

# Condominium Fire Sprinkler Systems: Clarity for a confusing situation

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Which residential condominium associations are required to install a fire sprinkler system in their condominium building or, in the alternative, hold a vote for the members to opt out of the requirement to install the fire sprinkler system? Does the requirement to install condominium fire sprinkler systems apply to all residential condominium buildings regardless of height, or does it refer to only those residential condominium buildings that are considered high-rise buildings? Rarely has there been so much confusion.

First, some background. The Florida Fire Prevention Code, as further discussed in Florida Statute Chapter 633, is based, in large part, upon the National Fire Protection Association Fire Code (referred to as “NFPA 1”) along with the Life Safety Code (referred to as “NFPA 101”). Chapter 31, Section 3.5.11 of the Life Safety Code, as amended by the Florida Fire Prevention Code, requires all “high-rise” buildings to be protected by an approved, automatic fire sprinkler system no later than December 31, 2019. The Florida Fire Prevention Code allows an “Engineered Life Safety System” as an alternative to the fire sprinkler system.

The section of law that is causing confusion is Florida Statute section 718.112 (2)(l). As you read the following provision, ask yourself whether you believe it applies to all residential condominiums, or only to “high-rise” buildings. This section of Florida law provides, in relevant part that, *“notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler 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 by the affirmative vote of a majority of all voting interests in the affected condominium. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system before January 1, 2020. 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.* Sadly, and candidly quite obvious given the number of reader emails I received on the subject, this section of the Condominium Act does not provide the necessary clarity to answer this question: Must every residential condominium either install fire sprinkler systems or hold a vote of the owners to opt out, or do the fire sprinkler requirements only apply to condominium associations whose residential condominium building(s) are considered “high-rise” buildings?

Simply put, while this section of the Condominium Act does not provide that it specifically applies only to “high-rise” buildings, the actual requirements, as set out in the Life Safety Code, more specifically the NFPA 101 Chapter 31, Section 3.5.11, only requires the installation of the fire sprinkler system in what is referred to as “high-rise” buildings. The NFPA 101 defines the term “high-rise building” as any building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access. In other words, without directly saying so, it appears that Florida Statutes section 718.112 (2)(l) was designed to function in parity with the relevant provision(s) of the Florida Fire Prevention Code. When section 718.112(2)(l) is read together with Chapter 31, Section 3.5.11 of the Life Safety Code, it is pretty obvious that the fire sprinkler system requirements and the condominium association opt-out procedures only apply to “high-rise” buildings.

Adding to the confusion is that earlier versions of section 718 112 (2)(l) provided, “[f]or 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.” Later, this text was amended out of the statute.

So, what is the bottom line? Does a condominium association whose buildings are not considered “high-rise” buildings have to install fire sprinkler systems or opt out by taking the necessary vote prior to December 31, 2016? While it seems clear that the fire sprinkler provisions do not apply to non - “high-rise” buildings, any unqualified person’s opinion may or may not be a correct opinion when later judicially challenged. Sometimes even the clearest points of law become all muddled up in the courtroom. Imagine a situation where a non-“high-rise” building experiences a catastrophic fire, and great harm is caused to both person and property. It would not be at all surprising for any resulting lawsuit brought by the injured’s attorney to include a claim for breach of fiduciary duty against the association and its board members for failure to install the fire sprinkler system or to have taken the requisite vote of the owners to opt out of the installation requirement. With that in mind, there is only one way to gain the clarity needed.

**NON- “HIGH RISE” CONDOMINIUMS:** In order to have certainty as to whether your non-“high-rise” condominium is required to install a fire sprinkler system or take the vote to opt out, an opinion of a qualified professional is needed. In this instance, it would be miraculously wonderful if the State Fire Marshall would issue a public statement. Absent that, an association should make inquiry to the Bureau of Fire Prevention, Division of State Fire Marshall, or their local Fire Marshall. Your association’s attorney should be able to assist in facilitating this communication for you.

**“HIGH RISE” CONDOMINIUMS:** By December 31, 2016, the “high-rise” condominium that is not in compliance with the requirements for a fire sprinkler system and that 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. The automatic sprinkler system is not required if the members voted to opt-out. It is also not required when every dwelling unit has exterior exit access which can include balconies, porches, and rooftop decks under certain circumstances. In addition, the automatic sprinkler system is not required in buildings having an approved engineered life safety system designed by a professional engineer that specializes in fire and life safety design. If a board believes their condominium is exempt for the forgoing reasons, then it should consult with a qualified fire safety engineer, State Fire Marshall or other qualified individual to render such opinion.

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