which is the deadline for an opt-out vote. Again, this opinion is general in nature and should not supersede your association obtaining advice from its own engineer or counsel.

For additional information regarding this alert, please contact one of the listed Roetzel attorneys.

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