

Final Order No. BPR-2007-00703 Date: **1-31-07**

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By:

*Brandon M. Nichols*

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA LAND SALES, CONDOMINIUMS, AND  
MOBILE HOMES

IN RE PETITION FOR DECLARATORY STATEMENT

Docket No. 2006055524

PLCA CONDOMINIUMS ASSOCIATION, INC.

**DS 2006-047**

**DECLARATORY STATEMENT**

PLCA Condominiums Association, Inc. (PLCA), Petitioner, filed a Petition for Declaratory Statement requesting an opinion as to whether PLCA may opt out of the fire safety sprinkler retrofit requirements of section 718.112(2)(l), Florida Statutes (2006), where the Fire Marshall is requiring the installation under section 633.025, Florida Statutes, and NFPA<sup>1</sup> 101, Life Safety Code (2004), chapter 31.3.4.1.

**PRELIMINARY STATEMENT**

On October 3, 2006, the Division received a petition for declaratory statement from PLCA. Notice of receipt of the petition was published in Florida Administrative Weekly on December 29, 2006. The Division received the additional information it requested from PLCA on November 14, 2006. The time

<sup>1</sup> National Fire Protection Association. See § 633.0215(2), Fla. Stat. (requiring State Fire Marshall to adopt the NFPA Standard 1, Fire Prevention Code).

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in which to respond to the petition was stayed while PLCA provided the additional information.

The Division requested that PLCA serve a copy of the petition on the Fire Marshall. PLCA filed a letter of service on the Fire Marshall dated November 7, 2006. The Fire Marshall has not filed a response. No hearing was requested or held.

#### FINDINGS OF FACT

The following findings of fact are based on information submitted by PLCA. The Division takes no position as to the accuracy of the facts, but merely accepts them as submitted for purposes of this final order.

1. PLCA Condominiums Association, Inc. (PLCA) is a Florida not-for-profit corporation operating and maintaining the PLCA multicondominium residential community and is a condominium master association. Pet. at 3; art. II, Art. of Incorp.; art. I(2), Declaration of Condominium for Pine Lake One, A Condominium [Declaration]. PLCA and the condominiums are part of a larger Pine Lake community that is separately governed by a homeowners' association. Art. XX, Declaration.

2. Its principal place of business is in Broward County, Florida. Id.; Art. I(2), By-Laws of PLCA Condominiums Association, Inc.

3. The PLCA community is comprised of seven condominiums, each subject to a separate declaration of condominium known as Pine Lake "One" through "Seven." Pet. at 3; art. II, Art. of Incorp.

4. PLCA provided a declaration of condominium for Pine Lake One, a Condominium. The condominium submission statement is signed in 1984 and was filed in the public records. Declaration at 1, 19. PLCA asserts that the seven declarations are substantially similar. Letter from J. Steven Hudson, Esq. to J. Sue Richardson, Esq. (Nov. 7, 2006).

5. The condominium building for Pine Lake, One is a single two-story building. Art. III, Declaration. All condominium buildings are two story buildings under 75 feet in height. Pet. at 5.

6. PLCA was incorporated in 1983. Art. of Incorporation. PLCA is granted the powers of a condominium association under the Condominium Act "as amended from time to time" and the powers of a Florida corporation under the not-for-profit corporation act. Art. II, Art. of Incorporation. PLCA is authorized to contract for maintenance, operation and management of any Condominium property." Art. II(3), Art. of Incorporation. Under the Condominium Act and its bylaws, PLCA collects funds for the operation and maintenance of the condominium common facilities. § 718.111(4), Fla. Stat.; art. II, Art. of Incorporation.; Art. II(8), By-Laws.

7. Common expenses include the operational expenses for PLCA and "expenses designated as common expenses from time to time by the Board or under the provisions of the Declarations of Condominium." Art. VII(3), By-Laws.

8. The Fire Marshall of the City of Pembroke Pines has jurisdiction over PLCA and the condominiums. Pet. at 3. The city established local fire safety codes and standards authorized under section 633.025, Florida Statutes.

9. On March 23, 2006, David Raines, Fire Marshall, notified PLCA that it was required to retrofit the common elements with a fire alarm system. Pet. at 4.

10. PLCA desires to exercise its vote to opt-out of the fire safety system requirements.

#### CONCLUSIONS OF LAW

1. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

2. PLCA is a condominium "association" that operates a "multicondominium." § 718.103(2) and (20), Fla. Stat.

3. The installation of a fire safety system relates to the protection of the common elements and is a common expense under the governing documents and section 718.115, Florida Statutes.

4. The question of whether PLCA may opt-out of the firesafety requirements, is governed by section 718.112(2)(l), Florida Statutes, which was amended in 2003 by the legislature, and which provides in pertinent part:

(l) *Certificate of compliance.*--There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego

the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term "high-rise building" means 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. For purposes of this subsection, the term "common areas" means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. . . .

§ 718.112(2)(l), Fla. Stat. (emphasis added); Fla. CS for CS for CS for SB 592, § 5 (2003).

5. The Senate Staff Analysis and Economic Impact Statement for the bill summarized section 5 as providing condominium associations and unit owners with "a procedure to exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system." Fla. S. Comm. on Judiciary, Reg'd Indus., Com., Econ. Op., Consumer Servs., CS for CS for CS for SB 59(2003) (Staff Analysis 2) (2003) (Apr. 15, 2003) (available at <http://flsenate.gov>). At the time the legislature considered these amendments, county governments were authorized to enforce the fire protection code adopted by the State Fire Marshall. *Id.* at 7. Because of "the practical limits to retrofitting existing structures, the local fire safety official was authorized to apply the applicable firesafety code to the extent practical to assure a reasonable degree of safety to life and property, or the fire official must fashion a reasonable

alternative that affords an equivalent degree of safety.” Id. Under section 553.895(2), Florida Statutes, any building 3 stories or more must be equipped with a fire sprinkler system. Id. Additionally, all “new and existing high-rise buildings must be protected throughout by an approved automatic sprinkler system under the firesafety code. Id. at 8. Condominium associations could rely on a certificate of compliance from a licensed electrical contractor as proof of compliance with the fire safety code. Id.

6. The effect of the amendment on condominium associations and owners was to “exempt themselves from any requirement at law to retrofit any common element or units of an association with a fire sprinkler system or other enhanced fire protection system, provided that. . . [t]wo-thirds of the unit owners by vote at a noticed meeting or written consent choose to forgo such retrofitting. The vote is effective upon the recording of a certificate attesting to the vote in the public records.” Staff Analysis at 11. The economic impact to condominium associations and owners was to exempt them from the cost of retrofitting the condominium buildings. Id. at 14. The impact to the local fire officials was to require them to “determine whether to exempt all condominiums, or unit owners in their jurisdiction from the requirement to retrofit those facilities with fire protection sprinkler systems.” Id. at 15.

7. Section 633.025, Florida Statutes, provides that the most current NFPA 101, Life Safety Code, adopted by the State Fire Marshall, shall be deemed to be adopted by each municipality, county, and special district with firesafety responsibilities. The association provided section 31.3.4 of the NFPA

101, Life Safety Code (2005), chapter 31.3.4.1 with its petition. This section provides:

Apartment buildings with more than three stories or with more than 11 dwelling units, other than those meeting 31.3.4.1.2, shall be provided with a fire alarm system in accordance with Section 9.6, except as modified by 31.3.4.2 through 31.3.4.5.2.

8. On January 10, 2006, the Department of Financial Services issued a declaratory statement regarding the opt-out vote by Ro-Mont Condominium J from the lifesafety system installation. In re: Pet. Dec. Stmt., Tavss, Ro-Mont So. Exec. Council, Inc., Case No. 83852-05-FM (Dep't Fin. Servs.) (Jan. 10, 2006). The department found that a fire alarm system by itself, without any other life safety system, feature, or attribute, was not an "engineered life safety system." Id. at 4. A fire alarm system may be one component of an engineered life safety system, but would not constitute such a system by itself. Ro-Mont Condominium J appealed the declaratory statement, which was affirmed by the Third District Court of Appeal in a per curiam decision. Ro-Mont So. Condo. J, Inc. v. Dep't of Fin. Servs., Case No. 3D06-303 (Fla. 3d DCA 2006) (aff'd per curiam).

9. The residential condominium buildings are under three stories in height. Therefore, the vote, if taken, would comply with section 718.112(2)(l), Florida Statutes. PLCA may opt-out of the installation of a fire sprinkler or a lifesafety system unless otherwise required under the controlling documents.

10. PLCA is being required to install a "fire alarm system" not a life safety system as its question indicates. According to the Department of Financial Services, a fire alarm system is not an "engineered lifesafety system"



by itself, but may be one component of such a system. Because the opt-out provision relies upon the terms interpreted by the State Fire Marshall and applied by the local fire officials, section 718.112(2)(l), Florida Statutes, would permit condominium associations to opt-out of installing a fire sprinkler system or an "engineered life safety system."


11. The Division has no authority to interpret, apply, or enforce the fire safety code. Therefore, the Division may not determine if PLCA may opt-out of the installation of a fire alarm system under NFPA 101, Life Safety Code, Chapter 31.3.4.1.

ORDER

Based upon the findings of fact and conclusions of law, it is declared that PLCA Condominiums Association, Inc. may vote to opt-out of the fire sprinkler and other lifesafety system retrofit under section 718.112(2)(l), Florida Statutes, but declines to determine if it may opt out of the installation of a fire alarm system under the fire safety code.

**DONE and ORDERED** this 24<sup>th</sup> day of January, 2007,  
at Tallahassee, Leon County, Florida.



  
MICHAEL T. COCHRAN, Director  
Department of Business and  
Professional Regulation  
Division of Florida Land Sales, Condominiums,  
and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1030



**NOTICE OF RIGHT TO APPEAL**

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2202 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to J. Steven Hudson, Esq., Randall K. Rodger & Associates, P.A., One Park Place, 621 N.W. 53rd Street, Suite 300, Boca Raton, Florida 33487, this 2<sup>nd</sup> day of February, 2007.



ROBIN MCDANIEL, Division Clerk

Copies furnished to:

Janis Sue Richardson,  
Chief Attorney

David Raines, Fire Marshall  
City of Pembroke Pines Fire Dept.  
10100 Pines Blvd.  
Pembroke Pines, FL 33025